

PARLIAMENT OF VICTORIA

Public Accounts and Estimates Committee



Report on the appointment of a person to conduct the financial audit of the Victorian Auditor-General's Office

Parliament of Victoria
Public Accounts and Estimates Committee

Ordered to be published

VICTORIAN GOVERNMENT PRINTER
April 2019

PP No 24, Session 2018-19
ISBN 978 1 925703 76 4 (print version), 978 1 925703 77 1 (PDF version)

Committee functions

The Public Accounts and Estimates Committee is a joint parliamentary committee constituted under the *Parliamentary Committees Act 2003* (Vic).

The Committee comprises nine members of Parliament drawn from both Houses of Parliament.

The Committee carries out investigations and reports to Parliament on matters associated with the financial management of the State. Its functions under the Act are to inquire into, consider and report to the Parliament on:

- any proposal, matter or thing concerned with public administration or public sector finances
- the annual estimates or receipts and payments and other budget papers and any supplementary estimates of receipts or payments presented to the Assembly and the Council
- any proposal, matter or thing that is relevant to its functions and has been referred to the Committee by resolution of the Council or the Assembly or by order of the Governor in Council published in the Government Gazette.

The Committee also has a number of statutory responsibilities in relation to the Office of the Auditor-General and Parliamentary Budget Officer.

Committee membership



CHAIR

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Southern Metropolitan



DEPUTY CHAIR

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Polwarth



Sam Hibbins
Prahran



Gary Maas
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This report is also available online at the Committee's website.

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Acronyms

APES	Accounting Professional and Ethical Standard
PAEC	Public Accounts and Estimates Committee
VAGO	Victorian Auditor-General's Office

Findings and Recommendations

RECOMMENDATION 1: In accordance with section 17 of the *Audit Act 1994*, the Legislative Council and the Legislative Assembly appoint Mr Geoff Parker of Nexia Melbourne for a period of one year:

- to conduct the financial audit of the Victorian Auditor-General's Office for the financial year ending 30 June 2019;
- in accordance with the Agreement for the provision of services for the financial audit of the Victorian Auditor General's Office (Year ending 30 June 2019), in Appendix 1 of this report; and
- at a fixed fee level of remuneration of \$38,000 (plus GST) for audit services for the year ending 30 June 2019. 5

RECOMMENDATION 2: The Legislative Council and the Legislative Assembly note that the Public Accounts and Estimates Committee will conduct a tender in 2020 for services in relation to the financial audit of the Victorian Auditor-General's Office for the three-year period 2019–20 to 2021–22 inclusive, in accordance with applicable Expenditure Approval Guidelines issued by the Parliament. 6

Appointment of a person to conduct the financial audit of the Victorian Auditor-General's Office

1.1 Legislative requirements

The *Audit Act 1994* (the Act) requires that an independent financial auditor be appointed 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 Act 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 Parliamentary Committee, 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.

Under section 18 of the Act, the independent auditor can also report on any recommendations for the more effective, efficient and economic operation of VAGO.

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

1.2 Previous financial auditor

The previous financial auditor appointed by the Parliament was Mr Geoff Parker, Director at Nexia Melbourne. Mr Parker undertook financial audits of VAGO for three years from 2015–2016 to 2017–18. Mr Parker's term expired in 2018, following his audit of VAGO's financial statements for the year ended 30 June 2018.

1.3 Options for consideration for the recommendation of a financial auditor

Members of the Committee of the 59th Parliament of Victoria were appointed on 21 March 2019. The new Committee is faced with constraints associated with its delayed establishment, the impending Parliamentary recess in July 2019, and the imperative that the financial audit for the financial year ending 30 June 2019 must be planned and commenced in July 2019 and conducted within a three month period. This timeframe is required for the Committee and the Auditor-General to have adequate time to receive and consider the independent Auditor's report. The Auditor-General incorporates his financial statements together with the independent Auditor's opinion within VAGO's Annual Report, generally tabled in October each year.

The Committee considered a number of options in making a recommendation to Parliament for the appointment of the independent Auditor by 30 June 2019. Given the unique constraints associated with the appointment this year, the Committee determined that the overriding considerations of timeliness of the appointment and recommending an auditor with proven expertise in conducting such an audit were paramount, while still meeting the requirements of the legislation, professional auditing standards and Parliament's Procurement Policy.

Mindful of these considerations, the Committee chose to defer a prolonged selected market tender process option, such as that conducted in 2016, until 2020. The total time frame required for such a tender process is estimated at 12 weeks. If such an option was adopted in 2019, an appointment would be delayed until August 2019.

The Committee considered and chose the option permitted by section 17(2) of the Act, which enables the Parliament to renew Mr Geoff Parker's appointment for a further term of 12 months.

Section 17(2)(a) of the Act states:

An appointment must not be made for a period exceeding 3 years, but may be renewed.

The Committee is satisfied that Mr Parker's performance and services to the Parliament as an auditor for the past three years have been professional and exemplary and that he has satisfied the requirements of his previous contract.

Mr Parker has indicated his availability and willingness for a renewal of his contract for performing the 2018–19 financial audit of VAGO and confirmed that there were no real or perceived threats to his professional independence since undertaking the previous year's audit of VAGO.¹

The Committee also considered the relevance of professional and ethical standards for auditors in public practice, specifically Auditing Standard ASA 102, issued by the Australian Auditing and Assurance Board, operative from March 2018, which stipulates that auditors must adhere to the ethical requirements of APES 110, issued by the Australian Professional and Ethical Standards Board.

¹ Mr Geoff Parker, Director, Nexia Melbourne, correspondence, 4 April 2019.

The relevant matter under APES 110 pertaining to Mr Parker's renewal of appointment for VAGO's financial auditor relates to a 'familiarity' threat to independence and incorporates the concept of 'partner rotation' for repeated services provided to an organisation.

Under paragraph 290.151 of APES 110, an individual shall not be a key audit partner for more than seven years in respect of the audit of a public interest entity (VAGO falls within this category of entities). As such, any renewal of Mr Parker's appointment by the Parliament for a further period of one year under the authority available to it in section 17(2)(a) of the Act would not contravene auditing standards.

