

Development Victoria Consultancy Agreement (Minor Services)

PPI REF	TRIM REF	VERSION	DATE
B02.1	18/10584	2.10	May 2023

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BETWEEN	Development Victoria (ABN 61 868 774 623) of Level 9, 8 Exhibition Street, Melbourne, Victoria, 3000	(‘the Principal’)
AND	#[INSERT NAME OF CONSULTANT] ABN: #[INSERT] Address: #[INSERT]	(‘Consultant’)

AGREEMENT (General Conditions):

1. Definitions and Interpretations

- 1.1 This Agreement establishes exclusively the terms and conditions by which the Consultant will provide the Principal with the consultancy services described in item 1 of Schedule 1 ('Services') for the term ('Term').
- 1.2 To the extent of any ambiguity, discrepancy or inconsistency between the general conditions and a schedule to this Agreement, the general conditions shall prevail.
- 1.3 In this Agreement:

Agreement means these general conditions and each of the Schedules.

BCA Volume One means Volume One of the National Construction Code Series including any variations or additions in the Appendix Victoria set out in the Appendices to that Volume.

Consequential Loss means loss of revenue and loss of profit, loss of business opportunity, loss of contract or loss of production.

Consultant Associate means each of the Consultant's officers, agents, advisers, subconsultants, subcontractors or employees (each only when acting in connection with the Services).

Consultant's Records mean accounting records and any other documents or papers which show all reasonable details in relation to costs incurred or expended by the Consultant in undertaking the Services, including any variations.

Consultant Representative means the person listed at item 4 of Schedule 1.

Contamination means a waste or substance present in or on land, air, soil or water including groundwater in quantities that is present above background levels and is capable of creating a risk of harm to human health or the environment, and includes any matter defined as pollution or contamination in any applicable Environmental Law, including the *Environment Protection Act 2017* (Vic) and its regulations.

Deliverable means any document or other thing required under this Agreement to be handed over to the Principal by the Consultant.

Environment has the meaning given in the *Environment Protection Act 2017* (Vic) and includes:

- (a) the physical factors of the surroundings of human beings including the land, waters, atmosphere, climate, sound, odours and tastes;
- (b) the biological factors of animals and plants; and

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- (c) the social factor of aesthetics.

Environmental Law means:

- (a) any common law principle applicable to the Environment or Contamination;
- (b) any legislation applicable to the Environment or Contamination;
- (c) any regulations made under such legislation; and
- (d) any directions or notices relating to the Environment or Contamination issued by any relevant authority or any code of practice, compliance code or standard relevant to the Services undertaken by the Consultant,

as amended from time to time.

Force Majeure Event means any event:

- (a) which is beyond the reasonable control of the Consultant; and
- (b) which could not reasonably have been anticipated or avoided by the Consultant at the date of this Agreement including war, acts of foreign enemies, invasion, revolution, insurrection, military or usurped power, acts of terrorism and natural catastrophes such as earthquake, hurricane, typhoon, lightening, flood or fire.

GST has the meaning given to that expression in the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* (as amended) unless, under or in relation to the *National Taxation Reform (Consequential Provisions) Act 2000 (Vic)* ('NTR Act') or a direction given under section 6 of the NTR Act, the Principal is obliged to make voluntary or notional payments, in which case:

- (a) 'GST' means those voluntary or notional payments, and
- (b) expressions containing the term 'GST' have a corresponding meaning.

Information means all text, drawings, statistics, tests, analysis and other materials embodied in any form which is supplied by or on behalf of the Principal in connection with this Agreement and includes that information which is generated, recorded, placed, stored, processed, retrieved, printed, accessed or produced utilising the Information for the purpose of the Agreement.

Intellectual Property Right means any statutory and other proprietary right in respect of inventions, innovations, patents, utility models, designs, circuit layouts, mask rights, copyright (including future copyright), confidential information, trade secrets, know-how, trademarks and any other right in respect of intellectual property.

Key People mean those people (if any) listed at item 5 of Schedule 1.

Liability Cap means the cap specified (if any) in item 11 of Schedule 1.

Local Jobs First Obligations means the obligations set out in Schedule 4.

Modern Slavery Legislation means the *Modern Slavery Act 2018 (Cth)* and any similar legislation in force from time to time in Victoria.

Prohibited Cladding Products means:

- (a) aluminium composite panels with a core of less than 93% inert mineral filler (inert content) by mass in external cladding as part of a wall system; and
- (b) expanded polystyrene products used in an external insulation and finish (rendered) wall system.

Principal's Representative means the person listed at item 3 of Schedule 1.

Protective Data Security Standards has the meaning given to that term in the *Privacy and Data Protection Act 2014 (Vic)*.

Public Sector Data has the meaning given to that term in the *Privacy and Data Protection Act 2014 (Vic)*.

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Public Sector Employee has the same meaning as set out in section 4 of the *Public Administration Act 2004* (Vic).

Safety Legislation means:

- (a) any legislation applicable to work health and safety, dangerous goods, building safety and electrical safety;
- (b) any regulations made under such legislation; and
- (c) any directions on safety or notices issued by any relevant authority or any code of practice, compliance code or standard relevant to the Services undertaken by the Consultant,

as amended from time to time.

Safety Requirements means any direction, instruction, request or requirement relevant or necessary for compliance by the Principal or the Consultant with any applicable Safety Legislation and including any such matter of which the Consultant has been informed by the Principal either orally or in writing.

Shared Reporting Contract has the meaning given in clause 20.3(a). This definition applies if indicated in Item 16.

Shared Reporting Information has the meaning given in clause 20.3(b)(ii). This definition applies if indicated in Item 16.

Shared Reporting Process has the meaning given in clause 20.3(c). This definition applies if indicated in Item 16.

Site means, where relevant to the Agreement, any land to which the Consultant will have access in connection with the Services.

Special Conditions means the special conditions set out in Schedule 5.

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

Supplier Code of Conduct means the code of conduct issued by the State for suppliers providing goods or services to the State, as amended from time to time.

Type A Construction has the meaning given to it in Part C1 of the BCA Volume One.

Type B Construction has the meaning given to it in Part C1 of the BCA Volume One.

Victorian Public Sector Commission Code of Conduct means the *Code of Conduct for Victorian Public Sector Employees 2015* (as amended from time to time) issued by the Victorian Public Sector Standards Commissioner pursuant to section 61 of the *Public Administration Act 2004* (Vic).

1.4 Unless otherwise expressly stated, the Principal or the Principal's Representative may exercise a right or power under or arising out of the Agreement in its absolute discretion.

1.5 A reference to any legislation or to any section or provision of any legislation includes regulations under it and consolidations, amendments or replacements of any of them.

1.6 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:

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- (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;
- (g) '\$', 'dollars' or 'AUD' is a reference to the lawful currency of the Commonwealth of Australia; and
- (h) if the date on or by which any act must be done under this Agreement is not a business day in Melbourne, Victoria, the act must be done on or by the next business day.

1.7 The Consultant acknowledges and agrees that all information provided by the Consultant to the Principal prior to entering into the Agreement is accurate and complete.

