

Master Supply Agreement

Effective 1 April 2025



Parties

Health Purchasing Victoria (ABN 28 087 208 309), a body corporate established under section 129(1) *Health Services Act 1988 (Vic)* undertaking its statutory functions as HealthShare Victoria of Level 34, Casselden Place, 2 Lonsdale Street, Melbourne VIC 3000, acting in its own right and as agent for Participating Health Services (**Organisation**)

and

the supplier as named and referred to in the Module Particulars in the Module (**Supplier**)

Background

- A** The Organisation provides; among other things; supply chain services, to public health services and hospitals in Victoria.
- B** The Supplier is engaged in the business of, among other things, providing goods and/or services.
- C** The Organisation and the Supplier may, from time to time, during the Term agree and execute a Module under which the Supplier will supply Goods and/or perform Services to the Purchasing Parties (**Activities**).
- D** The Supplier will perform the Activities on a non-exclusive basis in accordance with the terms and conditions of this MSA and the Module.

PART A – INTERPRETATION

1.1 Definitions

In this MSA:

Reference	Meaning
Activities	has the meaning given to it in Recital C of this MSA and the Module.
Agreed Performance Improvement Plan	means a program of remedial measures and activities designed to remedy unsatisfactory performance by the Supplier under the Agreement and agreed by the Organisation in accordance with clause 5.5(a)(i).
Agreement	means this MSA and each fully executed Module.
ARTG	means the Australian Register of Therapeutic Goods .
Authorised Representative	means, in respect of the Organisation or a Supplier, the person or role identified as the 'authorised representative' in the Module Particulars and performing obligations set out in clauses 4.2 and 4.3.
Best Industry Practice	means practices, methods, interventions, procedures or techniques based on high quality evidence (derived from a systematic evidence-based review of available data) in order to obtain improved business, patient and health outcomes.
Business Day	means a day which is not a Saturday, Sunday or public holiday in Victoria.
Claim	means any claim for payment of money (including damages), action, demand, suit or proceeding (including by way of contribution or indemnity) or any other relief or remedy <ul style="list-style-type: none"> (a) under, arising out of, or in any way in connection with, the Agreement; (b) arising out of, or in any way in connection with, the Activities; or (c) otherwise at law or in equity including <ul style="list-style-type: none"> (i) by statute; (ii) in tort for negligence or otherwise, including negligent misrepresentation; or

Reference	Meaning
	(iii) for restitution.
Commencement Date	means the date specified in the Module Particulars on which the Agreement commences.
Confidential Information	<p>means all</p> <ul style="list-style-type: none"> (a) technical, scientific, commercial, financial or other information of, about or in any way related to the Organisation; (b) information, which is designated or indicated as being proprietary or confidential information; (c) information disclosed, made available, communicated or delivered to the Supplier in connection with the Agreement or any Purchase Order Contract; (d) trade secrets or other types of information which are capable of protection at law or equity as confidential information; (e) information from a third party, where a party is advised by the other party that such information is confidential; and (f) information derived or produced, partly or wholly, from the information referred to above, including any calculation, conclusion, summary or computer modelling, <p>whether the information was disclosed</p> <ul style="list-style-type: none"> (g) orally, in writing or in electronic or machine-readable form; (h) before, on or after the Commencement Date; or (i) in the course of discussions between the Parties, <p>and in each case which is not in the public domain or was in the Supplier's possession prior to the earlier of the Commencement Date, or effective date of the relevant Purchase Order Contract.</p>
Consequential Loss(es)	<p>mean the following loss(es)</p> <ul style="list-style-type: none"> (a) any loss of profits, anticipated savings, business reputation, access to markets or denial of business opportunity; (b) any loss of or damage to goodwill; or (c) damage to credit rating; or (d) payment of liquidated sums or damages under any other agreement.
Continuous Improvements	<p>means efficiencies, productivity improvements, cost savings and the like for the benefit of the Purchasing Party(ies) derived through the coordinated and integrated provisions of the Activities by the Supplier, including (without limitation) the benefits of</p> <ul style="list-style-type: none"> (a) innovation of the Activities; (b) enhancements in inventory and supply chain management; (c) enhancements in achieving (and exceeding) the objectives described in clause 3.1; (d) innovation, coordination and "value adding" in the procurement and provision of Activities; and (e) overall coordination and administration of Participating Health Services.
Control	has the meaning given in section 50AA of the <i>Corporations Act 2001</i> (Cth).
Contract Material	<p>means</p> <ul style="list-style-type: none"> (a) any Material which the Supplier is required to provide to the Organisation under the Agreement; and (b) any Material created, collected, recorded, written, developed or otherwise brought into existence (whether before, on or after the Commencement Date) by or on behalf of the Supplier in the course of performing the Activities or otherwise in connection with this Agreement.

Reference	Meaning
Disaster	means, for the purpose of the Agreement, any unplanned impairment or interruption of critical technology systems and business operations that enable standard functionality and performance of Activities.
End Date	means the end date of the Initial Term set out in the Module Particulars.
Executive Negotiators	means the executive representatives of each Party as set out in the Module Particulars.
Further Term(s)	means any further term of this Agreement (if any), as set out in the Module Particulars.
Goods	means the goods, products, equipment, deliverables, software or other items to be supplied by the Supplier to the Purchasing Party(ies) as set out in the Module.
GST	has the same meaning given to that expression in the GST Law.
GST Law	has the meaning given in clause 18.1.
Initial Term	means the period commencing on the Commencement Date and ending on the End Date, as set out in the Module Particulars.
Intellectual Property Rights	means a person's rights in <ul style="list-style-type: none"> (a) any patents, trademarks, designs and services marks (whether registered or unregistered) and any applications for, or rights to apply for, registration of any patent, design or service mark; (b) any copyright (including copyright in software, websites, databases and advertising and other promotional Materials); and (c) any trade secrets, know-how, operating procedures and technical information.
Loss	means, on a full indemnity basis, any loss, liability, damage, demand, cause of action, fee, debt, penalty, fine, judgment, claim, cost, expense, including legal fees, specialist / expert fees, follow up costs and charges, internal administration and management costs.
KPI or Key Performance Indicator	means any key performance indicator as set out in the Module.
KPI Failure	means a failure by the Supplier to achieve a KPI in accordance with the Agreement.
Laws	means any legislation, delegated legislation, ordinance, guidelines, codes, regulations, administrative orders, rules, guidance notes applicable in the State of Victoria and that governs the Agreement, including laws relation to work health and safety adumbrated by the relevant Regulatory Authority.
Material	means tangible and intangible information, documents, reports, software (including source and object code), inventions, data and other materials in any media whatsoever.
Modern Slavery	has the same meaning as it has in the <i>Modern Slavery Act 2018</i> (Cth).
Module	means a fully executed module between the Organisation and the Supplier, setting out terms and conditions additional to the MSA terms and conditions, the Activities and the key details of the commercial agreement between the Parties.
Module Particulars	means the Module particulars set out in Schedule 1 of the Module.
Moral Rights	means rights of integrity of authorship, rights of attribution of authorship, rights not to have authorship falsely attributed and rights of a similar nature conferred by statute (including the <i>Copyright Act 1968</i> (Cth)) or otherwise anywhere in the world that may exist or that may come to exist in the future.

Reference	Meaning
MSA	means this Master Supply Agreement including any schedules and annexures (if any).
Organisation's Policies and Procedures	means the policies, procedures and guidelines that have been notified to the Supplier by the Organisation from time to time.
Participating Health Service	means a 'public hospital and other health and related service' as these terms are defined and used in the <i>Health Services Act 1988</i> (Vic) and as may be notified by the Organisation to the Supplier in accordance with PART E: PARTICIPATING HEALTH SERVICES AND ACCESS RIGHTS.
Party	means either Organisation or Supplier
Parties	means both the Organisation and Supplier.
Personnel	means, in relation to a Party or that Party's Related Bodies Corporate, that Party's or its Related Bodies Corporates' respective directors, officers, employees, contractors, sub-contractors and agents.
Purchase Order	means an order for Activities in the form set out in the relevant Module (or such other form as determined by the Purchasing Party) submitted by the Purchasing Party to the Supplier.
Purchasing Party	means the Organisation and / or the relevant Participating Health Service (as applicable) that submits a Purchase Order to the Supplier.
Registered	means, in respect of therapeutic goods, the registration of that therapeutic goods with the Therapeutic Goods Administration (TGA) demonstrated with an Australian Register of Therapeutic Goods (ARTG) number.
Regulatory Authority	means any court or tribunal of competent jurisdiction or any agency, authority, board, department, government, instrumentality, ministry, official or public or statutory person of the Commonwealth or of the State of Victoria and any local or municipal government or governmental bodies.
Related Body Corporate	has the meaning ascribed to it in section 50 of the <i>Corporations Act 2001</i> (Cth)
Relationship Manager	means a person nominated by the Supplier to fulfill responsibilities set out in clause 4.1 and named in the Module Particulars of the applicable Module as a dedicated point of contact for all Purchasing Parties issuing Purchase Orders under various Modules pursuant to this MSA.
Reputable Insurer	means an insurance company having a rating for its senior long-term indebtedness of at least 'A-' given by Standard & Poor's or an equivalent long-term rating published by Moody's Investors Service, Inc.
Services	means the services to be provided by the Supplier to the Purchasing Party(ies) as set out in the relevant Module.
Supplier Insurances	means the insurances as set out in Module Particulars the Supplier is required to procure and maintain in accordance with the Agreement.
Term	means the Initial Term and any Further Term(s) set out in the Module Particulars.
Third Party	means any person other than a Party and any of that Party's Related Bodies Corporate.
Warranty Period	means the warranty period set out in the Module Particulars of the applicable Module.
Website	means the Organisation's website page which contains the current and historical versions of this MSA at https://healthsharevic.org.au/tenders-and-contracts/information-for-new-suppliers/master-supply-agreement-msa/

Reference	Meaning
Wilful Misconduct	means an act or failure to act by the relevant Party that was intended to cause or was in deliberate disregard of or with deliberate indifference to, harmful consequences, excluding any innocent act, omission, mistake, error or judgement.