The Committee also considered the total cumulative financial value of Mr Parker's contract with Parliament for auditing services over the past three years, which totalled \$108,900 (inclusive of GST). Mr Parker has quoted \$41,800 (inclusive of GST) for performing the audit services for the financial year ending 30 June 2019 including an additional performance statement review. Over the four-year period, the cumulative value of Mr Parker's services will total \$150,700 (inclusive of GST). This satisfies the threshold of \$200,000 set by Parliament's Procurement Policy before a full market tender is required.

1.4 Financial auditor's role

As specified in the proposed contract (Appendix 1 in this report), the independent financial auditor's role will be to:

- conduct an audit of VAGO's financial statements for the year ended 30 June 2019
- form an opinion as to whether the financial statements of VAGO present fairly the financial position of the Office as at the end of the financial year and its financial performance and cash flows for the financial year in accordance with applicable Accounting Standards and other mandatory professional reporting requirements
- verify that the 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 the audit which may include risk-based principles, controls-based testing, analytical reviews, testing the 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 VAGO's 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
- conduct an audit of VAGO's performance statement and form an opinion in terms of reasonable assurance of the factual accuracy and integrity of the information
- prepare a management letter and/or operations letter to VAGO
- prepare, as the independent Auditor thinks fit, a report to Parliament that may include information and recommendations for the more effective, efficient and economic operation of VAGO
- 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.

1.5 Timelines and key deliverables

The Committee has specified that the following documents and reports were to be provided by the independent Auditor for the financial audit of VAGO for the year ending 30 June 2019:

- a. Prior to the commencement of the audit and by 1 June 2019, the independent Auditor should provide an audit plan and methodology to the Committee for comment.
- b. The independent 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 independent Auditor may, if the Auditor thinks fit, make a report under section 18 of the *Audit Act 1994* on the audit, including recommendations for the more effective, efficient and economic operation of VAGO, for transmission to Parliament. If such a report is made, the Auditor will transmit the final report to Parliament as required under section 18(4) of the *Audit Act 1994*.
- d. The independent Auditor's preliminary report and audit opinion, including a copy of a proposed management letter and/or operations letter, will be provided to the Committee and Auditor-General at least 10 business days prior to making the final audit report.
- e. The independent Auditor's finalised report and audit opinion, including a copy of the final management letter and/or operations letter, will 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 Parliament.
- f. The independent Auditor should also submit to the Committee a report on the conduct of the 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 letters outlined in paragraph (e) above.

- g. The final audit opinion is to be transmitted to Parliament by 30 November 2019 via its inclusion within the Auditor-General's Annual Report for 2018–19 when the Auditor-General tables the report in Parliament.

1.6 Recommended appointment

To expedite the financial audit of VAGO for the year ending 30 June 2019, the Committee resolved to recommend the renewal of the audit services from Mr Geoff Parker to conduct the financial audit of VAGO for the year ending 30 June 2019. Mr Geoff Parker is:

- a Director at Nexia Melbourne Audit Pty Ltd, an accounting firm in Melbourne which is also a member of Nexia Australia with offices in capital city locations across Australia and in Christchurch, New Zealand;
- a member of the Chartered Accountants Australia and New Zealand; and
- a registered company auditor.

The Committee considers that Mr Parker has demonstrated strength of experience in auditing VAGO and has demonstrated an excellent audit approach including an understanding of applicable accounting standards and of the responsibilities demanded of a financial auditor of VAGO, over the previous three-year period.

The Committee recommends that Mr Parker be appointed for an additional one year period for a fixed total fee of \$38,000 (plus GST) and that a tender for the financial audit services of VAGO for the three year period 2019–20 to 2021–22 inclusive be undertaken by the Committee in 2020.

1.7 Recommendations

The Committee recommends that:

RECOMMENDATION 1: In accordance with section 17 of the *Audit Act 1994*, the Legislative Council and the Legislative Assembly appoint Mr Geoff Parker of Nexia Melbourne for a period of one year:

- to conduct the financial audit of the Victorian Auditor-General's Office for the financial year ending 30 June 2019;
- in accordance with the Agreement for the provision of services for the financial audit of the Victorian Auditor General's Office (Year ending 30 June 2019), in Appendix 1 of this report; and
- at a fixed fee level of remuneration of \$38,000 (plus GST) for audit services for the year ending 30 June 2019.

RECOMMENDATION 2: The Legislative Council and the Legislative Assembly note that the Public Accounts and Estimates Committee will conduct a tender in 2020 for services in relation to the financial audit of the Victorian Auditor-General's Office for the three-year period 2019–20 to 2021–22 inclusive, in accordance with applicable Expenditure Approval Guidelines issued by the Parliament.

**Adopted by the Public Accounts and Estimates Committee
55 St Andrews Place, East Melbourne
11 April 2019**

**Appendix 1 Agreement for the
provision of services for the
financial audit of the Victorian
Auditor-General's Office
(Year ending 30 June 2019)**

The State of Victoria through the Parliament of Victoria

**Agreement for the Provision of Services for
the Financial Audit of the Victorian
Auditor-General's Office
(Year ending 30 June 2019)**

(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**)

Nexia Melbourne Audit Pty Ltd, ABN 86 005 105 975 of Level 12, 31 Queen Street, Melbourne, Victoria 3000 (**Service Provider**)

Background

- A. Section 17 of the *Audit Act 1994* (Vic) requires an audit to be conducted to determine whether 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 financial audit of VAGO.
- C. The Service Provider has fully informed itself on all aspects of the financial audit of VAGO required to be conducted, and has represented that it has the requisite skills and experience to deliver such audit services on behalf of the Parliament.
- D. This Agreement sets out the agreed terms and conditions and remuneration between the Parliament and the Service Provider pursuant to section 17 of the *Audit Act 1994* (Vic).

Agreed terms and conditions

1. Interpretation

1.1 Definitions

In this Agreement:

Agreement means this agreement and includes the schedules and any annexures to it or documents incorporated by reference.

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

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

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

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

Completion Date means the date (if any) set out in **Item 1 of Schedule 1** as that date may be extended in accordance with this Agreement.