2. Appointment of Consultant

2.1 The Principal appoints the Consultant to provide the Services on the terms set out in this Agreement. Except as otherwise provided in this Agreement, the Consultant performs the Services at its own cost and risk.

2.2 The Consultant must commence performance of the Services on the Commencement Date specified in item 2 of Schedule 1 and in accordance with any other dates for delivery specified in item 2 of Schedule 1. However, this Agreement also applies to any Services performed prior to the date of this Agreement.

2.3 The Consultant is an independent contractor, is not the Principal's agent, employee or a partner of and has no authority to bind the Principal or act on the Principal's behalf at any time.

3. Provision of Services

3.1 The Consultant represents that it possesses the qualifications, expertise and experience appropriate to perform the Services.

3.2 The Consultant must:

- (a) provide the Services in a proper, timely and efficient manner using the standard of care, skill, diligence, prudence and foresight that would reasonably be expected from a prudent, qualified, competent, professional and experienced provider of services that are similar to the Services;
- (b) ensure a high quality of work and efficient delivery of the Services;
- (c) provide the Services in accordance with the Agreement;
- (d) comply with all statements or representations as to its performance or the provision of the Services set out in its tender response;
- (e) keep the Principal 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 Principal;
- (f) comply with all relevant laws, codes and standards and any relevant policies of the Principal in carrying out Services, including, without limitation, sections 71 to 73 of the *Development Victoria Act 2003* (Vic);
- (g) comply with any reasonable direction given by the Principal, including the time within which the direction is to be complied with;

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- (h) provide the Services (including providing any Deliverables) such that they are fit for the purpose or purposes stated in or which can be reasonably ascertained from this Agreement;
- (i) without limiting clause 3.3, ensure that each Consultant Associate possesses the qualifications, expertise and experience appropriate to perform the Services;
- (j) not act dishonestly, fraudulently or illegally;
- (k) not act in a manner which brings the Principal into disrepute or affects the Principal's reputation or may have the effect of bringing the Principal into disrepute or affecting the Principal's reputation;
- (l) comply with, and require that a Consultant Associate complies with, Safety Legislation and Safety Requirements;
- (m) comply with, and require that any Consultant Associate complies with, Environmental Laws; and
- (n) so far as is reasonably practicable consult, cooperate and coordinate activities with the Principal, the Principal's contractors, suppliers and other persons and authorities engaged in or associated with the Services.

3.3 The Consultant remains fully responsible for the Services notwithstanding any subcontracting, or any review or acceptance of the Services by the Principal.

3.4 If the Consultant becomes aware of the use of any Prohibited Cladding Products on the Project, the Consultant must immediately notify the Principal's Representative.

3.5 Where the Services require the Consultant to perform any design activities, the Consultant must ensure that any design solution does not include the installation of Prohibited Cladding Products into any building work in connection with buildings of Type A or Type B Construction.

4. Representatives

4.1 The Principal has appointed the Principal's Representative.

4.2 The Principal may replace the Principal's Representative at any time and notify the Consultant in writing of that appointment.

4.3 The Consultant Representative must act as the representative of the Consultant under the Agreement.

4.4 The Consultant agrees that:

- (a) any direction given by the Principal or the Principal's Representative to the Consultant Representative will be taken to be have been given to the Consultant; and
- (b) matters within the knowledge of the Consultant Representative will be taken to be within the knowledge of the Consultant.

4.5 The Consultant must:

- (a) subject to clause 4.5(b) and clause 4.5(c), ensure that the Key People are employed or engaged in the roles specified in item 5 of Schedule 1;
- (b) not delegate the exercise of any power or authority or any of the functions of any of the Key People or allow any such delegation without the Principal's approval (such approval not to be unreasonably withheld or delayed); and
- (c) if any of the Key People die, become seriously ill, resign from the employment of the Consultant or a Consultant Associate (as applicable), or the Principal agrees to the replacement of any Key People, replace the relevant Key People with persons approved by the Principal (such approval not to be unreasonably withheld or delayed) of at least equivalent qualification, experience, ability and expertise.

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5. Time

- 5.1** The Consultant shall complete the Services during the Term with due expedition and without delay and in accordance with this Agreement, subject to adjustment in accordance with this clause 5.
- 5.2** If the Consultant believes that any cause beyond the control of the Consultant will delay the performance of the Services, the Consultant must notify the Principal in writing within seven (7) days of becoming aware of the cause of delay.
- 5.3** If the cause of the delay is:
- (a) an act, default or omission of the Principal (including the ordering of a variation, or a delay caused by a third party); or
 - (b) a Force Majeure Event,

the time for completion of the Services shall be extended by a reasonable period determined by the Principal. The Consultant agrees that an extension of time to the date for completion of the Services is its exclusive remedy for delays.

- 5.4** The Consultant must cooperate with, and must procure that each Consultant Associate cooperates with, the Principal and the Principal's contractors, suppliers and all other persons and authorities engaged in or associated with the Services.

6. Payment

- 6.1** Provided the Consultant performs the Services under the Agreement as specified or subsequently varied, the Principal will pay the Consultant the consultancy fee set out in item 6 of Schedule 1 or subsequently agreed in writing by the Principal.
- 6.2** Each payment claim under this Agreement must be accompanied by all evidence requested by the Principal's Representative (including proof of payment to a Consultant Associate in a form acceptable to the Principal).
- 6.3** Within 10 business days from receipt of a payment claim for the Services, the Principal or the Principal's Representative shall issue a payment schedule specifying the assessment of value of the payment claim and the reasons for any differences.
- 6.4** The Principal shall pay the amount in the payment schedule (less any amounts due to the Principal from the Consultant) within 10 business days of the date of the payment schedule. Payment does not mean that the Principal has accepted any part of the Services and payment shall be on account only.
- 6.5** The Consultant and each Consultant Associate has no claim against the Principal in respect of personal disability, accident or workers compensation in respect of its engagement under this Agreement.
- 6.6** The Consultant and each Consultant Associate has no claim against the Principal in respect of annual leave, public holidays, sick leave and long service leave in respect of its engagement under this Agreement.
- 6.7** The Consultant undertakes that it is registered for GST purposes.
- 6.8** Each payment due under this Agreement must be increased by an amount equal to any GST which a party becomes liable to pay for any supply made under or in connection with this Agreement so that that party retains, after payment of GST, the amount which it would have retained but for the imposition of GST.
- 6.9** The Principal is not required to make a payment until it receives a tax invoice for that payment and the Consultant must provide to the Principal all documentation required to claim any GST tax credit, set off, rebate or refund for or in relation to any GST included in any payment under the Agreement.

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7. Variations

- 7.1 The Principal may, at any time before completion of the Services, vary the scope or the extent of the Services. A fee for the variation shall be agreed prior to the execution of the variation.
- 7.2 The Consultant must not commence any variation to the Services until it receives a written notice from the Principal stating that the work is a variation under this clause 7. Unless the parties otherwise agree in writing, if the Consultant carries out extra work without receiving a notice under this clause 7, it will bear the entire cost of such work regardless of whether the work confers a benefit on the Principal or the Principal was aware that the work was being performed.