1.2 Construction

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) the headings are used for convenience only and do not affect the interpretation of this Agreement;
- (d) if a word or phrase is defined, its other grammatical forms have corresponding meanings;
- (e) a reference to a document includes the document as modified from time to time and any document replacing it;
- (f) 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, unless otherwise specified in the Agreement or otherwise agreed in writing between the parties to this Agreement;
- (g) the word "person" includes a natural person and any body or entity whether incorporated or not;
- (h) the words "in writing" include any communication sent by letter or email or any other form of communication capable of being read by the recipient;
- (i) 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;
- (j) wherever "include" or any form of that word is used it must be construed as if it were followed by "(without being limited to)"; and
- (k) a reference to
 - (i) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced;
 - (ii) 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;
 - (iii) "\$" or "dollars" is a reference to Australian currency; and
 - (iv) a clause, Schedule or annexure is a reference to a clause, Schedule or annexure, as the case may be.

PART B: FRAMEWORK

2 MSA Framework

2.1 Standing offer agreement

- (a) Terms and conditions of this MSA will govern:
 - (i) any Module agreed in accordance with this MSA and executed by the Parties; and
 - (ii) in addition to the terms and conditions contained in the Module, the performance and/or delivery of any Activities by the Supplier under a Module.
- (b) The Organisation may update this MSA at any time by posting a new version on its Website. Any updated version of the MSA will become effective once posted on the Website and will apply to a Module signed after that MSA has become effective.
- (c) This MSA is a standing offer between the Organisation and the Supplier under which the Parties may enter into a Module(s) for performance of Activities.
- (d) The Parties' rights and obligations under this MSA are separately applicable to each fully executed Module and the provisions of this MSA are to be read accordingly.

2.2 Formation of Modules

- (a) The Parties may from time to time agree to enter into a Module.
- (b) The Organisation has absolute discretion to seek proposals from several suppliers in relation to any proposed Module and to terminate negotiations with any supplier, at any time in respect of a Module.
- (c) Each Module together with this MSA constitutes a separate legally binding contract between the Organisation and the Supplier.

2.3 Interaction between MSA and Module

- (a) This MSA and the relevant Module, once fully executed, will form the 'Agreement' between the Parties.
- (b) Each fully executed Module will, together with this MSA, form a standalone Agreement.
- (c) In the event of any conflict or inconsistency between the terms and conditions of this MSA and a Module, the terms of the MSA will prevail to the extent of the inconsistency or conflict in relation to the Activities covered under that Module, unless the relevant Module expressly refers to the conflicting or inconsistent term or condition of this MSA and expressly specifies that the Module's replacement term or condition applies instead.

2.4 Order of precedence

In the event of any inconsistency between the documents which form the Agreement, the documents comprising the Agreement will be construed in the following order of precedence:

- (a) this MSA;
- (b) the terms and conditions of the applicable Module;
- (c) the Schedules and any Annexures to the applicable Module;
- (d) the Specification; and
- (e) documents incorporated by reference in the Agreement.

PART C: OVERARCHING OBJECTIVES AND RELATIONSHIP TERMS

3.1 Objectives

- (a) The Organisation's overarching objective is to achieve best value outcomes in procuring Activities in its own right and on behalf of Participating Health Services in Victoria. The Organisation wishes to promote a positive business relationship that ensures the on-time delivery of high-quality Activities at the agreed prices; and which also supports change through innovation and Continuous Improvement across all areas of service delivery.
- (b) The Supplier will work collaboratively with the Organisation to achieve the following objectives:
 - (i) **(better patient outcomes)** consistent availability of health or related goods and services, evidence-based product selection and supplying any other products and services, to ensure better patient outcomes for Victorian patients;
 - (ii) **(quality)** the Activities will be fit for their intended purpose, best merchantable quality Goods will be available / made available and staff and other resources will carry out the Activities with due diligence, skill and care;
 - (iii) **(value for money)** the cost of Activities is minimised and ensures the Organisation obtains value for money, including whole of life costs, risks, environmental and sustainability outcomes;
 - (iv) **(flexibility)** the Supplier has the flexibility to adapt to changes in demand and ensure continuity of performance of the Activities; and
 - (v) **(Continuous Improvements)** the Supplier will proactively identify ways in which performance of the Activities and its obligations may be delivered more efficiently and enable the Organisation to take advantage of any enhancements or innovations.

3.2 Continuous Improvements

The Supplier must:

- (a) perform the Activities efficiently and in accordance with Best Industry Practice;
- (b) work cooperatively with the Organisation to identify, detail and implement Continuous Improvements;
- (c) communicate in writing to the Organisation any potential Continuous Improvements as they are identified, including at the meetings held and in the reports provided under this Agreement;
- (d) detail to the Organisation the net impact of implementing the Continuous Improvements (having regard to any positive and negative impacts of implementing the Continuous Improvements), including potential impact on the costs, quality, warranties, and performance of the Activities;
- (e) implement any Continuous Improvements agreed by the Organisation and in the manner approved by the Organisation; and
- (f) monitor and report to the Organisation on the extent to which Continuous Improvements are implemented.

3.3 Contracting with and offers to Participating Health Services

- (a) The Organisation engages the Supplier on a non-exclusive basis to perform the Activities in accordance with the Agreement.
- (b) The Supplier must not offer or agree with any Purchasing Party (whether directly or indirectly via a third party) in respect of any of the following:
 - (i) discounts, incentives, rebates or credits; or
 - (ii) commercial terms contrary to, inconsistent with or in addition to the terms of this Agreement, in relation to performance of the Activities or any related products, services or other deliverables.

3.4 Term

- (a) The Agreement commences on the Commencement Date and continues for the Term, unless terminated earlier in accordance with PART R:TERMINATION of this MSA or any other express right to terminate specified in the Agreement.
- (b) Following the Term, the Agreement will continue in force until such time that:
 - (i) the Supplier issues the Organisation with 6 months' prior written notice to terminate the Agreement; or
 - (ii) the Organisation issues the Supplier with 30 days' prior written notice to terminate the Agreement.
- (c) The Organisation may elect to extend the Agreement for Further Term(s), by issuing written notice to the Supplier, prior to expiry of the Initial Term or then applicable Further Term (as the case may be).

PART D: GOVERNANCE

4.1 Relationship Manager for Supplier

- (a) The Supplier will nominate a Relationship Manager who will be responsible for:
 - (i) managing escalation of any concerns, complaints and issues arising out of or in connection with the Agreement which remain unresolved by the Supplier's Authorised Representative for more than 5 Business Days; and
 - (ii) managing escalation of issues relating to the performance of Activities, including but not limited to, shortage of supply, staff / personnel resourcing concerns and backorder issues.
- (b) In the event the Relationship Manager ceases to be employed by or no longer works with the Supplier's organisation, the Supplier must appoint a replacement Relationship Manager no later than 3 Business Days after the previous Relationship Manager ceases to act in that capacity. The Supplier must notify, in writing, the Organisation no later than 3 Business Days of such replacement along with contact details

of the new Relationship Manager and any other details that the Organisation may request from the Supplier.

- (c) The Supplier will only replace its Relationship Manager with a representative that is of an equal or higher seniority, experience and skillset of the Relationship Manager, who is being replaced.

4.2 Organisation's Authorised Representative

- (a) The Organisation's Authorised Representative will carry out the Purchasing Party's functions under the Agreement as an agent of the Participating Health Services and not as an independent certifier, assessor or valuer.
- (b) The Supplier must comply with all directions given to it by the Organisation's Authorised Representative.
- (c) The Organisation may, by express written notice to the Supplier and in its sole discretion:
 - (i) replace the Organisation's Authorised Representative with another person; or
 - (ii) delegate to any person any power or duty of the Organisation's Authorised Representative under the Agreement.

4.3 Supplier's Authorised Representative

- (a) The Supplier warrants that the Supplier's Authorised Representative is authorised to act on the Supplier's behalf under the Agreement.
- (b) The Supplier must, with the Organisation's prior written approval (which must not be unreasonably withheld) or upon the Organisation's written request:
 - (i) replace the Supplier's Authorised Representative with another person; or
 - (ii) delegate to any person any power or duty of the Supplier's Authorised Representative under the Agreement.
- (c) The Supplier will replace its Authorised Representative with a representative that is of an equal or higher seniority, experience and skillset as the Authorised Representative being replaced.
- (d) Unless otherwise agreed, a replacement Authorised Representative must be appointed no later than 3 Business Days after the previous Authorised Representative ceases to act in that capacity.