Confidential Information means any technical, scientific, commercial, financial or other information of, about, or in any way related to, the Parliament and/or the Victorian Auditor-General and/or VAGO, including any information designated by the Parliament as confidential, which is disclosed, made available, communicated or delivered to the Service Provider in connection with this Agreement, but excludes information:

- (a) which is in or which subsequently enters the public domain other than as a result of a breach of this Agreement;
- (b) which the Service Provider can demonstrate was in its possession prior to the date of this Agreement;
- (c) which the Service Provider can demonstrate was independently developed by the Service Provider;
- (d) which is lawfully obtained by the Service Provider from another person entitled to disclose such information; or
- (e) which is disclosed pursuant to legal requirement or order.

Contract Intellectual Property means any and all Intellectual Property Rights incorporated or comprised in any materials created by or on behalf of the Service Provider in the course of providing the Services.

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

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

Fees means a fixed fee payable to the Service Provider for the provision of the Services, determined in accordance with the Price Schedule.

Information Privacy Principles means the information privacy principles set out in the *Privacy and Data Protection Act 2014* (Vic).

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

Laws means:

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

Parliament Supplied Material means any material provided by the Parliament to the Service Provider for the purposes of this Agreement which includes, but not limited to, equipment, documents, software, hardware, information, data stored by any means and any other materials.

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

Price Schedule means the schedule of Rates and Fees payable by the Parliament to the Service Provider for the provision of the Services, as set out in **Schedule 2**.

Protective Data Security Standard means any standard issued under Part 4 of the *Privacy and Data Protection Act 2014* (Vic).

Public Sector Employee has the same meaning as in the *Public Administration Act 2004* (Vic).

Rates means the rates (whether charged on an hourly, daily, weekly or other time related basis) payable to the Service Provider for the provision of the Services, determined in accordance with the Price Schedule.

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

Request for Tender or RFT means the request for tender issued by the Parliament in relation to "Financial Audit of the Victorian Auditor-General's Office (Years Ending 30 June 2016, 30 June 2017 and 30 June 2018)" on **27 April 2016**.

Service Levels means the service levels the Service Provider must comply with in performing its obligations under this Agreement, as specified in **Schedule 3**, and as amended from time to time in accordance with **clause 7.2(c)**.

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

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

Staff Costs means Pay as You Go tax, withholding tax, superannuation contributions or charge amounts, fringe benefits tax, workers' compensation insurance premiums,

payroll tax and any like taxes and charges arising out of or in relation to this Agreement, or any engagement arising under this Agreement (together with all interest or penalties payable by reference to those costs).

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

Term means the period of time from the earlier of:

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

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

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

1.2 Interpretation

Unless expressed to the contrary, in this Agreement:

- (a) words in the singular include the plural and vice versa;
- (b) any gender includes the other genders;
- (c) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (d) "includes" means includes without limitation;
- (e) no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it;
- (f) a reference to:
 - (i) a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority;
 - (ii) a person includes the person's legal personal representatives, successors, assigns and persons substituted by novation;
 - (iii) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced;
 - (iv) an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation;

- (v) "\$", "dollars" or "AUD" is a reference to the lawful currency of the Commonwealth of Australia; and
- (vi) the Parliament is a reference to the Parliament of Victoria in right of the Parliament of Victoria; and
- (g) if the date on or by which any act must be done under this Agreement is not a Business Day, the act must be done on or by the next Business Day.

1.3 Headings

Headings do not affect the interpretation of this Agreement.

2. Commencement and Completion

The Service Provider must commence performance of the Services on the Commencement Date and complete the Services by the Completion Date and in accordance with any other dates for delivery specified in **Schedule 2**. However, for the avoidance of any doubt, this Agreement applies to any Services performed prior to the date of this Agreement.

3. Performance of the Services

3.1 Provision of Services

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

3.2 Service Levels

The Service Provider must provide the Services to a standard that reaches or exceeds the Service Levels and in accordance with all other requirements set out in **Schedule 2**. In addition, the Service Provider must:

- (a) provide the Services to the reasonable satisfaction of the Parliament and in a proper, timely and efficient manner using that standard of care, skill, diligence, prudence and foresight that would reasonably be expected from a prudent, expert and experienced provider of services that are similar to the Services;
- (b) ensure the highest quality of work and the delivery of the Services with the utmost efficiency;
- (c) act in good faith and in the best interests of the Parliament;
- (d) comply with all statements or representations as to its performance or the provision of the Services set out in the Tender Documentation; and

- (e) keep the Parliament informed of all matters of which it ought reasonably be made aware and provide such information in relation to the provision of the Services as may reasonably be required by the Parliament.

3.3 Compliance with Parliament's directions

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

3.4 Service Provider to provide facilities

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

3.5 Cooperation with other service providers

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

3.6 Time of the Essence

Time is of the essence in relation to the provision of the Services under this Agreement. Without limiting any other provisions of this Agreement, if, at any time during the Term, the Service Provider is unable or is likely to become unable, for whatever reason, to provide any or all of the Services, or is delayed or is likely to be delayed in the supply of the Services, the Service Provider must immediately notify Parliament's Representative of that fact. Parliament's Representative may agree, in its sole discretion, to extend the Completion Date.

3.7 Variations

The Parliament may at any time give written notice to the Service Provider proposing a variation to the scope of the Services (including any necessary extension to the Completion Date). The Service Provider must, within 5 Business Days of such notice, provide a written proposal as to varied Rates or Fees that would apply with respect to the provision of the varied Services (based on the value for money proposition reflected in the then current Price Schedule). The Parliament may accept such proposal within 5 Business Days of its receipt from the Service Provider. In the absence of such acceptance, the Services must be performed in accordance with this Agreement without such variation.

4. Service Provider's staff

4.1 Personnel to comply with this Agreement

The Service Provider must ensure that:

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

4.2 Specified Personnel

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

4.3 Replacement of Specified Personnel

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

4.4 Parliament's right to remove

- (a) If the Parliament is dissatisfied with the performance of particular personnel (not limited to the Specified Personnel or Replacement Personnel), the Parliament may request that the Service Provider remove that personnel from their involvement in the provision of the Services. Subject to any applicable law, the Service Provider must comply with such a request.
- (b) Subject to this **clause 4**, the Service Provider must promptly replace the relevant personnel at no additional cost to the Parliament with another person who has the appropriate skills, qualifications and experience.