8. Confidentiality and Privacy

- 8.1 The Consultant acknowledges that, except where information is generally available to the public (other than by reason of a breach of this Agreement) or which is required to be disclosed by law, it must at all times, and must ensure that each Consultant Associate at all times, including after this Agreement ends:
 - (a) keep all information, whether oral, graphic, electronic, written or in any other form, which it receives, possess or acquires in relation to the Principal, the Principal's agents, employees or contractors and/or the Services, confidential and take all reasonable steps to secure and keep secure all such confidential information; and
 - (b) not memorise, use, modify, reverse engineer or make copies, notes or records of the confidential information for any purpose other than in connection with the performance by the Consultant of its obligations under this Agreement;
- 8.2 If requested by the Principal at any stage prior to or during the carrying out of the Services the Consultant must:
 - (a) execute a deed of confidentiality; and
 - (b) procure that a Consultant Associate executes a deed of confidentiality, the form of which is available from the Principal on request.
- 8.3 The Consultant must comply, and must ensure that a Consultant Associate complies, with any privacy legislation which binds the Principal including the Information Privacy Principles set out in Schedule 1 of the *Privacy and Data Protection Act 2014 (Vic)* and any equivalent or similar legislation in Australia ('Privacy Laws'), and must not do or allow the doing of anything that would cause the Principal to breach any Privacy Laws.
- 8.4 The Consultant will indemnify and hold harmless the Principal for any loss or damage suffered or incurred arising from the Consultant being in breach of its obligations under this clause 8.
- 8.5 The Principal may publish (on the internet or otherwise) the name of the Consultant and the consultancy fee together with conditions of this Agreement generally (including its Schedules).

9. Environmental Laws

This clause 9 applies if indicated in item 14 of Schedule 1.

- 9.1 The Consultant must:
 - (a) comply, and must ensure that its Associate comply, with all Environmental Laws that are in any way applicable to carrying out the Services;
 - (b) promptly notify the Principal's Representative if the Consultant discovers or suspects that it has discovered any Contamination:
 - (i) in, on, over or under the Site;
 - (ii) that has emanated or migrated from, or is emanating or migrating to, the Site; or
 - (iii) in the direct vicinity of the Site,

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whether or not the Consultant has caused or contributed to that Contamination;

- (c) as far as reasonably practicable, and to the extent permitted by law, consult and cooperate with the Principal to ensure a coordinated approach to complying with any notification requirements under any Environmental Law;
- (d) co-operate with, do all things necessary to assist, and refrain from doing anything that may impede, the Principal in discharging their obligations under any Environmental Law; and
- (e) immediately notify the Principal's Representative of any breach of any Environmental Law of which the Consultant or its Associates become aware.

9.2 The Consultant acknowledges that, in undertaking the Services, it may engage in activities that:

- (a) attract the general environmental duty; and
- (b) attract duties relating to notifying and taking action in respect of Contamination or pollution caused or identified by the Consultant,

under the *Environment Protection Act 2017* (Vic).

10. Intellectual Property

10.1 The Principal licenses to the Consultant such Intellectual Property Rights in the Information as is reasonably necessary to enable the Consultant to perform the Services in accordance with this Agreement.

10.2 The Consultant retains the Intellectual Property Rights created outside the terms of this Agreement and used in performing the Services. The Consultant grants the Principal a royalty-free non-exclusive irrevocable licence to use such Intellectual Property Rights for any purpose for which the Services are provided.

10.3 The Alternative stated in item 7 of Schedule 1 applies.

Alternative 1

On creation, the Consultant grants the Principal an irrevocable, royalty-free licence to use, adapt, reproduce, amend, publish and sublicense on the same terms, the Deliverables created by the Consultant for any purpose for which the Services are provided, including any subsequent repairs, maintenance or servicing.

Alternative 2

On creation, all Intellectual Property Rights in the Deliverables created by or for the Consultant vest in the Principal. The Principal grants to the Consultant an irrevocable, royalty-free licence to use, adapt, reproduce, amend, publish and sublicense those Intellectual Property Rights to the extent required to undertake the Services under this Agreement.

The Consultant must sign all documents and do all things reasonably required by the Principal to give effect to the vesting of any Intellectual Property Rights in the Deliverables.

10.4 The Consultant undertakes that:

- (a) it has obtained valid consents from all relevant authors in the creation of any copyright work under this Agreement so that the use by the Principal or its assignees of such work will not infringe any copyright, including any author's moral rights under the *Copyright Act 1968* (Cth) or any other Intellectual Property Rights held by a third party; and
- (b) the consents permit the Principal in its absolute discretion, reproducing, publishing, copying, adapting, performing, communicating to the public, materially distorting or in any other way changing or using the work (or a substantial part of adaptation of it):
 - (i) with or without attribution of authorship;
 - (ii) with no title, the same title or any other title; and

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(iii) in any way it sees fit.

- 10.5** The Consultant indemnifies the Principal, the Principal's officers, employees and agents (collectively the **Principal**) against any and all losses, costs, expenses, claims, demands or any other actions in each case of any kind whatsoever which arise in connection with any infringement by the Consultant or by a Consultant Associate of any Intellectual Property Rights or any other breach of this clause 9 by the Consultant.
- 10.6** Subject to clause 10.2, the Principal will be entitled as it sees fit and at no cost either directly or through any other party to make use of any ideas, designs, data, reports or other products or outcomes used or developed by the Consultant in conjunction with this Agreement which are not subject to royalties or patent rights for carrying out additional or similar work. The Consultant will not be liable to the Principal or any third party in any way for such use of these outcomes or products.
- 10.7** Notwithstanding any other provision of this Agreement, the Consultant acknowledges that all information, data or personal details collected from third parties by the Consultant (or a person on the Consultant's behalf) at the request of the Principal or during the provision of the Services to the Principal shall be the intellectual property of, and ownership will vest by virtue of this clause, in the Principal.

11. Failure to Perform

11.1 Without limiting any other clause of this Agreement, or any other remedy the Principal may have, if the Consultant fails to provide or perform any of the Services in accordance with the requirements of this Agreement, the Principal will not be required to pay for those Services and may, by notice in writing to the Consultant, require the Consultant to:

- (a) remedy any default (if the default is capable of being remedied) at the Consultant's own expense; or
- (b) re-perform the Services (if the Services are capable of being re-performed by the Consultant),

within the time specified in the notice (which must be reasonable having regard to the nature of the Services).

11.2 If the remedied or re-performed Services are remedied or re-performed to the satisfaction of the Principal, then the Principal will pay the applicable fees for those remedied or re-performed Services (which the parties acknowledge may be less than the cost to the Consultant of remedying or re-performing the Services).

11.3 If the default referred to in clause 11.1 is not capable of being remedied or the Services are not capable of being re-performed, or the Consultant fails within the time specified to remedy the default or re-perform the Services, the Principal may either:

- (a) remedy that default or re-perform the Services itself; or
- (b) have the Services remedied or re-performed by a third party,

and in either case, the Consultant must pay the reasonable costs incurred by the Principal in doing so.

