

SOUTH EAST WATER CORPORATION

PURCHASE ORDER TERMS AND CONDITIONS

1. Definitions

In this Agreement unless the context otherwise requires:

Agreement means this agreement for the supply of the Goods and/or the provision of the Services consisting of these Purchase Order Terms and Conditions and the Purchase Order.

Claims means any claim, action, proceeding or demand made against the person concerned, however it arises and whether it is present or future, fixed or unascertained, actual or contingent.

Completion Date means the date by which the Goods must be delivered, or the provision of the Services must be completed, as specified in the Purchase Order.

Commencement Date means the date on which the supply of the Goods, or the provision of the Services, commences as specified in the Purchase Order.

Data means all data, information, text, drawings, statistics, analysis and other materials embodied in any form which is:

- a) supplied by or on behalf of SEW in connection with this Agreement (Input Data); or
- b) generated, placed, stored, processed, retrieved, printed, accessed or produced utilising the Input Data or the Services.

Data Breach means:

- a) a security incident which will impact, or is reasonably likely to impact SEW;
- b) unauthorised access to, or unauthorised disclosure of, Data; or
- c) any loss of Data in circumstances where unauthorised access to, or unauthorised disclosure of, Data is likely to occur.

Environment includes:

- a) the meaning given to that term in any Law in force in the State of Victoria; and
- b) land, water, atmosphere, climate, sound, odours, taste, the biological factors of animals and plants and the social factor of aesthetics.

Environmental Law means a Law regulating or otherwise relating to the Environment, including but not limited to any Law relating to land use, planning, pollution of air or water, soil or groundwater, chemicals, waste, the use, transport, storage and handling of dangerous goods, the health or safety of any person, or to any other aspects of protection of the Environment, human health or property.

First Aid Incident means basic first aid treatment (e.g. ice pack or band-aid) and/or observations by a Medical Professional where follow up treatment is deemed unnecessary, and the worker is able to resume duties.

Goods where applicable means the goods the subject of, and described in, the Purchase Order.

High Potential Incident means an Incident where there is potential for exposure to high or extreme risk of serious injury or for life altering consequences (or fatality) to people, regardless of the actual outcome.

Incident means occurrence arising out of or in the course of work that could or does result in injury and ill health.

IP Right includes all present and future copyright and neighbouring rights, all proprietary rights in relation to

inventions (including patents), registered and unregistered trademarks, confidential information (including trade secrets and know how), registered designs, circuit layouts, and all other proprietary rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

Laws includes:

- a) those principles of law or equity established or recognised by decisions of courts or judicial tribunals;
- b) Commonwealth, State or local government legislation, including any statutes, rules, regulations, ordinances, orders, by-laws, proclamations, decrees or other subordinate legislation; and
- c) policies and guidelines made under, or by reference to, Commonwealth, State or local government legislation.

Loss means any loss, damage, cost (including all legal and settlement costs on a full indemnity basis), expense, compensation or liability incurred by the person concerned, however it arises and whether it is present or future, fixed or unascertained, actual or contingent.

Lost Time Injury means Incident that results in a worker being unable to return to work for one day/shift or more, including permanent disability, death or any other injury that prevents the worker from performing their usual duties. The lost time can occur at any time (at the time of the Incident or at a later date following treatment in connection with the Incident).

Medical Professional means a person registered under the Health Practitioner Regulation National Law to practice in the medical, nursing, or midwifery profession (doctor, nurse, midwife etc.).

Medical Treatment Injury means an injury or disease (physical or psychological) that resulted in treatment provided by a Medical Professional at a medical facility, hospital or by paramedics, but excludes treatment for a First Aid Incident.

Monthly Health and Safety Performance Report means the monthly health and safety performance report prepared in accordance with clause 28.1(c) of this Agreement.

Notifiable Incident means any Incident that is notifiable to a Government Authority under Safety Legislation.

OHS means occupational health and safety.

OHS Requirements includes any written or verbal direction, instruction, request, or requirement made by SEW relevant or necessary for it or the Supplier to comply with this Agreement or the Safety Legislation.

Personnel of a party includes the officers, employees, agents, contractors and sub-contractors of the party.

PDSS means any standard issued under Part 4 of the *Privacy and Data Protection Act 2014* (Vic) and any policies or protocols issued by SEW to ensure compliance with those standards.

Purchase Order means the Purchase Order to which this Agreement apply.

Restricted Work Injury means any work-related injury or illness which results in a worker being issued a certificate by a Medical Professional outlining a requirement for alternate, restricted or modified duties for normal or reduced work hours due to the injury for one full shift or more.

Safety Incident means a High Potential Incident, Lost Time Injury, Medical Treatment Injury, Restricted Work Injury or Notifiable Incident.

Safety Incident Investigation Report means a report into a Safety Incident prepared by the Supplier and provided to SEW in accordance with clause 28.5(d).

Safety Legislation means all health and safety related laws, including without limitation:

- (a) all applicable OHS, electrical safety, road transport safety and dangerous goods legislation and regulations made under them;
- (b) codes of practice and other compliance codes;
- (c) OHS directions or notices issued by any relevant Authority; and
- (d) relevant standards.