5. Price for the Services

- (a) The Price Schedule (including the Rates and the Fees) according to which the Service Provider will charge the Parliament for the Services is set out in **Schedule 2**. Subject to any change in the Rates or Fees for the Services resulting from the application of any express provision of this Agreement, the Rates and Fees are fixed for the Term.
- (b) Expenses or other disbursements may only be charged by the Service Provider in accordance with **Schedule 2**.

6. Invoicing and payment

6.1 Invoicing

- (a) The Service Provider must submit to the Parliament a tax invoice (or invoices) in respect of the Services as soon as practicable after the completion of the Services, or at such other time or times set out in **Schedule 2** or as otherwise agreed by the parties in writing.
- (b) A tax invoice submitted for payment pursuant to **clause 6.1(a)** must contain each of the matters specified in **Item 4 of Schedule 1** and be sent to the address specified in **Item 4 of Schedule 1**.

6.2 Payment of invoice

- (a) Subject to the remainder of this **clause 6.2**, the Parliament will pay the invoiced amount to the Service Provider within 30 days of receipt of the invoice, in the manner specified in **Item 5 of Schedule 1**.
- (b) An invoice will not be paid until such time as the invoice is certified for payment by the Parliament's Representative. An invoice will not be certified for payment unless the Parliament's Representative is satisfied that it is correctly calculated with respect to the Services for which payment is sought and that the Service Provider is entitled to claim payment.
- (c) If the Parliament's Representative disputes the invoiced amount (whether in whole or in part) for any reason, the Parliament must pay the undisputed amount of such invoice (if any), and notify the Service Provider of the amount the Parliament believes is due for payment. If the Parliament and the Service Provider are unable to agree on the balance of the invoiced amount, the dispute will be referred for determination in accordance with **clause 21**.
- (d) Payment of an invoice is **not** to be taken as:
 - (i) evidence or an admission that the Services have been provided in accordance with the Service Levels and otherwise in accordance with this Agreement;
 - (ii) evidence of the value of the Services supplied; or
 - (iii) an admission of liability,but must be taken only as payment on account.

6.3 Fair Payment

- (a) The Parliament will, on demand by the Service Provider, pay simple interest on a daily basis on any overdue amount, at the rate for the time being fixed under section 2 of the *Penalty Interest Rates Act 1983 (Vic)*.

- (b) For the purposes of **clause 6.3(a)**, **overdue amount** means an amount (or part thereof) that:
- (i) is not, or is no longer, disputed in accordance with this Agreement;
 - (ii) is due and owing under a tax invoice (as defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth)) properly rendered by the Service Provider in accordance with this Agreement; and
 - (iii) has been outstanding for more than 30 days from the date of receipt of the invoice or the date that the amount ceased to be disputed, as the case may be.

7. Contract management

7.1 Parties' Representatives

- (a) For the purposes of ensuring a productive and efficient relationship between the Parliament and the Service Provider, each of the Parliament and the Service Provider nominates the person or persons specified in **Item 2 of Schedule 1** as their respective representatives (**Representatives**) in relation to all queries, consents, approvals, complaints and disputes required or arising under or in connection with this Agreement.
- (b) The Service Provider will have regard to all requirements of the Parliament's Representative and will comply with all reasonable directions of the Parliament's Representative.
- (c) Either party may nominate a replacement Representative by notice in writing to the other party. The appointment of the replacement Representative will be effective from the date on which such notice is given.

7.2 Service Levels

- (a) The Service Provider must comply with the Service Levels in the provision of the Services.
- (b) Performance against the Service Levels will be tracked, monitored and reported on in the manner and at the times (if any) set out in **Schedule 3**.
- (c) The Service Levels (or any of them) may only be varied by the written agreement of the parties.

7.3 Progress report

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

- (a) a progress report in respect of the Service Provider's performance under this Agreement, such report to be provided at the times, in the format and containing the matters specified in **Item 6 of Schedule 1**; and

- (b) all other data or information that the Parliament's Representative may request to enable it to adequately assess the performance of the Service Provider.

8. Not Used

9. Access to Records

9.1 Service Provider to retain records

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

- (a) keep full, true and accurate accounts and records of all Services provided under this Agreement and all associated records including all supporting materials used to generate and substantiate invoices submitted to the Parliament in respect of the Services; and
- (b) keep such other records in relation to the Services as the Parliament reasonably requires from time to time,

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

9.2 Right to access and audit

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

9.3 Cost and responsibility

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

9.4 Subcontracts

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

10. Intellectual Property Rights

10.1 Warranty and indemnity by Service Provider

The Service Provider warrants to the Parliament that it is entitled to use and deal with any Intellectual Property Rights which may be used by it in connection with the provision of the Services.

10.2 Ownership of Contract Intellectual Property

- (a) Subject to **clauses 10.3** and **10.4**, all Contract Intellectual Property vests in and is the property of the Parliament from the time of its creation.
- (b) Subject to **clauses 10.3** and **10.4**, the Service Provider hereby irrevocably and unconditionally assigns to the Parliament, free of additional charge, all of its right, title and interest in and to the Contract Intellectual Property, and the Service Provider must sign all documents and do all things reasonably required to ensure that such assignment is effected.
- (c) The Service Provider must procure from all of its employees, agents, contractors and other third parties who are authors or makers of any Contract Intellectual Property (and must procure that any contract with any third party for the creation of any Contract Intellectual Property includes a provision that requires such person to obtain from its employees, agents and contractors) a written assignment of all Intellectual Property Rights of the employee, agent, contractor or third party in the Contract Intellectual Property as necessary to give effect to **clauses 10.2(a)** and **(b)** and a written consent from all individuals involved in the creation of any Contract Intellectual Property irrevocably consenting to the Parliament exercising its rights in the Contract Intellectual Property in a manner that, but for the consent, would otherwise infringe the moral rights of those individuals.