12. Scope of liability and Insurance

12.1 The Consultant indemnifies the Principal against any and all losses, costs, expenses, claims, demands or any other actions in each case of any kind whatsoever (collectively 'liability') which are suffered or incurred by the Principal arising out of or in connection with:

- (a) without limiting sub-clauses 12.1(b) or 12.1(c), any liability for any negligent act, error or omission on the part of the Consultant or a Consultant Associate arising out of the of the Services;

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- (b) any liability in respect of personal injury, death or property damage arising out of the performance of the Services; or
 - (c) any liability arising out of a breach by the Consultant of this Agreement.
- 12.2** The Consultant's liability under clause 12.1 shall be reduced to the extent that the liability in question is caused, or contributed to, by a breach of this Agreement by the Principal or negligence by the Principal, the Principal's officers, employees or agents.
- 12.3** The Consultant and the Principal agree that, for the purposes of section 24AI of the *Wrongs Act 1958 (Vic)*, the Consultant is entirely responsible for the Consultant's failure to take reasonable care and any failure to take reasonable care by a Consultant Associate.
- 12.4** Before proceeding with the Services and as a condition of entitlement to any payment of the fee, the Consultant must arrange the following types of insurance:
- (a) workers' compensation insurance for any of the Consultant's employees or anyone treated as an employee of the Consultant as required by law;
 - (b) professional indemnity insurance of not less than the amount set out in item 8 of Schedule 1;
 - (c) public liability insurance of not less than the amount set out in item 9 of Schedule 1; and
 - (d) such other insurance required by law or any authority in order to perform the Services.
- 12.5** The Consultant must notify the Principal if any of the following events occur in respect of any insurance required by clause 12.4:
- (a) cancellation and/or lapse of the policy; and/or
 - (b) non-renewal of the policy; and/or
 - (c) a claim is made under the policy (or, where the relevant policy is procured on a global basis, a claim is made under the policy that adversely impacts the ability of the Consultant to perform the Services).
- 12.6** The policies referred to in clause 12.4 must be taken out with a reputable insurer and on reasonable commercial terms. The Consultant must provide to the Principal upon request certificates of currency as evidence that the relevant insurances have been effected in accordance with this Agreement.
- 12.7** The Consultant must keep the workers' compensation and public liability insurance in force at all times while the Agreement continues and keep the professional indemnity insurance in force for the number of years after the performance of the Services set out in the Schedule (which period shall not be less than 10 years from completion of the Services).
- 12.8** Failure to comply with this clause 12 constitutes a breach of a material term for the purpose of clause 15.2.
- 12.9** Subject to clause 12.10, to the extent permitted by law:
- (a) the aggregate liability of the Consultant to the Principal arising out of or in connection with the Agreement, (whether arising in contract, under an indemnity, in tort (including negligence), under statute or otherwise in law or equity) is limited to the Liability Cap; and
 - (b) neither party will be liable to the other for Consequential Loss.
- 12.10** Clause 12.9 does not apply to any loss or liability of the Consultant to the Principal:
- (a) which is covered by a policy of insurance required to be taken out by the Consultant under the Agreement up to the limits of insurance coverage required by the Agreement;
 - (b) which is offset by insurance proceeds payable (or which should have been payable) to a party under a policy of insurance required to be taken out by the Consultant under the Agreement including any proceeds that should have been payable but for:
 - (i) any act or omission of the Consultant or the Consultant Associates (including a failure to effect, maintain or comply with such insurances); or

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- (ii) the inclusion of this clause 12.10(b) in the Agreement;
up to the limits of insurance coverage required by the Agreement;
- (c) the abandonment of the Services or the repudiation of the Agreement;
- (d) fraud or criminal conduct by the Consultant or any Consultant Associate;
- (e) wilful default or wilful misconduct by the Consultant or any Consultant Associate;
- (f) any claims of a third party for personal injury, death or property damage;
- (g) any other intentional, malicious or reckless act or omission by the Consultant or any Consultant Associate;
- (h) any infringement by the Consultant or any Consultant Associate of any Intellectual Property Rights or the 'moral rights' (as defined in the *Copyright Act 1968* (Cth)) of a third party; or
- (i) which cannot be limited or excluded at law.

13. Conflict of Interest and Independence

- 13.1** The Consultant must avoid, and must ensure that each Consultant Associate avoids, whether during the term of this Agreement or for a reasonable period after it has ended, any financial, business and other relationships which are likely to give rise to an actual, potential or perceived conflict of interest or which could, or could reasonably be perceived to, materially interfere with the Consultant's ability to act in a capacity independent of management and in the best interests of the Principal, in each case unless prior written consent is obtained from the Principal.
- 13.2** If the Consultant becomes aware that it is at risk of being (or has been) placed in a position of actual, potential or perceived conflict or of anything which could, or could reasonably be perceived to, materially interfere with the Consultant's ability to act in a capacity independent of management and in the best interests of the Principal or otherwise breach obligations to maintain independence under law or industry standards, the Consultant must immediately notify the Principal in writing and co-operate with the Principal to resolve the actual, potential or perceived conflict or issue which may materially interfere with the Consultant's ability to act in a capacity independent of management and in the best interests of the Principal (as applicable).
- 13.3** For the purpose of this clause 13, requests for consent under clause 13.1 and notifications under clause 13.2 must be sent by the Consultant to the Principal's General Counsel or equivalent who will be responsible for determining whether the Principal will provide that consent and the process to resolve that actual, potential or perceived conflict (which determination will be made acting reasonably).

14. Assignment and Subcontracting

- 14.1** The Consultant must not assign or subcontract this Agreement or any part of it to any other person without the Principal's prior written consent, which consent may be conditional on approval of the proposed subcontract or assignment terms. Approval by the Principal of any assignment or subcontract will not relieve the Consultant of any liabilities under this Agreement and the Consultant will remain responsible for the acts, omissions or defaults of each Consultant Associate as if they were the Consultant's own acts, omissions or defaults.
- 14.2** The Principal may assign this agreement or any part of it to any other person at any time.

15. Termination

- 15.1** This Agreement ends on the earlier of:
- (a) the date on which the Services are completed;
 - (b) the expiry of the Term (as adjusted in accordance with this Agreement); or
 - (c) the termination of the Agreement.