4.4 Subcontracting

- (a) The Supplier may subcontract its obligations under this Agreement with the Organisation's prior written consent, which is conditional on the Supplier's subcontractors evidencing their agreement to and their continued compliance with the Organisation's Policies and Procedures.
- (b) The Supplier will be liable to the Organisation and the Purchasing Parties for all acts (including reporting obligations), defaults and omissions of its subcontractors, employees, agents, contractors and subcontractors (at any level in the supply chain) of those subcontractors as if they were those of the Supplier.
- (c) The Supplier must indemnify the Organisation and the Participating Health Service(s) from all Claims against, or Loss suffered or incurred by the Organisation and/or Purchasing Parties arising out of or in connection with any breach by the Supplier's subcontractors of its obligations under this clause 4.4.

4.5 Contract Management

- (a) The Organisation's Authorised Representative and the Supplier's Authorised Representative will manage the Parties' relationship and matters arising under the Agreement including to:
 - (i) discuss matters relating to the relationship of the parties including joint business plans, strategic partnerships and ongoing management of this Agreement;
 - (ii) consider and discuss any innovations and Continuous Improvements;
 - (iii) consider and discuss the Purchasing Party's future requirements for the provision of Activities;
 - (iv) review the Supplier's performance against the Organisation's objectives;
 - (v) monitor available stock levels for Goods and minimum service level requirements and available resources for Services, as set out in the Module;

- (vi) monitor the Supplier's performance against KPIs;
 - (vii) review and discuss all reporting provided by the Supplier under the Module; and
 - (viii) address such other matters as the Organisation's Authorised Representative and Supplier's Authorised Representative may raise from time to time.
- (b) The Parties must:
- (i) meet quarterly (or as otherwise agreed by its members); and
 - (ii) conduct its meetings in a manner agreed by its members from time to time.
- (c) Minutes from each meeting are to be captured and a detailed summary of the outcome of the meeting is to be provided to each Party.

4.6 Business continuity plan

- (a) Throughout the Term of the Agreement the Supplier will ensure a business continuity and Disaster recovery plan(s) (**BCP**) is maintained that define the roles, responsibilities and procedures necessary to ensure an ongoing and uninterrupted performance of Activities, in the event of a disruption to the Supplier's operations, regardless of the cause of such disruption.
- (b) Unless otherwise specified in a Module, the BCP must, at a minimum, define the Supplier's actions to address the impacts of the following key areas likely to cause a disruption to Supplier's operations: loss of key personnel, loss of facility, loss of information technology, including data breach.
- (c) Subject to confidentiality obligations in clause 4.6, the Organisation may request a copy of the BCP at any time during the Term of the Agreement and will, within 7 days of receiving the BCP from the Supplier, review the BCP and at its discretion, submit a written request for amendments to be made to the BCP. The Supplier must carry out amendments to its BCP, no later than 5 days of receiving the written request from the Organisation.
- (d) The Parties must co-operate with each other to establish a plan for alternative communications, in the event of a Disaster.
- (e) The Supplier must conduct testing and review of its BCP at least annually.
- (f) Upon the Organisation's request, the Supplier must participate in the Organisation's BCP testing, training, and exercise activities on mutually agreed Business Days and during normal business hours of the Organisation.

4.7 Reporting

The Supplier must, at all times, comply with its reporting obligations set out in the Module or as otherwise required by the Purchasing Party(ies) in writing, from time to time.

PART E: PARTICIPATING HEALTH SERVICES AND ACCESS RIGHTS

- (a) By written notice to the Supplier, the Organisation may grant a Participating Health Service or a health or related service (as that phrase is defined in the *Health Services Act 1988* (Vic) ('**Eligible Service**')) access to the Agreement for the purposes of issuing Purchase Orders under the applicable Module. Once access is granted under this PART E: PARTICIPATING HEALTH SERVICES AND ACCESS RIGHTS, each Eligible Service is taken to have agreed to be bound by the terms of the Agreement as a Participating Health Service and the Supplier must perform the Activities for such Eligible Services.
- (b) At any time during the Term of the Agreement, the Organisation may, in accordance with its purchasing policy, exempt one or more Participating Health Service(s) from the requirement to seek performance of the Activities from the Supplier pursuant to the Agreement.

PART F: PERFORMANCE MANAGEMENT

5.1 General

In performing the Activities, the Supplier must comply with and satisfy the KPIs.

5.2 Recording performance against KPIs

The Supplier:

- (a) must keep sufficient records of its performance as against the KPIs to enable the Organisation's Authorised Representative to evaluate the performance of the Supplier under the Agreement; and
- (b) acknowledges that the records required to be kept under clause 5.2(a) will not limit the Organisation's Authorised Representative's evaluation of the performance of the Supplier under the Agreement and the Organisation's Authorised Representative may consider all such other matters as it considers (in its absolute discretion) to be relevant to the evaluation of the performance of the Supplier under the Agreement.

5.3 Failure to meet Key Performance Indicators

- (a) In addition to any other right or remedy that may be available to the Organisation under this Agreement or at law, if the Organisation notifies the Supplier that a KPI Failure has occurred:
 - (i) the Organisation may direct the Supplier to prepare a Performance Improvement Plan; and
 - (ii) subject to the provisions of the Agreement, the Supplier must, with due diligence and at its own cost, make such adjustments, modifications or additions to its performance of the Activities as may be necessary to satisfy the KPIs.

5.4 Performance Improvement Plan

If the Organisation directs the Supplier to prepare a Performance Improvement Plan under clause 5.5(a)(i), the Supplier must provide the Organisation with a draft Performance Improvement Plan within 7 Business Days of being requested by the Organisation to do so.

5.5 Agreeing a Performance Improvement Plan

- (a) The Organisation will, within 10 Business Days of receipt of the Supplier's draft Performance Improvement Plan, notify the Supplier that:
 - (i) the Organisation agrees with the Supplier's Performance Improvement Plan, specifying a date for its implementation; or
 - (ii) the Organisation rejects the Supplier's Performance Improvement Plan, specifying:
 - A. the issues which the Supplier must address;
 - B. amendments that must be made to the Performance Improvement Plan; and
 - C. the date by which the Supplier must resubmit the Performance Improvement Plan.
- (b) If clause 5.5(a)(ii) applies, the Supplier must submit its amended Performance Improvement Plan to the Organisation by the date specified, demonstrating to the Organisation's satisfaction that it has addressed the issues notified under clause 5.5(a)(ii) and the provisions of this clause 5.5(b) will reapply to the resubmitted Performance Improvement Plan.
- (c) The Organisation's review of, and agreement to, a Performance Improvement Plan does not relieve the Supplier from its obligations under the Agreement or prejudice the Purchasing Party's rights against the Supplier, whether under the Agreement or otherwise at law.

5.6 Implementing the Agreed Performance Improvement Plan

The Supplier must:

- (a) implement the Agreed Performance Improvement Plan:
 - (i) in accordance with its terms; and
 - (ii) by the relevant date;
- (b) monitor its performance against the Agreed Performance Improvement Plan;
- (c) update the Agreed Performance Improvement Plan (if required); and
- (d) report to the Organisation on its progress against the Agreed Performance Improvement Plan.

5.7 Amendments to KPIs

- (a) Subject to clause 5.7(b), the Organisation may, from time to time:
 - (i) issue new or amended KPIs; or
 - (ii) delete or remove any KPIs.
- (b) Critical KPIs may only be amended by written agreement of the Parties.
- (c) The Supplier must comply with any new or amended KPIs.
- (d) The Supplier will have no Claim arising out of or in connection with its compliance with clause 5.7(c).

5.8 Consequences of KPI Failure

- (a) Where the Supplier notifies the Organisation that a KPI Failure has occurred; then, in addition to the requirements in clause 5.3(a), any payments due to be made by the Supplier to a Purchasing Party or actions to be taken against the Supplier shall be determined in accordance with the Module.

PART G: PAYMENT TERMS

6.1 Invoicing

- (a) The Supplier must submit a Tax Invoice to the relevant Purchasing Party in respect of each Purchase Order:
 - (i) in accordance with the terms of the Module; or
 - (ii) as otherwise provided in the relevant Purchase Order.
- (b) The Tax Invoice must be in the form and contain all information necessary to meet the requirements set out by the Australian Tax Office, including a Purchase Order number.

6.2 Payment

- (a) Subject to the terms of this clause 6.2 and unless specified otherwise in the Module, the Purchasing Party will pay the amount set out in a Tax Invoice that is due and payable to the Supplier:
 - (i) within 10 days of the date of the Tax Invoice if the Purchasing Party is listed as an applicable agency under the Victorian Government's Fair Payment Policy and the Supplier is a small business under the Australian Payment Code; or
 - (ii) if clause 6.2(a)(i) does not apply, within 30 days from the end of the month in which the Tax Invoice was issued.
- (b) If the Purchasing Party disputes the amount claimed in a relevant Tax Invoice, it will:
 - (i) pay the Supplier the undisputed amount it determines is due and payable;
 - (ii) withhold the disputed amount; and
 - (iii) notify the Supplier of the disputed payment.
- (c) Within 10 days after service of the notice under clause 6.2(b)(iii), either Party may refer the disputed payment as a Dispute for resolution under clauses 16.2 to 16.5.