10.3 Ownership of Pre-Existing Intellectual Property

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

10.4 Licence of Pre-Existing Intellectual Property

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

11. Parliament Supplied Materials

11.1 Provision of Parliament Supplied Materials

- (a) Where the Parliament Supplied Materials are provided by the Parliament to the Service Provider, the Service Provider must:

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

11.2 Use of Parliament Supplied Materials

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

11.3 Risk and maintenance

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

11.4 IP Rights of third parties

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

11.5 Return of Parliament Supplied Material

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

12. Failure to perform

- (a) Without limiting any other clause of this Agreement, or any other remedy the Parliament may have, if the Service Provider fails to provide or perform any of the Services in accordance with the requirements of this Agreement (including the applicable Service Levels), the Parliament will not be required to pay for those Services and may, by notice in writing to the Service Provider, require the Service Provider to:
 - (i) remedy any default (if the default is capable of being remedied) at the Service Provider's own expense; or
 - (ii) re-perform the Services (if the Services are capable of being re performed by the Service Provider),within the time specified in the notice (which must be reasonable having regard to the nature of the Services).
- (b) If the remedied or re-performed Services are remedied or re-performed in accordance with the applicable Service Levels and otherwise to the satisfaction of the Parliament, then the Parliament will pay the applicable Rates or Fees for those remedied or re-performed Services (which the parties acknowledge may be less than the cost to the Service Provider of remedying or re performing the Services).
- (c) If the default referred to in clause 12(a) is not capable of being remedied or the Services are not capable of being re-performed, or the Service Provider fails within the time specified to remedy the default or re-perform the Services, the Parliament may either:
 - (i) remedy that default or re-perform the Services itself; or
 - (ii) have the Services remedied or re-performed by a third party,

and in either case, the Service Provider must pay the reasonable costs incurred by the Parliament in doing so.

13. Liability

13.1 Liability

The Service Provider must indemnify the Parliament and its officers, employees and agents (**Indemnified Party**) against any loss, damage, claim, action or expense (including legal expense) which any Indemnified Party suffers as a direct or indirect result of any of the following:

- (i) a breach of this Agreement by the Service Provider, including any failure to provide the Services in accordance with this Agreement;
- (ii) any warranty given by the Service Provider under this Agreement being incorrect or misleading in any way;
- (iii) any negligent act or failure to act by the Service Provider or any of the Service Provider's employees, agents, officers or sub-contractors,

except to the extent that any such loss, damage, claim, action or expense is caused by the negligence or other wrongful act or omission of the Parliament, its officers or employees.

13.2 Tax on indemnity payment

If any indemnity payment is made by the Service Provider under this **clause 13**, the Service Provider must also pay to the Indemnified Party an additional amount equal to any tax which is payable by the Indemnified Party in respect of that indemnity payment.

14. Warranties

The Service Provider warrants that:

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

Parliament's lawful directions and policies of which the Service Provider is notified or is otherwise aware, including any applicable occupational health and safety and security policies;

- (e) where the Parliament has, either expressly or by implication, made known to the Service Provider any particular purpose for which the Services are required, the Services will be performed in such a way as to achieve that result;
- (f) the provision of the Services will not infringe any right of any third party (including any intellectual property right) or any Laws; and
- (g) all representations made by the Service Provider in or in connection with the Tender Documentation were and remain accurate and the Service Provider has and will maintain at all relevant times the quality assurance arrangements set out in the RFT and Tender Documentation.

15. Conflict of Interest

- (a) The Service Provider warrants to the Parliament that it does not, and will ensure that its employees, agents and contractors do not, hold any office or possess any property, are not engaged in any business, trade or calling and do not have any obligations by virtue of any contract whereby, directly or indirectly, duties or interests are or might be created in conflict with or might appear to be created in conflict with their duties and interest under this Agreement.
- (b) The Service Provider must promptly inform the Parliament of any matter which may give rise to an actual or potential conflict of interest.
- (c) The Service Provider acknowledges and agrees that failure to comply with this **clause 15** will constitute a breach of a fundamental term of this Agreement.

16. Change in Control

- (a) The Service Provider must notify the Parliament in writing of any impending change in Control of the Service Provider's parent/associated company or partnership of which it becomes aware.
- (b) In determining whether or not to provide its consent to a change in Control (which consent will not be unreasonably withheld), the Parliament may consider such information as it considers relevant or necessary, including:
 - (i) compliance by the proposed owner with Governmental policies;
 - (ii) insurance coverage maintained by the proposed owner;
 - (iii) the financial viability of the proposed owner; and
 - (iv) the likely ability of the proposed owner to satisfy the requirements set out in the Tender Documentation, and the obligations of the Service Provider under the Agreement.

- (c) If the Parliament notifies the Service Provider that it does not consent to the proposed change in Control or consent is not sought, and the change in Control occurs notwithstanding, the Parliament may, by notice in writing to the Service Provider, terminate this Agreement, such termination to take effect at any nominated time within the immediately succeeding 12 months.

17. Termination

17.1 Grounds for termination by the Parliament

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

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

17.2 Termination without cause

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

17.3 Consequences of termination

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

- (b) Where this Agreement is terminated by the Parliament pursuant to **clause 17.2**:
- (i) the Service Provider must cease all work under this Agreement as soon as practicable following receipt and take all appropriate action to mitigate any loss and prevent additional costs being incurred; and
 - (ii) the Parliament will pay to the Service Provider all amounts owing in respect of the Services undertaken, and work in progress as at the date of termination, provided that such Services or work in progress have, in the reasonable opinion of the Parliament, been performed in accordance with the Service Levels and the requirements of this Agreement.

17.4 Knowledge Transfer

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

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

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

17.5 Survival

Clauses 9, 10, 11, 13, 14, 17.3 and 20 of this Agreement survive the termination or expiry of this Agreement or the completion of the Services and may be enforced at any time.

18. Insurance

18.1 Service Provider to maintain insurance

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

evidence of the currency of relevant replacement insurance prior to the expiration of the Initial Insurance.

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

18.2 Accident Compensation

The Service Provider must ensure that, in respect of its employees and contractors and any other persons engaged by the Service Provider to provide the Services, it:

- (a) complies with the provisions of the *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic);
- (b) insures against its liability to pay compensation whether under legislation or otherwise; and
- (c) produces to the Parliament on request any certificates or like documentation required by the *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic).