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- 15.2** The Principal may end the Agreement immediately if:
- (a) the Consultant breaches a material term of the Agreement;
 - (b) the Consultant enters or threatens to enter into bankruptcy, liquidation or other analogous type of insolvency or if the Consultant ceases to conduct business;
 - (c) the Principal becomes aware that there is a real or potential conflict of interest and the matter is not resolved within 7 days of the Principal giving notice to the Consultant of the Principal's concerns;
 - (d) the Consultant or a Consultant Associate is charged with any criminal offence which, in the Principal's reasonable opinion, brings the Consultant or the Principal into disrepute;
 - (e) the Consultant acts dishonestly, fraudulently or illegally; or
 - (f) the Consultant fails to execute a deed of confidentiality upon request by the Principal pursuant to clause 8.2.
- 15.3** The Principal may end the Agreement for any reason by written notice to the Consultant. Subject to the Consultant's compliance with clause 15.6, the Principal shall pay to the Consultant (as full compensation but without prejudice to any accrued rights of the Consultant) the substantiated portion of the fee due to the Consultant at the time of ending the Agreement, in accordance with this clause plus a sum for the reasonable direct costs and expenses (but not losses, whether loss of profit or otherwise) the Consultant incurs solely as a consequence of the Principal ending the Agreement in accordance with this clause 15.3.
- 15.4** Any costs or expenses incurred or damage sustained by the Principal in remedying any breach of the Consultant or in any way arising out of the Consultant's default shall become a debt due and payable to the Principal by the Consultant and may be recoverable from the Consultant by deduction from any moneys held on account of the Consultant or by action at law.
- 15.5** The Consultant may only end this Agreement if the Principal does not pay any money owing to the Consultant under the Agreement within 30 days after the Principal has received written notice from the Consultant advising the Principal that the money is overdue for payment in accordance with the Agreement and that the Consultant intends to terminate the Agreement.
- 15.6** On completion of the Services, or the earlier termination of the Agreement, the Consultant must immediately provide to the Principal all confidential information and other materials, which the Principal has provided to the Consultant or to a Consultant Associate, and all other materials in a form capable of re-use by the Principal.
- 15.7** The Consultant may not claim, and the Principal will not be liable upon, any claim for loss of profit, penalty fee, termination fee or any other loss or damage arising under, out of or in connection with termination of this Agreement.

16. Notices

Where a notice has to be given under the Agreement, it may be given by:

- (a) hand;
- (b) email to an email address set out in the Agreement, or a substitute address that has been notified to the other party;
- (c) sent by post to the address set out in the Agreement, or a substitute address that has been notified to the other party; or
- (d) another medium agreed by the parties in writing for the purposes of this Agreement.

17. Information, Data Protection and Protective Data Security Standards

- 17.1** The Consultant must provide to the Principal any information reasonably requested by the Principal in connection with the Services.

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17.2 The Consultant must:

- (a) keep accurate and up to date Consultant's Records;
- (b) keep all the Consultant's Records for a minimum of 10 years or any other period directed in writing by the Principal's Representative after the earlier to occur of:
 - (i) the expiry of the Completion Date; and
 - (ii) the termination of the Agreement, **(Record Retention Period)**; and
- (c) permit the Principal's auditors or nominees to inspect and verify all the Consultant's Records during the Record Retention Period (including ensuring that each Consultant Associate cooperates with and gives all reasonable assistance to any persons authorised to undertake such audits and inspections).

17.3 The Consultant must:

- (a) do all things that a reasonable and prudent consultant would do to ensure that all information held by the Consultant in relation to the Services and the Principal (Data) is protected at all times from unauthorised access or use by a third party or misuse, damage or destruction by any person;
- (b) provide protective measures for the Data that are no less rigorous than accepted industry standards and commensurate with the consequences and probability of unauthorised access to, or use, misuse or loss of, the Data; and
- (c) without limiting clauses 17.3(a) or 17.3(b), comply with all security regulations or procedures or given by the Principal from time to time regarding any aspect of security of, or access to, the Principal's information, material or premises.

17.4 If the Consultant becomes aware of any actual or suspected action taken through the use of computer networks that result in an actual or potentially adverse effect on the Data or any other unauthorised access or use by a third party or misuse, damage or destruction by any person (Incident),

- (a) the Consultant must:
 - (i) notify the Principal in writing immediately (and no longer than 12 hours after becoming aware of the Incident); and
 - (ii) comply with any directions issued by the Principal in connection with the Incident including in relation to obtaining evidence about how, when and by whom the Consultant's information system and/or Data has or may have been compromised, providing it to the Principal on request, and preserving and protecting that evidence for a period of up to 12 months;
 - (iii) implementing any mitigation strategies to reduce the impact of the Incident or the likelihood or impact of any future similar incident; and
 - (iv) preserving and protecting Data (including as necessary reverting to any backup or alternative site or taking other action to recover Data).
- (b) The Consultant must ensure that those of its Associates who have access to Data comply with this clause 17.4.

17.5 This clause 17.5 applies when indicated in item 15 of Schedule 1.

The Consultant:

- (a) acknowledges that the Principal is bound by the Protective Data Security Standards; and
- (b) must not do any act or engage in any practice that would contravene or give rise to a breach of a Protective Data Security Standard in respect of Public Sector Data collected, held, used,

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managed, disclosed or transferred by the Consultant on behalf of the Principal, under or in connection with this Agreement.

18. Non-Reliance

- 18.1 The Consultant acknowledges that in entering into the Agreement it has not relied upon any representations made by the Principal other than the matters expressly set out in the Agreement.
- 18.2 The Consultant undertakes that it enters into this Agreement based on its own investigations, interpretations, deductions, information and determinations.
- 18.3 The Consultants acknowledges that it is aware that the Principal has entered into the Agreement relying upon the undertakings in clauses 18.1 and 18.2.

19. Clauses Surviving Termination

Any indemnity or any obligation of confidence under this Agreement is independent and survives the termination, completion or expiration of this agreement. Any other term by its nature intended to survive the termination, completion or expiration of this agreement survives the termination, completion or expiration of this agreement, including this clause 19 and clauses 8, 9, 12, 13, 14, 24 and 25.

20. Supplier Code of Conduct, Modern Slavery, Shared Reporting Process and Compliance with Victorian Public Sector Commission Code of Conduct

20.1 Supplier Code of Conduct

The Consultant acknowledges that:

- (a) the Supplier Code of Conduct is an important part of the State's approach to procurement and describes the State's minimum expectations regarding the conduct of the State's suppliers;
- (b) it has read and will use its best endeavours to comply, and will use its best endeavours to ensure that each Consultant Associate complies, with the Supplier Code of Conduct; and
- (c) the expectations set out in the Supplier Code of Conduct do not reduce, alter or supersede any other obligations of the Consultant under this Agreement or otherwise at law.

20.2 Modern Slavery

The Consultant acknowledges and agrees that the Consultant must:

- (a) comply with the Modern Slavery Legislation to the extent that such legislation is applicable to the Consultant;
- (b) in any event, facilitate the Principal complying with any of the Modern Slavery Legislation applicable to the Principal, by reporting in a timely manner and providing all information concerning its supply chain and that of its subconsultants and suppliers which the Principal may acting reasonably require, such reporting and other information being provided no later than 60 days after expiry of the period to which the reporting relates to, or earlier where required in order for the Principal to meet its obligations under the applicable Modern Slavery Legislation; and
- (c) ensure that such reporting and other information is accurate, complete and in such form as the Principal in its discretion requires.

20.3 Shared Reporting Process

The Consultant acknowledges and agrees that:

- (a) the Agreement will be subject to the Shared Reporting Regime if the consultant fee exceeds the threshold identified in Item 16 (**Shared Reporting Contract**);
- (b) if the Agreement is a Shared Reporting Contract under clause 20.3(a), the Consultant must:

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- (i) cooperate with, and provide any assistance reasonably required by, the Principal's Representative in relation to the Shared Reporting Process; and
- (ii) without limiting clause 20.3(a), provide to the Principal's Representative any information required by the Principal's Representative from time to time, within the time requested, for the purposes of the Shared Reporting Process (**Shared Reporting Information**); and
- (c) if the Agreement is a Shared Reporting Contract under clause 20.3(a), then details of the Consultant's performance under the Contract, including the Shared Reporting Information, may be made available by the Principal to other government departments or agencies or municipal, public or statutory authorities (**Shared Reporting Process**), and taken into account by the Principal or those other government departments or agencies or authorities when considering the Consultant for future tendering and contracting opportunities.