6.3 Effect of payment

Payment by a Purchasing Party of part or all of the amounts set out in a Tax Invoice does not constitute:

- (a) approval or acceptance by the Organisation or the Purchasing Party that the Activities have been performed in accordance with the Agreement;
- (b) evidence that the Activities performed are satisfactory or of the value of the relevant Activities performed; or
- (c) an admission of liability or prejudice any claim by the Organisation and/or Purchasing Party, and will be payment on account only.

PART H: INTELLECTUAL PROPERTY RIGHTS

7 Intellectual Property

7.1 Parties' Intellectual Property

- (a) Each Party to the Agreement shall remain the proprietor of or licence holder of its respective Intellectual Property Rights embodied in or used in connection with the Activities or which may be developed in connection with the Activities (whether registered or unregistered).
- (b) Neither party will, during the Term, and after the expiration or termination of the Agreement use, register or seek to register any of the industrial and Intellectual Property Rights referred to in clause 7.1(a).

7.2 Licence

- (a) The Supplier grants to the Organisation and the Purchasing Party, a non-exclusive, perpetual, royalty-free licence to use any Intellectual Property Rights in relation to the performance of Activities.
- (b) The Supplier must upon request by the Organisation and/or Purchasing Party, do all things as may be necessary (including executing any documents) to give full effect to this clause 7.2.

7.3 Representations and warranties

The Supplier represents and warrants that:

- (a) the Supplier owns or is licensed to use as contemplated by this Agreement all Intellectual Property Rights in and to the Contract Material;
- (b) it is able lawfully to grant the rights and licences it has granted under this clause 7;
- (c) it is able to lawfully grant and assign or procure the grant and assignment of the rights required to be assigned under this clause 7, without encumbrance;
- (d) the Activities and any act of the Purchasing Party in relation to the Activities for any purpose in connection with this Agreement will not:
 - (i) breach any Laws;
 - (ii) infringe any person's rights (including contractual rights, Intellectual Property Rights or Moral Rights);
 - (iii) constitute a misuse of any person's Confidential Information; or
 - (iv) result in the Supplier breaching any obligation that it or they owe to any person (including its Personnel).

PART I: COMPLIANCE

8.1 Organisation Policies and Procedures

The Supplier must, at all times, comply and ensure that all Supplier Personnel comply with the Purchasing Party's Policies and Procedures at all times when performing its obligations under the Agreement.

8.2 Compliance with Laws

The Supplier must, at all times, comply and ensure that all Supplier Personnel comply with all applicable Laws when performing its obligations under the Agreement.

PART J: SUPPLIER CODE OF CONDUCT

Code Compliance

- (a) The Supplier acknowledges that the Supplier Code of Conduct as amended from time to time applies to the Agreement and undertakes that during the Term it will comply with the Supplier Code of Conduct

and all obligations under this clause (a). The Supplier Code of Conduct (as amended from time to time) is available at the Buying for Victoria website: <https://www.buyingfor.vic.gov.au/supplier-code-conduct>.

- (b) The Supplier must:
- (i) establish all necessary policies and systems to monitor compliance by the Supplier with the Supplier Code of Conduct; and
 - (ii) monitor its compliance with the Supplier Code of Conduct on a regular basis throughout the Term of the Agreement in accordance with the policies and systems established under paragraph (b)(i).
- (c) The Supplier must promptly provide any information requested by the Organisation related to:
- (i) the compliance by the Supplier with the Supplier Code of Conduct; and
 - (ii) any policies or systems established to monitor the compliance by the Supplier with the Supplier Code of Conduct
- (d) The Supplier must ensure that its Personnel engaged in the performance of the Agreement:
- (i) comply with paragraphs (a) and (b)(ii) as though those requirements apply directly to them;
 - (ii) provide to the Supplier, on request by the Organisation, a declaration of their compliance with the Supplier Code of Conduct, and with any policies or systems established to monitor the compliance by the Supplier with the Supplier Code of Conduct in the form required by the Organisation from time to time; and
 - (iii) who have, or are suspected of having, breached the Supplier Code of Conduct do not remain engaged in the performance of the Agreement and return, or where directed by the Organisation, destroy all of the Organisation's Confidential Information in their possession, custody or control.
- (e) The term '**Code Compliance Event**' under this Part J means a failure to comply with this clause.

Code Investigation

- (a) The Supplier agrees that:
- (i) the Organisation may from time-to-time conduct an investigation into the character, integrity, honesty or other aspects of compliance with the Supplier Code of Conduct of the Supplier or any of its Personnel ('**Code Investigation**'), which may include:
 - (A) investigations into commercial structure and ownership, business and credit history, prior contract compliance or any criminal records or pending charges; and
 - (B) interviews of any person or research into any activity that is or might reasonably be expected to be the subject of criminal or other regulatory investigation; and
 - (ii) if the Organisation requests in writing that the Supplier or a third party nominated by the Organisation must carry out the Code Investigation, the Supplier must carry out, or have carried out as requested, the investigation and provide a full report to the Organisation; and
 - (iii) the Supplier must procure all relevant consent from people who will be the subject of a Code Investigation.

Notice – Code Compliance Event

- (a) The Supplier must immediately notify the Organisation in writing on becoming aware that a Code Compliance Event has occurred or is likely to have occurred, describing the circumstances giving rise to the actual or likely occurrence of the Code Compliance Event, when it occurred or is likely to have occurred and any of the Supplier's Personnel involved.
- (b) Upon delivery of a notice under paragraph (a) or if the Organisation otherwise becomes aware of a Code Compliance Event or likely Code Compliance Event, without prejudice to any other rights the Organisation may have in relation to the Code Compliance Event, then:
- (i) the Supplier must take any action directed by the Organisation to remedy or otherwise address the Code Compliance Event;

- (ii) without limiting paragraph (b)(i), the Organisation and the Supplier must meet within five (5) Business Days and use reasonable endeavours to agree a course of action that will be taken by the Supplier to remedy the Code Compliance Event (including timing) and to ensure that it does not reoccur; and
- (iii) the Supplier must comply with any agreement made under paragraph (b)(ii) and provide any reports or other information about the Supplier's progress in implementing any agreement made under paragraph (b)(ii) as may reasonably be requested by the Organisation from time to time.

Notice – Code Compliance Event

- (a) The occurrence of a Code Compliance Event or a breach of the above Notice – Compliance Event clause will constitute a material breach of the Agreement, and the Organisation may, without prejudice to other remedies under the Agreement, in its sole and absolute discretion suspend or terminate the Agreement, immediately by written notice to the Supplier, upon receipt of which the Supplier must immediately cease all work under the Agreement.
- (b) The Supplier acknowledges that a failure to comply with this [clause 1] may be considered by the Organisation and other Victorian public entities in any future approach to market or their respective procurement processes, and that such information may be shared with those Victorian public entities as detailed in cl 10.3(f).
- (c) The reasonable costs incurred by the Organisation in connection with this clause will be a debt due and payable by the Supplier to the Organisation on demand.
- (d) The Supplier will comply with its obligations under this clause at its cost and without any additional charge to the Organisation.

PART K: CONFLICT OF INTEREST, FRAUD AND CORRUPTION

9.1 Conflict of Interest

- (a) The Supplier must ensure that its Personnel 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 interests under this Agreement.
- (b) The Supplier must disclose in writing to the Organisation all actual or potential conflicts of interest (direct or beneficial) that exist, arise or may arise (either for the Supplier or any of the Supplier's Personnel) in the course of performing the Activities as soon as practicable after it becomes aware of that conflict.

9.2 Fraud and Corruption

- (a) The Supplier must promptly disclose in writing to the Organisation all fraud and corruption that:
 - (i) was detected or become known within the Supplier's operating entities within 3 (three) years prior to the commencement of the Agreement; and
 - (ii) is detected or of which the Supplier becomes aware of during the Term of the Agreement within the Supplier's operating or associated entities.
- (b) In making the disclosure in clause 9.20, the Supplier must provide the date and nature of the fraud or corruption, details of the nature of the fraud or corruption and the nature of the corrective and preventative actions which the Supplier has taken in light of the fraud and corruption.

9.3 Post disclosure and failure to comply

- (a) Upon disclosure of a conflict of interest, fraud or corruption, the Organisation may do such things as is necessary to mitigate the risk that the conflict of interest, fraud or corruption presents to protect the financial integrity of the Agreement and the State of Victoria including termination of the Agreement.
- (b) The Supplier acknowledges and agrees that failure to comply with clauses 9.1 and 9.2 will constitute breach of a fundamental term of the Agreement.