19. Not Used

20. Confidentiality, Privacy and Data Protection

20.1 Use of Confidential Information

- (a) The Service Provider will (and will ensure that its employees, agents and advisers will):
 - (i) use and reproduce Confidential Information only to perform its obligations under this Agreement; and
 - (ii) not disclose or otherwise make available Confidential Information other than to personnel who have a need to know the information to enable the Service Provider to perform its obligations under this Agreement;.
 - (iii) ensure that the Confidential Information is stored in a safe and secure manner, and protect it against unauthorised copying, use, disclosure, access and damage or destruction, at all times; and
 - (iv) comply with all the Parliament's policies (as notified to the Service Provider from time to time by the Parliament) and the applicable law in relation to the Confidential Information and take all necessary precautions to prevent

any unauthorised access to the Confidential Information. This includes the relevant standards and secrecy provisions in the *Audit Act 1994* (Vic).

- (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 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 VAGO as the case may be) or destroyed by the Service Provider as the Parliament directs, on termination or expiry of this Agreement. The Service Provider must promptly provide the Parliament with reasonable proof of destruction, upon request. on termination or expiry of this Agreement.
- (d) The Service Provider acknowledges that the Parliament will be entitled (in addition to any other remedy it may have) to seek an injunction or other equitable relief with respect to any actual or threatened breach by the Service Provider of this clause and without the need on the part of the Parliament to prove any special damage.

20.2 Disclosure of Service Provider's Information

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

20.3 Privacy

The Service Provider acknowledges that it will be bound by the Information Privacy Principles and any applicable Code of Practice with respect to any act done or practice

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

20.4 Data Protection

The Service Provider acknowledges that it will be bound by the Protective Data Security Standards and will not do any act or engage in any practice that contravenes a Protective Data Security Standard in respect of any data collected, held, used, managed, disclosed or transferred by the Service Provider, on behalf of the Parliament, under or in connection with this Agreement.

21. Disputes

21.1 Parties to meet

If any dispute arises under or in connection with this Agreement (**Dispute**) which Dispute is not able to be resolved by the parties' Representatives within 14 days of such Dispute arising, the nominated senior executive officer (or equivalent) of each of the Parliament (on the one hand) and the Service Provider (on the other hand) will promptly meet and discuss in good faith with a view to resolving such Dispute.

21.2 Mediation

(a) If any Dispute is unable to be resolved in accordance with **clause 21.1** within 14 days, the parties agree to endeavour in good faith to settle the Dispute by mediation administered by the Australian Commercial Disputes Centre (**ACDC**) before having recourse to arbitration or litigation.

(b) The mediation will be conducted in accordance with the mediation guidelines of ACDC (**Guidelines**) which set out the procedures to be adopted, the process of selection of the mediator and the costs involved and the terms of those Guidelines are incorporated in this Agreement.

21.3 Arbitration or litigation

(a) If the parties fail to settle any Dispute in accordance with **clause 21.2**, the parties may agree to submit the Dispute for resolution to final and binding arbitration under the Rules of Arbitration of the Institute of Arbitrators and Mediators Australia by one or more arbitrators appointed in accordance with those rules.

(b) If the parties do not agree to refer the dispute to arbitration in accordance with **clause 21.3(a)**, either party may submit the dispute for resolution to the non-exclusive jurisdiction of the Courts of Victoria, Australia.

21.4 Performance during dispute resolution

The parties to a Dispute will continue to perform their respective obligations under this Agreement pending the resolution of the Dispute under this **clause 21**.

21.5 Interlocutory relief

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

22. Compliance with Law and Policy

22.1 General Law

The Service Provider must, in performing its obligations under this Agreement, comply with all Laws affecting or applicable to the provision of Services by the Service Provider under this Agreement, in particular the *Audit Act 1994*.

22.2 Code of Conduct

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

- (i) supervise or work with Public Sector Employees;
- (ii) undertake work that is of a similar nature to the work undertaken by Public Sector Employees at premises or a location generally regarded as a public sector workplace; or
- (iii) use or have access to public sector resources or information that are not normally accessible or available to the public,

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

22.3 Employment Policy

- (a) The Service Provider and any person engaged in the provision of the Services must not:
 - (i) engage in unethical work practices; or
 - (ii) engage employees or sub-contracted workers upon terms and conditions which do not meet industry standards generally applicable in Victoria.
- (b) Where a federal industrial award may apply to the capacity in which an employee is engaged by the Service Provider, or by a sub-contractor, in the provision of the Services, the conditions on which that employee is engaged shall be no less beneficial to the employee than the rates and conditions under that award.

23. Sub-contracting

- (a) Except as expressly provided in this Agreement, the Service Provider must not sub-contract to any third person any of its obligations under this Agreement without

the prior written consent of the Parliament, which consent may be given or withheld by the Parliament in its absolute discretion.

- (b) The Service Provider must ensure that any person engaged by it complies with all obligations imposed on the Service Provider by this Agreement. The Service Provider will not, as a result of any sub-contracting arrangement, be relieved from the performance of any obligation under this Agreement and will be liable for all acts and omissions of a sub-contractor as though they were the actions of the Service Provider itself.

24. Access and safety

24.1 Access to premises

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

24.2 Obligations

When the Service Provider enters the premises of the Parliament, the Service Provider must and must ensure that its employees, agents and contractors use all reasonable endeavours to:

- (a) protect people and property;
- (b) prevent nuisance and unnecessary noise and disturbance;
- (c) act in a safe and lawful manner and comply with the safety standards and policies of the Parliament (as notified to the Service Provider); and
- (d) comply with the Occupational Health and Safety Act 2004 (Vic) and any applicable regulations made under that Act.

25. GST

25.1 Definitions

Terms used in this clause have the same meanings given to them in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

25.2 Consideration is inclusive of GST

Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under or in accordance with this Agreement are inclusive of GST. The recipient's obligation to pay the GST component of the consideration is subject to it receiving a valid tax invoice in respect of the supply at or before the time of payment.

25.3 Reimbursement

If this Agreement requires a party to pay for, reimburse or contribute to any expense, loss or outgoing (**reimbursable expense**) suffered or incurred by another party, the amount required to be paid, reimbursed or contributed by the first party will be the amount of the reimbursable expense net of input tax credits (if any) to which the other party is entitled in respect of the reimbursable expense plus any GST payable by the other party.