20.4 Compliance with Victorian Public Sector Commission Code of Conduct

Where, in the course of providing the Services or working on the Project, the Consultant, or its subconsultants and any other person engaged by the Consultant for the performance of the Services:

- (a) supervise Public Sector Employees;
- (b) 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
- (c) use or have access to public sector resources or information that are not normally accessible or available to the public,

the Consultant must comply, and must ensure that its subconsultants and any other person engaged by the Consultant for the performance of the Services comply, with the Victorian Public Sector Commission Code of Conduct.

21. Applicable Law

This Agreement will be governed by the laws of Victoria, Australia and both parties will conduct any litigation or other proceedings in the Courts or tribunals in Victoria.

22. Entire Agreement and Alteration

This Agreement is the entire agreement between the parties relating to the Services. The Agreement cancels and supersedes all previous offers and negotiations between the Principal and the Consultant in relation to the Services. The parties may add to or alter this Agreement but only in writing signed by both the Principal and the Consultant.

23. Severability

Any provision in this Agreement which is invalid or unenforceable in any jurisdiction is to be read down for the purposes of that jurisdiction, if possible, so as to be valid and enforceable, and is otherwise severed to the extent of the invalidity of unenforceability, without affecting the remaining provisions of the Agreement or affecting the validity or enforceability of that provision in any other jurisdiction.

24. Counterparts

This Agreement may be executed in counterparts and if so the counterparts taken together constitute one document.

25. Dispute Resolution

- 25.1** If a dispute arises under or in connection with the Agreement (for the purposes of this clause **Dispute**), either party may at any time deliver by hand or send by registered post a written notice to

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the other requesting that a settlement meeting take place between nominated senior representatives (being at or not less than general manager level) of both parties with authority to settle the Dispute. The nominated senior representatives must meet within seven (7) days of the notice and endeavour to resolve the Dispute in good faith.

- 25.2 If the Dispute has not been resolved within 28 days after receipt of the notice referred to in clause 25.1, either party may by notice in writing delivered by hand or sent by registered post to the other party, refer that Dispute to litigation.
- 25.3 Notwithstanding the existence of a Dispute, the Consultant must continue to perform the Services in accordance with the Agreement.

26. Local Jobs First Policy

This clause 26 applies if indicated in item 12 of Schedule 1.

- 26.1 The Consultant must comply with the Local Jobs First Obligations.

27. Special Conditions

This clause 27 applies if indicated in item 13 of Schedule 1.

- 27.1 The Special Conditions in Schedule 5 form part of this Agreement. If the Special Conditions are inconsistent with the General Conditions or any other part of this Agreement, the Special Conditions prevail to the extent of any inconsistency.

28. Electronic Exchange

- 28.1 The parties agree that this Agreement may be executed and entered into using electronic means.

- 28.2 The parties acknowledge and agree that the execution and exchange of this Agreement will be effected as follows:

- (a) first, the Consultant will execute this Agreement by way of electronic signature;
 - (b) second, the Principal will execute this Agreement by way of an electronic signature; and
 - (c) lastly, the Agreement will be exchanged by email or other electronic means,
- with the date of exchange being the date of the Agreement.

- 28.3 If, at any time, as a result of this Agreement being entered into using electronic means the Agreement or any of its terms and conditions are invalid or unenforceable or the Principal or Consultant are not bound by them, the parties agree to execute and exchange printed copies of the Agreement (in the same form and with the same date of exchange as described in clause 28.2) and to take such other steps or provide such assurances as are reasonably necessary to confirm that the Agreement is binding upon the parties and enforceable.

- 28.4 Nothing in this clause 28 prevents or restricts the parties from executing and exchanging physical copies of the Agreement.

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Development Victoria
B02.1 Consultancy Agreement (Minor Services)

EXECUTED AS AN AGREEMENT on the

[Drafting Note: the date of execution needs to be inserted by hand when all parties have executed the document.]

Executed for and on behalf of **Development Victoria**

under delegation of the Board in accordance with section 11 of the *Development Victoria Act 2003 (Vic)*

by **[insert name of authorised signatory]**

Signature:

[Drafting Note:

There are 5 execution clauses for the other party if the document is being signed in hardcopy .

If the Consultant is a company with multiple directors and a company secretary, insert the name of the company and retain execution clauses 1 and 2 letting the company choose between these execution clauses.

If the other party is a proprietary company with 1 person as sole director and sole company secretary, insert the name of the person and retain execution clause 3.

If the other party is signing by its attorney pursuant to a power of attorney, insert the name of the attorney and the date of the power of attorney in the fourth execution clause, and retain execution clause 4. DV Legal needs to review the power of attorney.

Execution clause 5 must be used if the person is signing as the company's authorised signatory.]

No 1.

Executed by **[insert name of other party]** by being executed in accordance with section 127 of the *Corporations Act 2001 (Cth)*

Signature of director / secretary

Signature of director / secretary

Name of director / secretary

Name of director / secretary

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OR
No 2.

The official seal of **[insert name of other party]** is affixed in accordance with its constitution in the presence of:

 Signature of director

 Signature of director/company secretary
 (Please delete as applicable)

 Name of director (print)

 Name of director/company secretary (print)

No 3.

Executed by **[insert name of other party]** by being executed in accordance with section 127 of the *Corporations Act 2001 (Cth)*

 Signature of sole director / sole secretary

 Name of sole director / sole secretary

No 4. – To be used only after consultation with DV Legal

Executed by **[insert name of other party]** by its Attorney **##full name of Attorney** under a Power of Attorney dated **##date** in the presence of:)
)
)
)

.....
 Witness

.....
 Full name of Witness

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No 5. Execution by authorised signatory

Executed for and on behalf of **[insert name of corporation] [insert ACN]** by **[insert name of other party]** as its duly authorised signatory in the presence of:)
)
)
)

.....
Witness

.....
Full name of Witness

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Schedule 1 – Particulars

#[DEVELOPMENT VICTORIA to complete information in this Schedule]

Item	Clause	Details
1.	SERVICES: (clause 1) [Description of projects/tasks to be completed]	[Insert general description] , and as may be set out in more detail in Schedule 2. [Please consider whether a detailed Services Brief in Schedule 2 will be required]
2.	TERM: (clause 1.1 and clause 15.1) [Show commencement date and also state the period of time which parties consider is reasonably necessary to undertake the services. Specify any other dates for delivery.]	#
3.	PRINCIPAL'S REPRESENTATIVE: (clause 4) [DV to insert details of Principal's Representative]	Name: Address: Email: Telephone:
4.	CONSULTANT REPRESENTATIVE: (clause 4) [Consultant to insert details of Consultant Representative]	Name: Address: Email: Telephone:
5.	KEY PEOPLE (clause 4) [Please consider whether Key People are required. If so, please insert role and name accordingly]	
6.	CONSULTANCY FEES and PAYMENT PROCEDURE (clause 6.1)	[\$# (GST exclusive) and as may be set out in more detail in Schedule 3. [Please consider whether a price breakdown (including hourly rates etc) in Schedule 3 is required] A daily rate of [\$#] including GST: Monthly tax invoices are to be submitted for approval and to be payable within 30 days of receipt.