PART L: MODERN SLAVERY

- (a) The Supplier represents and warrants that, at the date of entering into this Agreement the Supplier:
- (i) has not been convicted of any offence involving Modern Slavery and, to the best of the Supplier's knowledge having made reasonable enquiries, neither its Affiliates nor Representatives have been convicted of any offence involving Modern Slavery;
 - (ii) does not engage in any conduct or omission which would amount to an offence involving Modern Slavery and, to the best of the Supplier's knowledge having made reasonable enquiries, neither its Affiliates nor Representatives engage in any conduct or omission which would amount to an offence involving Modern Slavery;
 - (iii) to the best of the Supplier's knowledge having made reasonable enquiries, is not and has not been, and its Affiliates and Representatives are not or have not been, the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence involving Modern Slavery;
 - (iv) has no knowledge of any Modern Slavery currently occurring within its operations and supply chain or, if it is so aware, it has disclosed this information to the Organisation and has taken and will continue to take appropriate action to mitigate, remediate and reduce those risks; and
 - (v) takes and will continue to take reasonable steps to identify the risk of, and reduce or prevent the occurrence of, Modern Slavery within its operations or supply chains.
- (b) The Supplier must, in connection with performing its obligations under the Agreement:
- (i) comply, and ensure that its Representatives comply, with the Organisation's policies and standards in relation to Modern Slavery as published on the Organisation's website from time to time; and
 - (ii) not, and ensure that its Representatives do not, engage in any conduct or omission which would amount to an offence involving Modern Slavery.
- (c) The Supplier must promptly notify the Organisation upon becoming aware of any potential, suspected or actual Modern Slavery within its operations or supply chain and of any other information that would make the representations and warranties given under PART L: MODERN SLAVERY clause (a), if repeated, false.
- (d) If requested by the Organisation, the Supplier must, subject to any existing confidentiality requirements and any relevant law, provide the Organisation with any information, reports or documents in relation to any Modern Slavery or any risk of Modern Slavery within the Supplier's operations or supply chain.
- (e) The Supplier must cooperate in good faith with the Organisation in investigating the circumstances relevant to any potential, suspected or actual Modern Slavery occurring in the Supplier's operations or supply chain.
- (f) If the Organisation becomes aware or has a reasonable suspicion of any potential, suspected or actual Modern Slavery occurring in the Supplier's operations or supply chain, the Organisation may in its absolute discretion do one or more of the following:
- (i) request the Supplier to provide all information that the Organisation reasonably requires in relation to the potential, suspected or actual Modern Slavery;
 - (ii) request the Supplier to assist the Organisation with any investigation that the Organisation wishes to conduct into the potential, suspected or actual Modern Slavery; or
 - (iii) request the Supplier to:
 - A. prepare, document and implement a corrective action plan to address the risk of Modern Slavery occurring in the supply chain;
 - B. terminate any relationship between the Supplier and the Representatives involved in the potential, suspected or actual Modern Slavery; or
 - C. procure the Supplier's Representatives to prepare, document and implement corrective action plans; and
 - D. confirm to the Organisation in writing that such measures have been implemented.
- (g) The Supplier must use reasonable endeavours to ensure its arrangements with its Representatives:
- (i) include obligations on the relevant Representatives that are equivalent to the obligations in PART L: MODERN SLAVERY clauses (b), (c), (d) and (f); and
 - (ii) permit termination of such arrangements where the Supplier has reasonable grounds to believe there has been or is likely to be the occurrence of any offence involving Modern Slavery by the relevant Representative.

- (h) Without limiting PART L: MODERN SLAVERY clause (i) , if the Supplier is in breach of this PART L: MODERN SLAVERY, the Organisation may notify the Supplier of the breach and require, within 30 Business Days of such notice, that the Supplier undertake remedial action to rectify the breach, ensure its compliance with any laws relevant to Modern Slavery and minimize the risk of Modern Slavery within the Supplier's operations and supply chain.
- (i) If the Supplier fails to undertake the remedial action as required in PART L: MODERN SLAVERY clause (f) and to the satisfaction of the Organisation, the Organisation may immediately terminate the Agreement.

PART M: CONFIDENTIALITY

10.1 Confidential Information

If a Party (**Recipient**) acquires Confidential Information of the other Party (**Discloser**), the Recipient must ensure that Confidential Information is maintained as secret, confidential and valuable to the Discloser.

10.2 Obligations regarding Confidential Information

- (a) The Recipient acknowledges and agrees that Confidential Information is disclosed in confidence and undertakes and agrees to treat and hold Confidential Information as strictly confidential and secret.
- (b) The Recipient must prevent disclosure of Confidential Information to third persons other than to:
 - (i) Personnel of the Recipient who have a need to know the Confidential Information for the purposes of this Agreement (and only to the extent that each has a need to know);
 - (ii) any actual or prospective investor in or lender to (or assignee or novatee of a lender to) the Party;
 - (iii) any insurer in respect of the matters the subject of this Agreement; or
 - (iv) any of the applicable Party's professional advisers, auditors and consultants.
- (c) The Recipient must ensure that each person to whom it discloses Confidential Information under clause 10.2(b) complies with the confidentiality terms in this Agreement and any confidentiality agreement with the Discloser, and holds that Confidential Information as strictly confidential and secret and must notify Discloser of and take all steps to prevent or stop any suspected or actual breach of such confidential obligation.
- (d) The Recipient and the Personnel of the Recipient must not access information systems used to store/access Confidential Information and also must notify the Discloser, in the event of a breach of information security including Personnel, Information and Communications Technology or physical breaches.
- (e) The Recipient will, if required by law to disclose any Confidential Information to a third person (including, but not limited to, any government):
 - (i) notify the Discloser;
 - (ii) if possible before such disclosure:
 - A. give the Discloser a reasonable opportunity to take any steps that the Discloser considers necessary to protect the confidentiality of that information; and
 - B. take any reasonable steps that the Discloser directs to protect the confidentiality of that information;
 - (iii) subject to clause 10.2(e)(ii) only disclose so much of the Confidential Information as is necessary to comply with the law; and
 - (iv) notify the third person that the information is Confidential Information of the Discloser.
- (f) The Recipient must, and must cause its Personnel, to use Confidential Information solely for the purposes of the subject matter of this Agreement and for no other purpose whatsoever except with the prior written approval of the Discloser.
- (g) Upon completion of relevant activities by the Recipient or upon request by the Discloser, the Recipient must as directed by the Discloser return all Confidential Information in material form and all Material containing Confidential Information or destroy any such Material and supply certification of destruction save for those required to be retained for legal and regulatory purposes.

- (h) Return or destruction of Confidential Information does not release the Recipient from its confidentiality obligations under this Agreement or any confidentiality agreement with the Discloser, and any Confidential Information retained shall be held subject to the confidentiality terms of this Agreement.
- (i) In the event of any loss or inability of a Party to account for any of the other Party's Confidential Information, the Party must immediately notify the other Party in writing.
- (j) In the event of a breach or threatened breach of the terms of this PART M: CONFIDENTIALITY by the Recipient, the Discloser shall be entitled to an injunction restraining the Recipient from committing any breach of this Agreement without showing or proving any actual damage sustained by the Discloser.
- (k) This Agreement is not to be construed as granting to the Recipient any licence rights or other rights relating to the Confidential Information except as expressly provided in this Agreement or specifically agreed to by the Parties in writing.

10.3 Organisation's disclosure of Confidential Information

Notwithstanding clause 10.2, the Supplier acknowledges and agrees:

- (a) the Organisation may disclose Confidential Information to third parties (other than any competitor of the Supplier) for the purposes of benchmarking, monitoring, comparison or evaluation of:
 - (i) contracts of this type; or
 - (ii) the performance of the Activities,
- (b) with the Organisation taking reasonable steps to keep such information confidential (including requiring the relevant third party to sign a confidentiality agreement relating to the Supplier's information);
- (c) the Organisation (or such other public sector agency as may, from time to time, be responsible for doing so) may publish, whether on the internet or otherwise, all such information as is necessary to comply with the requirements of the Organisation's Policies and Procedures;
- (d) the Organisation may make available to the Victorian Auditor-General all information that is requested by the Auditor-General, if required by law;
- (e) the Organisation may make available all information in relation to the Supplier or this Agreement as may be required to comply with its obligations under the *Freedom of Information Act 1982* (Vic), providing that any proposed disclosure will be provided to the Supplier for comment; and
- (f) the Organisation may provide all information that may be requested in relation to this Agreement (which may include Confidential information) to Parliament, the Governor, Cabinet or a Parliamentary or Cabinet committee or sub-committee, government agency, authority, instrumentality, or Minister or office of the State of Victoria.