26. Staff Costs

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

27. Notices

27.1 Giving a communication

A notice, demand, certification, process or other communication relating to this Agreement must be in writing in the English language, and may (in addition to any other method permitted by law) be sent by pre-paid post, pre-paid courier or by electronic mail as follows:

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

27.2 Time of delivery

A notice or document shall be taken to be delivered or served as follows:

- (a) in the case of delivery in person or by courier, when delivered;
- (b) in the case of delivery by post, two Business Days after the date of posting;
- (c) in the case of facsimile transmission, on receipt by the sender of a transmission report from the despatching machine showing: the date of transmission, the relevant number of pages, the correct telephone number of the destination facsimile machine and the result of the transmission as satisfactory; and
- (d) in the case of electronic mail, if the receiving party has agreed to receipt in that form under the Agreement and the message is correctly addressed to and successfully transmitted to that party's electronic mail address (e mail address), and acknowledgment of receipt is recorded on the sender's computer.

27.3 After hours communications

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

- (a) after 5.00 pm in the place of receipt; or
- (b) on a day which is a Saturday, Sunday or public holiday in the place of receipt,

it is taken as having been delivered at 9.00 am on the next day which is not a Saturday, Sunday or public holiday in that place.

28. General

28.1 Legal costs

Except as expressly stated otherwise in this Agreement, each party must pay its own legal and other costs and expenses of negotiating, preparing, executing and performing its obligations under this Agreement.

28.2 Amendment

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

28.3 Waiver and exercise of rights

- (a) A single or partial exercise or waiver by a party of a right relating to this Agreement does not prevent any other exercise of that right or the exercise of any other right.
- (b) A party is not liable for any loss, cost or expense of any other party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right by the first party.

28.4 Severability

Any provision of this Agreement which is invalid or unenforceable is to be read down, if possible, so as to be valid and enforceable, and, if that is not possible, the provision shall, to the extent that it is capable, be severed to the extent of the invalidity or unenforceability, without affecting the remaining provisions.

28.5 Rights cumulative

Except as expressly stated otherwise in this Agreement, the rights of a party under this Agreement are cumulative and are in addition to any other rights of that party.

28.6 Set off

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

28.7 Time of the essence

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

28.8 Governing law and jurisdiction

- (a) This Agreement is governed by and is to be construed in accordance with the laws applicable in Victoria.
- (b) Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Victoria and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

28.9 Counterparts

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

28.10 Entire understanding

- (a) This Agreement, together with:
 - (i) the Tender Documentation; and
 - (ii) any other documents or representations specified in **Item 9 of Schedule 1**,contains the entire understanding between the parties as to the subject matter of this Agreement.
- (b) Except as otherwise provided in **clause 28.10(a)**:
 - (i) all previous negotiations, understandings, representations, warranties, memoranda or commitments concerning the subject matter of this Agreement are merged in and superseded by this Agreement and are of no effect; and
 - (ii) no oral explanation or information provided by any party to another:
 - (A) affects the meaning or interpretation of this Agreement; or
 - (B) constitutes any collateral agreement, warranty or understanding between any of the parties.

28.11 Relationship of parties

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

Schedule 1

Contract Variables

Item 1: Commencement and completion (Clause 1.1)

Commencement Date:

Completion Date:

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

Parliament's Representative

Name: Dr Caroline Williams

Title: Executive Officer

Telephone: 8682 2863

Mobile:

Email: caroline.williams@parliament.vic.gov.au

Service Provider's Representative

Name: Mr Geoff Parker

Title: Director

Telephone: 8613 8888

Mobile:

Email: gparker@nexiamelbourne.com.au

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:

Mr Geoff Parker — Audit Engagement Partner (main contact)

Mr Chapman Wan — Audit Manager (second contact)

Ms Ann Nguyen — Senior Auditor

Ms Emily Haddon — Auditor

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:

Administration 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:
As per Schedule 2 under “2. Price Schedule”.

Item 6: Progress report (Clause 7.3)

As per Schedule 2 under “1. Services”.

Item 7: Insurance (Clause 18.1)

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

Item 8: Notice particulars (Clause 27)

Parliament:

Address: Parliament House, Spring Street, East Melbourne 3002
Email: paec@parliament.vic.gov.au
Addressee: The Executive Officer, Public Accounts and Estimates Committee, Parliament of Victoria

Service Provider:

Address: Level 12, 31 Queen Street, Melbourne, Victoria 3000
Fax: 8613 8800
Email: gparker@nexia.melbourne.com.au
Addressee: Mr Geoff Parker — Nexia Melbourne Audit Pty Ltd

Item 9: Documentation (Clause 28.9)

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

[Not applicable]

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) the Terms of Reference and proposed timelines and key dates attached to this Agreement as Annexure A; and
- (b) the Service Provider's Tender dated 18 May 2016 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.

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

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

Work program

Year ending 2018–19

	Milestones/deliverables	Due date (Proposed)
1	Proposed audit plan	1 June 2019
2	Progress report on the audit	14 June 2019
3	Preliminary audit report, draft audit opinion and draft management letter if made	30 June 2019
4	Finalised audit report, finalised performance statement review, finalised audit opinion, finalised management letter if made, and a completion report to the Public Accounts and Estimates Committee.	16 August 2019

2. Price Schedule

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

Year ending 2018–19

Payment events	Instalment (% of total Fee)	Amount (GST inclusive)
<p>1 after submission of the</p> <ul style="list-style-type: none"> • preliminary audit report; • draft audit opinion; and • draft management letter if made <p>as described in Part A.2 – Specifications, under the "Terms of Reference" and "Proposed Timelines and Key Deliverables", of this RFT.</p>	50%	\$20,900
<p>2 after submission of the</p> <ul style="list-style-type: none"> • finalised preliminary audit report; • finalised performance statement review; • finalised audit opinion; • finalised management letter if made; and • completion report to the Public Accounts and Estimates Committee <p>as described in Part A.2 – Specifications, under the "Terms of Reference" and "Proposed Timelines and Key Deliverables", of this RFT.</p>	50%	\$20,900
Total	100%	\$41,800

Schedule 3

Service Levels

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

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

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

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

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

Key Performance Indicator	Measure
Parliament's satisfaction with the Services provided	A specific review by the Parliament of the Service Provider's reports (as described in Annexure A).
Quality and impartiality of analysis, findings and recommendations.	That the advice facilitates delivery of the primary objectives and Specifications as attached to this Agreement as Annexure A. That the advice provided is sufficiently clear, detailed and documented to allow the Parliament to make informed decisions in relation to the audit findings and recommendations. That the advice provided has regard to any relevant and/or applicable legislative objectives and constraints.