Services means the services and includes any deliverables provided as part of the Services, specified in the Purchase Order and as provided under this Agreement.

SEW means the buyer of the Goods and/or Services, being South East Water Corporation (A.B.N. 89 066 902 547).

Supplier means the person, company or other legal entity to whom the Purchase Order is issued to supply the Goods and provide the Services, as the case may be.

2. Term of Agreement

- 2.1 This Agreement begins on the Commencement Date and continues until the Completion Date, unless extended in accordance with clause 2.2 or terminated earlier in accordance with clause 16. If no Completion Date is specified, this Agreement comes to an end when all Goods have been delivered and accepted, or all Services have been completed and accepted, and all payments required to be made under this Agreement have been made.
- 2.2 A party may, by the provision of notice in writing to the other party, request that this Agreement be extended beyond the Completion Date. This Agreement may only be extended for the period agreed to by the parties in writing.

3. Authority, Acceptance and Inconsistency

- 3.1 SEW is bound by this Agreement at the time the Purchase Order is issued to the Supplier.
- 3.2 If written acceptance of this Agreement is not communicated by the Supplier to SEW, the supply of the Goods by the Supplier to SEW or the commencement of Services by the Supplier shall constitute acceptance of this Agreement by the Supplier.
- 3.3 This Agreement applies in the absence of any other written agreement executed by the parties regarding the Goods and/or Services being provided by the Supplier to SEW. This Agreement contains everything the parties have agreed in relation to the Goods and the Services.
- 3.4 In the event, and to the extent, of any inconsistency between this Agreement and the Purchase Order, this Agreement prevail (except to the extent this Agreement expressly state otherwise). If the inconsistency remains incapable of resolution by reading down, the inconsistent provision will be severed without otherwise diminishing the enforceability of the remaining provisions.

4. Price

- 4.1 The Supplier must furnish all necessary Goods, Services, labour, materials, tools, equipment and supervision required for the fixed price on the Purchase Order, which price includes (unless specified in the Purchase Order) all applicable taxes (subject to clause 4.2). The Supplier must not charge SEW any other costs or expenses in supplying the Goods or delivering the Services.

- 4.2 All prices are exclusive of GST.

5. Performance of the Services

- 5.1 Where the presence of the Supplier is required on SEW's premises in respect of this Agreement:
 - (a) the Supplier must not impede or interfere with other work in progress on SEW's premises and must protect people and property, prevent nuisance and act in a safe and lawful manner;
 - (b) the Supplier enters SEW's premises at its own risk and is liable for and indemnifies SEW against any Loss arising directly or indirectly out of the provision of the Services or presence of the Supplier on SEW's premises except to the extent caused directly as a result of SEW's proven negligence;
 - (c) the Supplier must comply with the standards, policies and procedures and lawful directions of the SEW's Personnel.

6. Quantities

If quantities of Goods delivered or Services provided exceed those specified in the Purchase Order, the excess will not be accepted or paid for by SEW.

7. Completion and Delivery

- 7.1 The Goods must be delivered to the place specified on the Purchaser Order unless otherwise agreed between SEW and the Supplier.
- 7.2 The delivery of Goods and provision of the Services must be completed in accordance with any reasonable directions given by SEW from time to time.
- 7.3 Acceptance of the Goods and Services by SEW will not be taken to have occurred until acceptance is acknowledged in writing by SEW or acceptance is deemed to have occurred in accordance with this Agreement.
- 7.4 Time is of the essence so far as it applies to the obligations of the Supplier. If any Goods are not delivered or Services are not provided or completed within the time specified (if any) on the Purchaser Order (or as otherwise agreed by the parties), SEW may either (where appropriate):
 - (a) refuse to accept the Goods and immediately terminate this Agreement (and if SEW acquires the Goods from a different supplier at a cost greater than the amount which would have been paid to the Supplier by SEW, such cost is a debt due and owing to SEW by the Supplier);
 - (b) cause the Supplier to deliver the Goods by the most expeditious means and any additional delivery charges must be paid for by the Supplier; or
 - (c) obtain a reduction in the price paid for the Services specified in the Purchase Order.

8. Quality

- 8.1 The Supplier warrants that the Goods:
 - (a) conform with the description model number and sample (if any), provided by the Supplier;
 - (b) conform to any applicable specifications agreed by SEW and the Supplier;
 - (c) are of merchantable quality and are fit for the purpose for which they are sold;
 - (d) are fit for the specific purpose (if any) of which SEW has advised the Supplier in writing;
 - (e) are free of defects in material, workmanship and design and capable of safe and reliable operation without risks to health;