PART N: PRIVACY

- (a) Each Party must abide and procure its Personnel to abide by
 - (i) all relevant Information Privacy Principles set out in the *Privacy and Data Protection Act 2014* (Vic),
 - (ii) the Health Privacy Principles set out in the *Health Records Act 2001* (Vic),
 - (iii) obligations in relation to privacy under the *Privacy and Data Protection Act 2014* (Vic),
 - (iv) any applicable code of practice defined in, and approved under the *Privacy and Data Protection Act 2014* (Vic); and
 - (v) any other applicable laws and regulations relating to the collection, use, disclosure, transfer, processing and retention of personal information (collectively, 'Privacy Obligations').
- (b) Without limiting the generality of PART N: PRIVACY clause (a), each Party:
 - (i) must not collect, use or disclose personal information as defined in the Privacy Obligations in the course of performing this Agreement unless the collection, use or disclosure of personal information is reasonably necessary for, or directly related to, one or more of its functions or activities required under this Agreement or as otherwise permitted or required by applicable laws and regulations;

- (ii) must collect, use and disclose personal information only by lawful means and not in an unreasonably obtrusive way;
 - (iii) must implement, having due regard to generally accepted information security practices, commercially reasonable precautions and measures (both organisational and technical) to preserve the integrity and prevent and detect the corruption and unauthorised access, use, transfer, disclosure, alteration or destruction of any personal information through its information technology systems;
 - (iv) must provide evidence of staff training and awareness of cybersecurity, including phishing simulation, if requested by the other party;
 - (v) must take reasonable steps to ensure that any individual whose personal information is collected in the course of performing this Agreement is aware of:
 - A. the identity of the organisation collecting personal information;
 - B. the option not to identify themselves, or use a pseudonym, unless it is required under Australian law, court/tribunal, or it would be impractical under the circumstances;
 - C. the purposes for which this personal information is collected;
 - D. the main consequences for the individual if the personal information is not provided;
 - E. how to contact the organisation collecting personal information including the handling of complaints, accessing and correction of their personal information;
 - F. if relevant, whether the personal information will be sent to other organisations including countries outside Australia; and
 - G. how to unsubscribe from future correspondence.
 - (vi) must not collect sensitive information (as defined in the Privacy Obligations) without the consent of the individual whose information is collected and the written approval of the other Party which shall not be given unless the other Party is satisfied that such information is reasonably necessary for the purpose of collection of that information;
 - (vii) must provide a communication protocol for suspected and actual security incidents and other outages; and
 - (viii) must assist the other Party to comply with its obligations under the Privacy Obligations, to the maximum extent possible.
- (c) Each Party must ensure that only its authorised Personnel have access to any sensitive information processed by it.
- (d) Each Party must not, without the prior written consent of the other Party who provided the personal information, transfer any personal information or sensitive information processed by it to any Third Party or to a country outside Australia.
- (e) Each Party further undertakes to the other that all prior consents or approvals required, whether by statute or otherwise, for the disclosure of any personal information or sensitive information to the other Party has been or shall be obtained prior to such disclosure.
- (f) Each Party must notify the other Party immediately if it becomes aware of or suspects, any unauthorised collection, use or disclosure of or access to any personal information or sensitive information it receives from the other Party or it becomes aware of any complaint by any person concerning that person's personal information or sensitive information in relation to the first-mentioned Party's obligations under this Agreement.
- (g) Each Party indemnifies the other in respect of any actual Loss which such other Party may suffer directly in consequence of the first mentioned Party's breach of any Privacy Obligations, unless and to the extent the same arises from or in connection with such other Party's fault, wilful misconduct or negligence.
- (h) The Supplier must provide the Purchasing Party with such co-operation as the Purchasing Party requires in relation to resolving any complaint concerning privacy, including provision of a copy of the data that was breached, where a data or privacy breach occurs. The Supplier must also provide access to, or amend any record as directed by the Purchasing Party.
- (i) The Supplier must report to the Office of the Victorian Information Commissioner (OVIC) or the Office of the Australian Information Commissioner when a confirmed data or privacy breach occurs and also notify the Purchasing Party(ies) within 8 business hours, if their respective data forms part of a confirmed data breach.
- (j) The Supplier agrees to comply with any directions made with respect to the Agreement by the relevant Commissioners under applicable Privacy Obligations, including the OVIC, the Commonwealth Privacy Commissioner, OAIC or the Victorian Health Services Commissioner.

- (k) The Supplier must:
- (i) not, without the prior consent of the Purchasing Party, disclose the information to a person who is outside Victoria;
 - (ii) take all reasonable steps to destroy or permanently de-identify information that is no longer needed for the purposes of the Agreement;
 - (iii) co-operate with any reasonable request or direction of the Purchasing Party, which relates to the protection of information or the exercise of functions of any of the relevant Commissioners, the Commonwealth Privacy Commissioner or the Victorian Health Services Commissioner;
 - (iv) ensure that its Personnel or agents are made aware and comply with the provisions of section 141 of the *Health Services Act 1988* (Vic) and section 346 of the *Mental Health Act 2014* (Vic) (if and where relevant), relating to unlawful disclosure of patient information; and
 - (v) ensure that access to the information is limited to those of its Personnel who are required to access that information for the purposes of the Agreement or a Purchase Order Contract.

PART O: WARRANTIES

11.1 Supplier warranties

The Supplier represents and warrants to the Purchasing Party that:

- (a) any Goods:
- (i) unless otherwise specified in the Module, are new and of the best merchantable quality available;
 - (ii) are free of defects;
 - (iii) are fit for their intended purpose and use including, as specified in the ARTG certificate for the relevant Goods;
 - (iv) conform to the description, model number and sample (if any) provided by the Supplier to the relevant Purchasing Party;
 - (v) comply with all applicable Laws and standards; and
 - (vi) conform to the requirements of the Agreement.
- (b) any Services will:
- (i) be performed with due care and skill, in a professional manner and in accordance with Best Industry Practice;
 - (ii) be performed by suitably qualified and experienced Personnel, including licenced, certified or accredited Personnel (as the case may be);
 - (iii) be fit for the purpose for which they are supplied;
 - (iv) comply with all applicable Laws and standards; and
 - (v) conform to the requirements of this Agreement;
- (c) Therapeutic Goods are and will remain Registered until termination or expiration of the Agreement;
- (d) it is an entity properly incorporated, lawfully registered and validly existing under the laws of its place of incorporation or registration;
- (e) it is not insolvent;
- (f) it has the legal right and full corporate power and capacity to execute, deliver and perform its obligations under this Agreement and it has obtained all necessary authorisations and consents and taken all other actions necessary to enable it to do so;
- (g) this Agreement constitutes (or will when executed constitute) valid legal and binding obligations of the Supplier and is enforceable against the Supplier in accordance with its terms;
- (h) the execution, delivery and performance of the Agreement by the Supplier does not and will not result in a breach of or constitute a default under:
- (i) any agreement to which the Supplier is a party;
 - (ii) any provision of the constitution of the Supplier; or
 - (iii) any law or regulation or any order, judgment or determination of any court or Government Authority by which the Organisation is bound; and
- (i) it has obtained and will maintain all licences, registrations and permits required to be obtained to act as the provider of the Activities pursuant to this Agreement.

11.2 Warranty Period

During any applicable Warranty Period, the Supplier must, at no additional charge and without prejudice to any other rights or remedies of the Purchasing Party, repair or replace any Goods (at the Purchasing Party's discretion) that do not comply with any of the warranties in clause 11.1(a) or re-perform the Services (as the case may be) that do not comply with any of the warranties in clause (b).

PART P: AUDITS

12.1 General

- (a) The Supplier must:
- (i) for a period of 7 years after expiry or termination of the Agreement, maintain all books, records (including financial records) and other documents relating to the performance of the Supplier's obligations under this Agreement; and
 - (ii) for a period of 3 years after expiry or termination of the Agreement, upon the provision of reasonable notice by the Organisation, permit the Organisation to:
 - A. access, inspect and make copies of the documents and other Materials referred to in clause 12.1(a)(i) during normal business hours of the Supplier;
 - B. send its representatives (including any Related Bodies Corporate or its auditors) to audit, inspect and observe the processing, storage, transportation and disposal activities (as applicable) undertaken by the Supplier in the performance of the Activities at the relevant Participating Health Service(s); and
 - C. conduct inventory audits, as well as any other types of audits required for its internal control or to ensure compliance with legal or other requirements of this Agreement.
- (b) Without limiting clause 12.1(a), in the event that an audit is undertaken:
- (i) as a result of an alleged breach of any of the provisions in this Agreement, or a requirement to re-audit, then:
 - A. in addition to all relevant records (including financial records), the Organisation will have a right to access the Supplier's, each of its Related Bodies Corporates', and each of its subcontractor's, personnel, systems (where permissible), and processes; and
 - B. no limitation will apply to the number of audits per year that the Organisation can undertake, in respect of matters connected to such alleged breach or re-audit requirement; and
 - (ii) by a Regulatory Authority, the Supplier will give that Regulatory Authority any access it requires, whether it be to its premises, Related Bodies Corporate, any sub-contractors, personnel, systems, processes and records, to fulfil the purpose/s stipulated by that Regulatory Authority for conducting the audit.
- (c) To the extent that any audit under this clause 12.1 or any other provision of this Agreement requires access and review of any commercially or strategically sensitive information relating to the business of the Supplier, its Related Bodies Corporate or any sub-contractors, such activity shall be carried out by Third Party professional advisors appointed by the Organisation, and such professional advisors shall only report to the Organisation such information as is directly relevant to informing the Organisation on compliance with the particular provisions that are the subject of the audit.

12.2 Audit assistance

- (a) The Supplier will provide or procure all co-operation and assistance during normal working hours reasonably required by the Organisation for the purposes of an audit.
- (b) The Organisation will procure that any auditor (including Third Party professional advisors) enters into a confidentiality agreement or is otherwise subject to confidentiality obligations equivalent to PART M: CONFIDENTIALITY in all material respects.
- (c) The Organisation will instruct any auditor or other person given access in respect of an audit to cause the minimum amount of disruption to the business of the Supplier, its Related Bodies Corporate and sub-contractors and to comply with relevant building and security regulations.