Timeliness of advice received	<p>That the timelines for reporting and tabling in Parliament as set out in this Agreement are met by the Service Provider.</p> <p>That the Parliament is satisfied with the quality and timeliness of the advice provided.</p>
Retention of Specified Personnel	<p>That the Service Provider's Specified Personnel remain substantially unchanged during the performance of the Services.</p> <p>If the Service Provider's Specified Personnel vary, that the Service Provider can continue to meet the engagement requirements as detailed in Annexure A.</p>
No adverse feedback on the draft Preliminary Report	<p>That the Parliament provides no significant or serious adverse/ negative feedback in respect to the quality and detail indicated in the evidence, analysis, and conclusions/ findings contained in the draft preliminary report provided by the Service Provider.</p>

Schedule 4

Deed Poll of Confidentiality

Date:

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

in favour of

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

Recitals

- A. The Parliament has entered into an Agreement with **Nexia Melbourne Audit Pty Ltd ("the Service Provider")** for the provision of Financial Audit of the Victorian Auditor-General's Office (Year Ending 30 June 2019) dated [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 protect information

The Confidant will –

- (a) comply with the relevant standards and secrecy provisions in the *Audit Act 1994* (Vic); and

- (b) 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, 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 3.2(a) and the words and expression in that sub clause, and for the purposes only of clarification, the Confidant:
 - (i) will not retain in any form any note, report, summary, memorandum or other document containing or referring to Information; and
 - (ii) will institute and use a system to enable all copies, notes, reports, summaries, memoranda and other documents containing, pertaining to or referring to Information to be traced and returned.

3.3 Non Derogation

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

3.4 Damages not Sufficient

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

Executed as a deed poll

Signed sealed and delivered by

.....
(Confidant's Name)

.....
(Confidant's Signature)

in the presence of:

.....
(Witness Name)

.....
(Witness Signature)

Executed as an agreement.

<p>Signed by Hon. Colin Brooks MP, Speaker of the Legislative Assembly, a duly authorised officer of the Parliament of Victoria for and on behalf of the STATE OF VICTORIA:</p> <p>..... Signature</p>	<p>in the presence of:</p> <p>..... Witness</p> <p>..... Name of Witness (print)</p>
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<p>Signed by Hon. Shaun Leane MLC, President of the Legislative Council, a duly authorised officer of the Parliament of Victoria for and on behalf of the STATE OF VICTORIA:</p> <p>..... Signature</p>	<p>in the presence of:</p> <p>..... Witness</p> <p>..... Name of Witness (print)</p>
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<p>The Service Provider:</p> <p>Signed by Geoff Parker, Nexia Melbourne Audit Pty Ltd (Level 12, 31 Queen Street, Melbourne Victoria 3000):</p> <p>..... Signature</p>	<p>in the presence of:</p> <p>..... Witness</p> <p>..... Name of Witness (print)</p>
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Annexure A

Terms of Reference

The Service Provider must:

- conduct an audit of VAGO's financial statements in the 2018–19 financial year;
- conduct a review of VAGO's performance statement;
- form an opinion as to whether the financial statements of VAGO present fairly the financial position of the Office 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 the financial statements of VAGO 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 and financial statements;
- conduct the financial audit in compliance with:
 - the Audit Act 1994;
 - Australian Auditing Standards and professional reporting requirements;
 - the relevant compliance obligations of the Standing Directions of the Minister for Finance 2016 commencing 1 July 2016;
- observe the standards and secrecy provisions that apply to VAGO in the conduct of an audit;
- prepare an appropriate audit plan the financial audit which may include (but not be limited to) risk-based principles, controls-based testing, analytical reviews, adequacy of financial reporting systems and any other appropriate procedures to ensure a professional audit is undertaken in compliance with Australian Auditing Standards;
- meet on a regular basis with VAGO staff and/or VAGO Audit Committee to discuss, clarify and resolve issues and findings;
- consult, as the independent financial auditor thinks fit, with the Chair of the Public Accounts and Estimates Committee and/or the Audit Sub-Committee of the Public Accounts and Estimates 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;
- take note of any:
 - 1) related policy changes from the Department of Treasury and Finance; and
 - 2) potential changes to the Audit Act 1994 during the engagement period;
- prepare, as the independent financial auditor thinks fit, a report to the Parliament which may include such information and such recommendations for the more effective, efficient and economic operation of VAGO; and
- submit to the Committee a completion report the 2018–19 financial year on the conduct of the independent financial audit, including details of meetings with the Auditor-General and VAGO, and any particular auditing issues dealt with during the financial audit.

Proposed Timelines and Key Deliverables

The Service Provider must provide the following reports to the Committee on the financial audits of VAGO for the financial year ending 30 June 2019:

- a. Prior to the commencement of the financial audit, the Service Provider should provide an audit plan to the Committee and VAGO for comment, preferably by 1 June 2019.

- b. The Service Provider should provide a progress report to the Committee by 14 June 2019.
- c. Following the conduct of the audit, the Service Provider may, if the Service Provider thinks fit, under section 18 of the Audit Act 1994, make a report on the audit for transmission to Parliament, including recommendations for the more effective, efficient and economic operation of VAGO.
- d. The Service Provider'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 preferably by 30 June 2019.
- e. The final audit opinion:
 - should preferably be ready for sign off by VAGO Audit Committee, by no later than 9 August 2019; and
 - is to be transmitted to Parliament via its inclusion within the Auditor-General's 2018–19 Annual Report.
- f. The Service Provider'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, preferably by no later than 16 August 2019, and prior to the inclusion of the audit opinion in the Auditor-General's Annual Report to the Parliament.
- g. The Service Provider should also submit to the Committee a completion 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 Service Provider's final report, performance statement review, audit opinion and management and/or operations letter as outlined in paragraph (e) above, preferably by no later than 16 August 2019.

Annexure B

Tender Documentation

Tender Documentation submitted by the Service Provider to the Public Accounts and Estimates Committee dated 18 May 2016.

(This Tender Documentation has been resolved by the Parliament as 'Commercial-in-Confidence' and will not be published.)