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Item	Clause	Details
7.	INTELLECTUAL PROPERTY RIGHTS – ALTERNATIVE APPLYING (clause 10.3)	[Please insert Alternative 1 or Alternative 2 as required]
8.	PROFESSIONAL INDEMNITY INSURANCE (clause 12.4) [Review to ensure PI level is appropriate for the contemplated scope of the work and risk profile. Refer to Schedule of Insurance on Connect. If a lower sum is required, this must be approved by DV Legal.]	[\$xx] million
9.	PUBLIC LIABILITY INSURANCE: (clause 12.4) [Review whether PL level is appropriate for the contemplated scope of the work and risk profile – this level of insurance is not expensive and should be acceptable to the market]	[\$20] million
10.	RUN OFF PERIOD FOR PROFESSIONAL INDEMNITY INSURANCE: (clause 12.7) [Please consider whether run off cover is appropriate. If it is, the period should be not less than 7 years]	10 years after this Agreement has ended in accordance with clause 15.1.
11.	LIABILITY CAP: (clause 12.9) [Liability cap should be the same amount as Item 8. If a lower amount is required this must be approved by DV Legal.]	<input type="checkbox"/> Yes <input type="checkbox"/> No \$[Insert] <i>(If nothing stated, No.)</i>
12.	LOCAL JOBS FIRST OBLIGATIONS applies to this Agreement? (clause 26 and Schedule 4)	<input type="checkbox"/> Yes <input type="checkbox"/> No <i>(If nothing stated, Yes)</i>
	Local Jobs First reporting – are 6 monthly reports required? (Schedule 4 clause 2.3(c))	<input type="checkbox"/> Yes <input type="checkbox"/> No <i>(If nothing stated, No.)</i> [Guidance Note: 6 monthly reports are required if this Agreement is part of a project valued at \$20 million or more.]

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Item	Clause	Details
	Other reporting dates for the Local Jobs First Policy (Schedule 4 clause 2.3(d))	[Insert] <i>(If nothing stated, there are no other reporting dates)</i>
13.	SPECIAL CONDITIONS (clause 27)	<input type="checkbox"/> Yes <input type="checkbox"/> No <i>(If nothing stated, No)</i>
14.	ENVIRONMENTAL OBLIGATIONS applies to this Agreement? (clause 9)	<input type="checkbox"/> Yes <input type="checkbox"/> No <i>(If nothing stated, No)</i>
15.	PROTECTIVE DATA SECURITY STANDARDS applies to this Agreement? (clause 17.5)	<input type="checkbox"/> Yes <input type="checkbox"/> No <i>(If nothing stated, No)</i>
16.	SHARED REPORTING PROCESS Threshold for Shared Reporting Contract (clause 20.3(a))	\$200,000

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Schedule 2 – Scope of Services

#[Generally a detailed services brief is required – see further item 1 of Schedule 1 This must be prepared and reviewed by DV. The scope of services needs to document what the consultant will do and specify the deliverables. It is effectively a checklist that can be used to confirm that the consultant has delivered on what was agreed. The scope needs to be a single document so all amendments must be consolidated.]

Do not insert the Consultant's tender response or the RFQ/RFP as things may have changed.]

[Insert]

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Schedule 3 – Detailed Pricing

#[Please consider whether a price breakdown (including hourly rates etc) is required – see further item 6 of Schedule 1]

[Insert]

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Schedule 4 - Local Jobs First Obligations

This Schedule 4 applies if indicated in item 12 of Schedule 1.

1. Definitions

In this Schedule:

Apprentice means a person (other than a Cadet or Trainee) who is employed to undertake training in a trade under a Training Contract. The Local Jobs First Policy requires employers to employ Apprentices under a Training Contract registered with the Victorian Registration and Qualification Authority which combines structured training with paid employment related to a Local Jobs First applicable project. For an Apprentice to be counted towards the Major Projects Skills Guarantee requirement (if applicable), they must be undertaking a course that relates directly to their role on a Local Jobs First Project and is consistent with the Training Contract.

Cadet means an employee engaged by an employer (other than an Apprentice or Trainee) who is concurrently enrolled at an Australian University undertaking a tertiary qualification. To be considered a Cadet for the purposes of a Local Jobs First applicable project, a Cadet's employment must be paid practical work experience connected to their tertiary qualification. Cadetships are different to professional traineeships (an employee who is not in an entry level role and is undertaking professional development training). Professional traineeships cannot count towards the Major Projects Skills Guarantee (if applicable).

Industry Capability Network (Victoria) means Industry Capability Network (Victoria) Limited of Level 23, 370 Little Lonsdale Street, Melbourne VIC 3000 ACN 007 058 120.

LIDP means the Local Industry Development Plan submitted by the Consultant at the time of the proposal and certified by Industry Capability Network (Victoria) by providing an acknowledgement letter.

LIDP Commitments means the obligations and undertakings of the Consultant as detailed in its LIDP.

LIDP Monitoring Table means the table of milestones and LIDP Commitments contained in the LIDP.

Local Content has the meaning given in s 3(1) of the *Local Jobs First Act 2003*.

Local Jobs First Commissioner means the person appointed under s 12 of the *Local Jobs First Act 2003*.

Local Jobs First Department has the meaning given in s3(1) of the *Local Jobs First Act 2003*.

Local Jobs First Policy means the policy of the Victorian Government made under s 4 of the *Local Jobs First Act 2003*.

Local Jobs First Responsible Minister means the Minister with responsibility for administering the *Local Jobs First Act 2003*.

Notice means a notice given, delivered or served in accordance with this Agreement.

Trainee means an employee engaged by an employer (other than an Apprentice or Cadet) employed under a Training Contract registered with the Victorian Registration and Qualification Authority that combines training with paid employment in an entry level role related to a Local Jobs First applicable project. For a Trainee to be counted towards the Major Projects Skills Guarantee requirement (if applicable) for a project they must be undertaking a course that relates directly to their role on a Local Jobs First Project and is consistent with the Training Contract. Professional Traineeships (an employee who is not in an entry level role and is undertaking professional development training) cannot count towards the Major Projects Skills Guarantee (if applicable).

Training Contract has the meaning given in the *Education and Training Reform Act 2006*.

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Victorian Management Centre (VMC) is a cloud based secure online platform that enables the registration of projects and associated tenders, the submission of LIDPs, collection, analysis and reporting of local content and jobs data, including, supply chain monitoring and reporting. The VMC is available at <https://icnvic.force.com>.