12.3 Costs

- (a) Subject to clause 12.3(b), each party will bear its own costs associated with audits and inspections.
- (b) If an audit or inspection reveals that the Supplier has overcharged the Purchasing Party or has breached this Agreement in any material respect, the Supplier will be liable for the Organisation's audit and inspection costs and must promptly reimburse the Organisation for those costs upon request.

PART Q: INDEMNITY AND LIABILITY

13.1 Indemnity

- (a) To the maximum extent permitted by law, the Supplier indemnifies and will keep indemnified the Purchasing Party(ies) and their respective Personnel (each an **Indemnified Person**) from and against any Claim or Loss (including any claim by, or loss to, a third party) which an Indemnified Person suffers, incurs or for which it becomes liable arising out of or in connection with:
 - (i) any breach by the Supplier of its obligations under this Agreement;
 - (ii) any act, error, or omission of the Supplier in relation to the performance of this Agreement;
 - (iii) any representation or warranty made or given by, or on behalf of, the Supplier being proven to have been false, misleading, deceptive, incomplete or inaccurate in any material respect when made or deemed to have been made;
 - (iv) any:
 - A. loss or damage to any real or personal property, including property of an Indemnified Person;
 - B. personal injury, disease, illness or death of any person; arising out of or in connection with any act or omission (including negligence) of the Supplier in connection with the performance of Activities or breach by the Supplier of its obligations under the Agreement; or
 - (v) any infringement or alleged infringement of a person's rights (including contractual rights and Intellectual Property Rights):
 - A. by any Activities;
 - B. arising from any act of the Supplier or any of the Supplier's Personnel in relation to any Activities; or
 - C. arising from any machine, equipment, work, Material or thing, system or method of using, fixing or working, or any arrangement used or fixed or supplied by the Supplier in performing the Activities.
- (b) The Indemnified Persons may demand as a debt due and immediately payable under the Agreement any amount in respect of which the Supplier has indemnified the Indemnified Persons under this Agreement.
- (c) The Organisation enters into the Agreement on its own behalf and on behalf of the Participating Health Service(s) in accordance with sections 131 and 132 of the *Health Services Act 1988* (Vic) and in acknowledging that, the Supplier agrees that the Supplier's liabilities in relation to and arising from the Goods will be as if those Goods have been purchased directly by the relevant Participating Health Service(s) and health or related services (as that phrase is defined in the *Health Service Act 1988* (Vic) (as the case may be) under the Agreement.
- (d) Any liability of the Supplier will be reduced to the extent that any such Claim or Loss is contributed to by:
 - (i) negligent acts or omissions of the Organisation, a Participating Health Service or their respective Personnel; or
 - (ii) misconduct, fraudulent or criminal actions of the Organisation, a Participating Health Service or their respective Personnel.

13.2 Exclusion of Consequential Loss(es)

Notwithstanding any other term of the Agreement, neither Party will be liable to the other Party for any Consequential Loss(es) in connection with the Agreement.

PART R: TERMINATION

14.1 Termination for Convenience

The Organisation may, during the Term, terminate this MSA without cause, by providing the Supplier with a minimum of 30 days' prior written notice.

14.2 Immediate Termination

Either Party may immediately terminate the Agreement by giving notice to the other Party, in the following circumstances:

- (a) breach of any material term of the Agreement which:
 - (i) is not capable of remedy; or
 - (ii) is capable of remedy, but the other Party fails to remedy the breach within 10 Business Days of receiving notice requiring it to do so; or
- (b) a receiver, liquidator, trustee in bankruptcy or official manager or administrator is appointed in respect of the other Party (non-terminating party) or any of its Related Bodies Corporate or any of their respective businesses or properties; or
- (c) the other Party (non-terminating party) threatens to cease to carry on its business or is unable to pay its debts within the meaning of the *Corporations Act 2001* (Cth) or any amending legislation.

14.3 Termination by the Organisation

The Organisation may immediately terminate the Agreement in the event a change of Control occurs in respect of the Supplier without prior written consent of the Organisation.

14.4 Effect of termination

- (a) Each Party retains any rights it may have against the other Party in respect of any accrued liability or any breach of the Agreement arising or occurring prior to expiration or termination of the Agreement.
- (b) Any authorisation granted under the Agreement immediately and automatically terminates if the Agreement expires or terminates for any reason or cause.
- (c) Clauses 1.1, 4.1, 6.2, 6.3, 7, 8.2, 10.1, 10.2, 10.3, PART N: PRIVACY, 11.1, 12.1, 12.2, 12.3, 13.1, 14.5, 15.1, 15.2, 15.4, 15.6, 16.1, 16.2, 16.3, 16.4, 16.5, 17.1, 17.2, 19.1, 19.4, 19.5, 19.7 and 19.8 survive the expiry or termination of the Agreement.

14.5 Consequences of Termination

- (a) On termination, the Supplier will be entitled to payment for existing Activities performed and completed to the satisfaction of the Purchasing Party, prior to the effective date of termination in accordance with the relevant Purchase Order, provided an invoice is issued by the Supplier for such Activities within 90 days from termination.
- (b) The Supplier will not be entitled to make any Claim against the Purchasing Party arising out of or in connection with the termination of the Agreement other than for the amount payable under clause 14.5(a).
- (c) Termination will not release the Supplier from its obligation to perform the Activities sought under any Purchase Order issued to the Supplier prior to the effective date of Termination.

PART S: INSURANCE

15.1 Supplier Insurance

- (a) The Supplier must procure each of the Supplier Insurances on or before the Commencement Date:
 - (i) upon the minimum terms specified in the Module Particulars; and
 - (ii) to the extent not so specified, upon terms no less favourable than a reasonable and commercially prudent supplier would procure and maintain in respect of the relevant Activities, in light of all relevant circumstances.
- (b) The Supplier Insurances must be maintained by the Supplier for the prescribed period specified in the Module Particulars.

15.2 General insurance requirements

- (a) All Supplier Insurances:
 - (i) must be effected and maintained with a Reputable Insurer (except for workers compensation insurance, where a licence compliant with applicable law may apply);
 - (ii) must not contain any unusual condition, exclusion, endorsement or alteration not usually included in policies of the relevant class provided by Reputable Insurers to a reasonable and commercially prudent supplier in respect of activities similar to the Activities, in light of all relevant circumstances, unless it is first approved by the Organisation; and
 - (iii) which refer to more than one insured must include a waiver and cross liability clause in which the insurer agrees:
 - A. to waive all rights of subrogation or action that it may have or acquire against any person to whom the benefit of cover extends;
 - B. that the term "insured" applies to each person to whom cover extends as if a separate policy of insurance had been issued to each of them (subject always to the overall sum insured not being increased as a result); and
 - C. that any non-disclosure, breach of any duty or act or omission by one insured or policy beneficiary does not prejudice the right of any other such person to claim under any insurance.
- (b) Clauses 15.2(a)(iii)A and 15.2(a)(iii)B do not apply to workers compensation insurance and professional indemnity insurance.

15.3 Premiums and deductibles

The Supplier must punctually pay all premiums and other amounts payable in respect of the Supplier Insurances.

15.4 Evidence of insurance

The Supplier must give to the Organisation (for the Supplier Insurances):

- (a) certified copies of all current and valid certificates of currency on or before the Commencement Date; and
- (b) from the Commencement Date, replace the expired certificates of currency no later than 5 Business Days of expiry, by providing certified copies of renewed or new certificates of currency to the Organisation.

15.5 Failure to insure

If the Supplier fails to procure any of the Supplier Insurances in accordance with clauses 15.1 and 15.4, the Organisation may terminate the Agreement by issuing 14 days' prior written notice to the Supplier.

15.6 General insurance obligations

The Supplier must:

- (a) not do or permit, or omit to do, anything which prejudices any insurance policy or recovery;
- (b) rectify anything which might, if not rectified, prejudice any insurance policy or recovery;

- (c) reinstate any Supplier Insurance policy prior to expiry, where it is due to lapse;
- (d) not cancel, materially vary or allow any Supplier Insurance to lapse;
- (e) ensure that the insurance policy wordings are governed by and construed in accordance with the law of the Commonwealth, wherever this is possible, on commercially reasonable terms;
- (f) immediately notify the Organisation of any fact or circumstance or change in circumstances which may prejudice an insurance policy or recovery;
- (g) fully and promptly disclose every matter known to it, being a matter that:
 - (i) it knows to be a matter relevant to the decision of the insurer whether to accept the risk and, if so, on what terms; or
 - (ii) a reasonable person in the circumstances could be expected to know to be a matter so relevant, to all relevant insurers (and any persons acting on their behalf) relating to the insurance policies and any claim thereunder in all respects, not limited to circumstances in which failure to do so would violate or invalidate the relevant policy;
- (h) diligently pursue recovery of claims made under the Supplier Insurance policies; and
- (i) comply at all times with the terms of each insurance policy.

PART T: COMPLAINTS AND DISPUTE RESOLUTION

16.1 Complaints Process

- (a) At first instance, the Supplier must raise any complaints relating to the Activities and or in connection with the Agreement through the Organisation's Authorised Representative.
- (b) Where the complaint remains unresolved for more than 20 Business Days after being raised with the Organisation's Authorised Representative, the Supplier may submit a written complaint to the Organisation's Complaints Delegate via email at complaints@healthsharevic.org.au.
- (c) Notwithstanding clauses 16.1(a) and 16.1(b), complaints in relation to Participating Health Services must be lodged with the Participating Health Services' Chief Procurement Officer in accordance with POL501 HSV Purchasing Policy 1. – Procurement Governance available on the HSV website at <https://healthsharevic.org.au/purchasing-policies-and-compliance/hsv-purchasing-policies/hsv-purchasing-policy-1-governance/>.
- (d) The Supplier must fulfill the requirements of this clause 16.1 prior to disputing and issuing a notice in accordance with clauses 16.2, and 16.3.

16.2 Disputes

- (a) Any dispute or difference arising out of, relating to or in connection with:
 - (i) the Agreement, or its subject matter (including any question regarding the existence, validity or termination of this Agreement); or
 - (ii) the Activities,(each a **Dispute**), must be resolved in accordance with clauses 16.2 to 16.5.
- (b) Notwithstanding the existence of a Dispute, except as expressly provided otherwise, each Party must continue to perform its obligations under this Agreement.
- (c) The relevant Purchasing Party may withhold payment of an amount equal to the amount which is the subject of a Dispute.
- (d) Nothing in clause 16.2 will prejudice the right of a Party to institute legal proceedings to seek urgent injunctive relief.
- (e) The Parties agree that any Dispute Notice and any arbitration are to be confidential.

16.3 Notice of Dispute

- (a) If a Dispute arises between the Parties, a Party must provide to the other Party a notice of dispute in writing identifying and providing details of the Dispute (**Dispute Notice**).
- (b) Within 10 Business Days (or such other time period as the Parties may agree) after service of the Dispute Notice, the Contract Management group constituted for the purpose of clause 4.5 will convene at least once to attempt to resolve the Dispute.
- (c) If the Contract Management group constituted for the purpose of clause 4.5 has not resolved the Dispute within 20 Business Days (or such other time period as the Parties may agree) of the service of the Dispute Notice, then the Dispute must be referred to the Executive Negotiators for resolution.
- (d) The Executive Negotiators will endeavour to resolve the Dispute within a further 10 Business Days of the expiry of the 20 Business Days period referred to in 16.3(c) or any other agreed period.

16.4 Mediation

If a Dispute has not been resolved by the Executive Negotiators within the timeframe set out in clause 16.3(d), the Dispute shall be resolved by mediation in accordance with the ACICA Mediation Rules. The mediation shall take place in Melbourne, Australia and be administered by the Australian Centre for International Commercial Arbitration (**ACICA**).

16.5 Arbitration

- (a) If a Dispute has not been resolved within 5 Business Days from mediation in accordance with clause 16.4, the Organisation may, at its discretion, refer the Dispute to arbitration in accordance with the following procedure:
 - (i) the arbitration will be conducted in accordance with the ACICA Arbitration Rules;
 - (ii) the seat of the arbitration will be Melbourne, Australia;
 - (iii) the language of the arbitration will be English;
 - (iv) the number of arbitrators will be one;
 - (v) the arbitral tribunal will have the power to grant all legal, equitable and statutory remedies, except punitive damages;
 - (vi) any award of the arbitral tribunal will be final and binding on the Parties; and
 - (vii) the arbitration agreement is governed by and must be construed according to the laws applying in Victoria.

PART U: NOTICES

17.1 General

Any notice, demand, consent or other communication given or made under this MSA or a Module:

- (a) must be in writing, in English and signed by the sender or a person duly authorised by the sender;
- (b) must be addressed and delivered to the intended recipient at the address, or email address set out in the Module Particulars or the address or email address last notified in writing by the intended recipient to the sender after the date of this MSA; and
- (c) will be taken to be duly given or made when delivered, received or left at the above address or email address (as described in the preceding clause). If delivery or receipt occurs on a day that is not a Business Day in the place to which the notice is sent or is later than 4.00pm (local time) at that place, it will be taken to have been duly given or made at the commencement of business on the next Business Day in that place.

17.2 Particulars for delivery of notices

- (a) The particulars for delivery of notices are initially as set out in the Module Particulars.
- (b) Each Party may change its particulars for delivery of notices by written notice to the other Party.

PART V: GST

18.1 Construction

In this clause 18.1:

- (a) words and expressions which are not defined in this Agreement, but which have a defined meaning in GST Law have the same meaning as in the GST Law; and
- (b) **GST Law** has the same meaning given to that expression in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

18.2 Consideration GST exclusive

Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this Agreement are exclusive of GST.

18.3 Payment of GST

The amount payable for any taxable supply made under or in accordance with these terms is increased by the amount of any GST levied or imposed on or in respect of such supply, provided that it is a precondition of any payment for any taxable supply that the recipient has issued a GST tax invoice or such other document as may be required under the GST Law to enable the payer to obtain an input tax credit.

18.4 Timing of GST payment

The recipient will pay the amount referred to in clause 18.3 in addition to and at the same time that the consideration for the supply is to be provided under this Agreement.

18.5 Tax invoice

The Supplier must deliver a tax invoice or an adjustment note to the recipient before the Supplier is entitled to payment of an amount under clause 18.4. The recipient can withhold payment of the amount until Supplier provides a tax invoice or an adjustment note, as appropriate.

PART W: GENERAL

19.1 Media release and public announcements

- (a) The Agreement is 'Commercial in Confidence.'
- (b) In relation to the Agreement, the Supplier must not:
 - (i) make any public announcement,
 - (ii) issue any press / media releases; or
 - (iii) use the Organisation's Intellectual Property Rights (including trademark, logo or brand) in any promotional activity or advertising materials, without express prior written approval of the Organisation.

19.2 Entire Agreement

The Agreement constitutes the entire agreement between the Parties with respect to its subject matter. It sets out the only conduct relied on by the Parties and supersedes all earlier conduct and prior agreements and understandings between the Parties in connection with its subject matter.

19.3 Further steps

Each Party must promptly do whatever the other Party reasonably requires of it to give effect to the Agreement and to perform its obligations under it.

19.4 Severability

In the event that any provision or any part of any provision of the Agreement shall be held by any court or other competent authority to be illegal or unenforceable or void then such provision shall be deemed to have been severed or removed from the Agreement but without prejudice to the continuance in force and effect of all other provisions of the Agreement and the Parties shall agree to insert in place thereof such provision as shall be lawful and shall approximate as near as possible to the severed words.

19.5 Governing law

The Agreement shall be governed by the laws of the State of Victoria, Australia. Each Party submits to the non-exclusive jurisdiction of courts exercising jurisdiction there.

19.6 Consents

- (a) If the doing of any act, matter or thing under the Agreement is dependent on the consent or approval of a Party or is within the discretion of a Party, the consent or approval may be given or the discretion may be exercised conditionally or unconditionally or withheld by the Party in its absolute discretion unless express provision to the contrary has been made.
- (b) Notwithstanding anything to the contrary contained in the Agreement or in a Purchase Order Contract, nothing restricts or prohibits the relevant Purchasing Party from revoking a consent given in accordance with this clause 19.6 at any time after that consent is given.

19.7 No waiver

- (a) A failure to exercise or a delay in exercising any right, power or remedy under the Agreement does not operate as a waiver.
- (b) A single or partial exercise or waiver of the exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy.
- (c) A waiver is not valid or binding on the Party granting that waiver unless made in writing.

19.8 Rights cumulative

Unless expressly stated otherwise in the Agreement, the rights of a Party under the Agreement are cumulative and are in addition to any other rights of that Party.

19.9 Assignment and Change of Control

- (a) The Supplier may not novate, transfer or assign its rights and/or obligations (including by operation of law or otherwise) under the Agreement to any person(s) without the prior written consent of the Organisation.
- (b) If the Supplier intends on undertaking a transaction that will result in a change of Control, it must, prior to the occurrence of the change of Control, provide a notice to the Organisation setting out:
 - (i) the details of the change of Control, including the entity(ies) that that will assume control of the Supplier following the change of Control; and
 - (ii) any other information reasonably requested by the Organisation,
(Change of Control Notice).
- (c) Within 20 Business Days of receipt of a Change of Control Notice the Organisation will notify the Supplier that it (i) consents or (ii) does not consent to the change of Control.
- (d) If the Organisation does not consent to the change of Control, either Party may terminate the Agreement on 30 Business Days' prior written notice.

19.10 Relationship of Parties

- (a) This Agreement is not intended to create an agency, partnership or joint venture relationship between the Parties.

- (b) The Supplier has no authority to bind the Organisation or any Participating Health Service.
- (c) The Supplier is not authorised or empowered to act as an agent for any Purchasing Party for any purpose and may not enter into any contract or provide any warranty or representation regarding any matter, on behalf of any Purchasing Party.
- (d) At all times during the Term, the Supplier is an independent contractor and not an employee or agent of the Organisation or any Participating Health Service.

19.11 Costs and expenses

Each Party must pay its own legal and other costs and expenses of negotiating, preparing, executing and performing its obligations under the Agreement.