2. Local Jobs First Policy

2.1 Local Industry Development Plan

- (a) The Consultant must, in performing its obligations under this Agreement:
 - (i) comply with the LIDP;
 - (ii) perform all obligations required to be performed under the LIDP, including the LIDP Commitments by the due date for performance; and
 - (iii) comply with the Local Jobs First Policy.
- (b) The Consultant acknowledges and agrees that its obligations as set out in the LIDP apply during the term of this Agreement, any extensions to the term and until all of its reporting obligations as set out in clause 2.3 of this Schedule are fulfilled.
- (c) The Consultant's failure to comply with this clause 2.1 may, in the Principal's discretion, constitute a material breach of this Agreement.

2.2 Revised LIDP

- (a) If at any time a variation to this Agreement is proposed which involves or effects a change in the nature of any of the LIDP Commitments, the Consultant must prepare a revised LIDP in collaboration with and certified by Industry Capability Network (Victoria) (**Revised LIDP**).
- (b) When requested by the Principal's Representative, the Consultant must provide the Revised LIDP to the Principal's Representative.
- (c) The Revised LIDP must be agreed by the parties before any variation to the Agreement can take effect unless the parties agree that a Revised LIDP is unnecessary.
- (d) Once the Revised LIDP is agreed by the parties, the Revised LIDP replaces the LIDP and forms part of this Agreement.

2.3 Reporting

- (a) The Consultant must prepare and maintain records demonstrating its compliance with the LIDP and performance of the LIDP Commitments.
- (b) The Consultant must use the Victorian Management Centre (VMC) for Local Jobs First monitoring and reporting.
- (c) If indicated in item 12, the Consultant must provide a six monthly report demonstrating its progress towards implementing the LIDP through reporting on the VMC.
- (d) Upon completion of the Services and at such other reporting dates for the purposes of this clause 2.3(d) as indicated in Item 12, the Consultant must provide to the Principal's Representative:
 - (i) the LIDP Monitoring Table identifying LIDP commitments and actual achievements. The LIDP Monitoring Table must identify and explain any departures from the LIDP Commitments and the aggregated outcomes as reported in the LIDP Monitoring Table; and
 - (ii) a statutory declaration in the form set out as part of the online LIDP to confirm that the information contained in the LIDP Monitoring Table is true and accurate. The statutory declaration must be made by a director of the Consultant, the Consultant's Chief Executive Officer or Chief Financial Officer.
- (e) At the request of the Principal's Representative, the Consultant must provide further information or explanation of any differences between expected and achieved LIDP outcomes.

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- (f) The reporting obligations in this Schedule are in addition to and do not derogate from any other reporting obligations as set out in this Agreement.

2.4 Verification of Consultant's compliance with LIDP Plan

- (a) The Consultant agrees that the Principal, and if nominated by the Principal, the Local Jobs First Department, has the right to inspect its records in order to verify compliance with the LIDP.
- (b) The Consultant must:
 - (i) permit the Principal's Representative, an accountant or auditor on behalf of the Principal or the Local Jobs First Department, or any other person authorised by the Principal or the Local Jobs First Department, from time to time during ordinary business hours and upon Notice, to inspect and verify all records maintained by the Consultant for the purposes of this clause 2.4 of this Schedule 4;
 - (ii) permit the Principal or the Local Jobs First Department from time to time to undertake a review of the Consultant's performance in accordance with the LIDP; and
 - (iii) ensure that its employees, agents and subcontractors give all reasonable assistance to any person authorised by the Principal or the Local Jobs First Department to undertake such audit or inspection.
- (c) The Consultant acknowledges and agrees that the Principal, the Local Jobs First Department, the Principal's and Local Jobs First Department's duly authorised representatives and Industry Capability Network (Victoria) are authorised to obtain information from any relevant persons, firms or corporations, including third parties, regarding the Consultant's compliance with the LIDP.
- (d) The obligations set out in this clause 2.4 are in addition to and do not derogate from any other obligation under this Agreement.

2.5 Use of information

The Consultant acknowledges and agrees that:

- (a) Industry Capability Network (Victoria) will assess the Consultant's performance against the LIDP;
- (b) the statistical information contained in the LIDP and the measures of the Consultant's compliance with the LIDP as reported in the LIDP Monitoring Table:
 - (i) will be included in the Principal's report of operations under Part 7 of the *Financial Management Act 1994* in respect of the Principal's compliance with the Local Jobs First Policy in the financial year to which the report of operations relates;
 - (ii) will be provided to the Local Jobs First Responsible Minister for inclusion in the Local Jobs First Responsible Minister's report to the Parliament for each financial year on the compliance and performance of the LIDP during that year; and
 - (iii) may be disclosed in the circumstances authorised or permitted under the terms of this Agreement or as otherwise required by law.

3. Subcontracting

- (a) The Consultant must ensure that any subcontract entered into by the Consultant in relation to work under this Agreement contain clauses requiring subcontractors:
 - (i) to comply with the Local Jobs First Policy and the LIDP to the extent that it applies to work performed under the subcontract;
 - (ii) to provide necessary information that allows the Consultant to comply with its reporting obligations under clause 2.3 of this Schedule; and

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- (iii) to permit the Principal and the Local Jobs First Department to exercise their inspection and verification rights under clause 2.4 of this Schedule.
- (b) The subcontracting obligations set out in this clause 3 are in addition to and do not derogate from any other obligations under this Agreement.
- (c) The Consultant's failure to comply with this clause 3 may, in the Principal's discretion, constitute a material breach of this Agreement.

4. Local Jobs First Commissioner

- (a) The Consultant acknowledges that:
 - (i) it is required to comply with any information notice issued to it by the Local Jobs First Commissioner in accordance with s 24 of the *Local Jobs First Act 2003*;
 - (ii) it is required to comply with any compliance notice issued to it by the Local Jobs First Commissioner in accordance with s 26 of the *Local Jobs First Act 2003*;
 - (iii) its failure to comply with the compliance notice referred to in this clause 4(a) may result in the issue of an adverse publicity notice by the Local Jobs First Responsible Minister under s 29 of the *Local Jobs First Act 2003*; and
 - (iv) the Local Jobs First Commissioner may:
 - (A) monitor and report on compliance with the Local Jobs First Policy and LIDP; and
 - (B) request the Principal to conduct an audit in relation to the Consultant's compliance with the Local Jobs First Policy and the LIDP.
- (b) The Consultant acknowledges that the Local Jobs First Commissioner may recommend that the Principal take enforcement proceedings against the Consultant if the Consultant has failed to comply with the Local Jobs First Policy or the LIDP by:
 - (i) applying to a court to obtain an injunction; or
 - (ii) taking action available under this Agreement.

5. Local by Nature LIDP

This clause 5 of Schedule 4 applies when the Consultant has submitted a Local by Nature LIDP to the Industry Capability Network (Victoria) in compliance with the Local Jobs First Policy.

- (a) The Consultant commits to using only labour and services supplied that represent 97% local content in delivering the Services under this Agreement and will fully comply with its obligations under its Local by Nature LIDP submitted to the Industry Capability Network (Victoria).

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Schedule 5 – Special Conditions

This Schedule only applies where Item 13 of Schedule 1 has been completed to state that clause 27 applies.

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