- (f) are new (unless otherwise specified); and
- (g) are free from all liens and encumbrances, and the Supplier has good title to them and the right to sell, and transfer title and property in them to SEW.
- 8.2 The Supplier warrants that:
- (a) the Services will be rendered in a timely and efficient manner using the standard of care, skill, diligence, prudence and foresight that would reasonably be expected from a prudent, expert and experienced provider of services that are similar to the Services;
- (b) the Services will be provided by competent and appropriately skilled and trained Personnel;
- (c) any materials supplied in connection with the Services, are fit for the purposes for which they are provided and are fit for the specific purpose (if any) of which SEW has advised the Supplier in writing; and
- (d) the Services will not infringe the IP Rights or other rights of any person or any Laws.
- 8.3 The Supplier warrants that it is entitled to use and deal with any IP Rights which may be used by it in connection with the provision of the Goods and/or Services (including where such IP Rights are incorporated in any Goods) and to grant to SEW the licences contemplated or required by this Agreement.
- 8.4 The warranties contained in this Agreement are in addition to any other warranties or guarantees applied by Law or provided by the Supplier or any third party.
9. Testing and Inspection
- 9.1 The Supplier agrees that SEW and its Personnel have the right to review, test and inspect the Goods prior to dispatch, and the Services while in any stage of engineering, manufacture or installation (even if being engineered, manufactured or installed by a third party). Any such test or inspection does not relieve the Supplier of any obligations contained in this Agreement or required by Law.
- 9.2 The Supplier has the right to attend all tests and inspections by SEW, but SEW's determination as to quality and quantity is final.
10. Acceptance or Rejection
- 10.1 If the Goods or Services provided are fit for purpose and comply with this Agreement, SEW will issue written notification of acceptance. If SEW does not give written notification of acceptance or rejection within 30 days of delivery or completion, acceptance will be deemed to have occurred on the date of delivery or completion.
- 10.2 Notwithstanding Clause 9 SEW or its Personnel may, by giving written notice (including reasons for rejection) to the Supplier within 30 days of delivery or completion, reject any Goods or Services that do not conform to the Agreement, or on delivery or completion are damaged, unfit for purpose or not of merchantable quality.
- 10.3 SEW is not obliged to pay for any rejected Goods or Services, and any payment by SEW for the Goods or the Services shall not prejudice its right of rejection.
- 10.4 The Supplier must, at its cost, collect and remove any rejected Goods as soon as practicable following notification. If the Supplier fails to collect or remove the rejected Goods within a reasonable time, SEW may return the Goods to the Supplier at the Supplier's expense, or, following further notification, destroy or dispose of the Goods.
- 10.5 Any Goods or Services rejected shall be re-performed or re-delivered (as the case may be) by the Supplier at no additional cost to SEW. If the re-performed or re-delivered Goods or Services are again rejected, SEW may, at its discretion:
- (a) waive, in writing, the requirement for the Goods or Services to comply with this Agreement;
- (b) conditionally accept the Goods or Services, subject to the Supplier agreeing to rectify the non-compliance within a reasonable timeframe and on such terms as SEW specifies; or
- (c) subject to SEW having provided the Supplier with at least one opportunity to rectify the non-compliance, immediately terminate this Agreement by written notice to the Supplier. If SEW terminates this Agreement SEW will be entitled to a full refund of all moneys paid to the Supplier in respect of the Goods or Services which SEW is unable to use following termination.
- 10.6 The Supplier must reimburse SEW for any:
- (a) purchase price paid by SEW with respect to rejected Goods or Services; and
- (b) costs reasonably incurred by SEW in connection with the rejection of the Goods or Services.
11. Alterations / Additions
- No alterations or additions to the Services or the character or description of the Goods may be made by the Supplier unless the Supplier has first obtained written approval from SEW's authorised officer.
12. Terms of Payment
- 12.1 On or following acceptance of the Goods or Services, or as otherwise specified in the Purchase Order, the Supplier must promptly issue to SEW tax invoices for the Goods and Services in accordance with SEW's instructions.
- 12.2 In the absence of any special arrangement, SEW must affect payment of the invoiced amount (less any amount required by Law) thirty (30) days from the date SEW is satisfied that an issued tax invoice has been correctly calculated. If SEW disputes the invoiced amount, it must pay the undisputed amount (if any) and notify the Supplier of the amount in dispute. The parties will endeavour to resolve any such dispute in accordance with clause 26.
- 12.3 Payment of an invoice is not to be taken as evidence that the Goods or Services have been supplied or completed in accordance with this Agreement but must be taken only as payment on account.
13. Sub-Contracting And Assignment
- 13.1 The Supplier must not assign its rights or obligations under this Agreement, or sub-contract the Services or the provision of the Goods pursuant to this Agreement, without the prior written consent of SEW (which may be given or withheld by SEW in its absolute discretion) and any such consent shall not relieve the Supplier of its responsibility for the Services or the Goods pursuant to this Agreement or of any obligations contained in the Agreement.
- 13.2 SEW may, by notice in writing to the Supplier, assign its rights, transfer its obligations or novate the Agreement.
14. Packaging
- 14.1 The Supplier must ensure that the Goods are properly packed to avoid being damaged during delivery, loading and unloading. All packages must be clearly marked with the Purchase Order number and location of delivery.

14.2 The Supplier must comply with all applicable Laws, including Laws and other relevant requirements relating to the transport, packaging, storage and handling of the Goods.

15. Applicable Law

This Agreement is governed in accordance with the Laws of Victoria, and the parties irrevocably and unconditionally submit to the exclusive jurisdiction of the Courts of Victoria.

16. Termination

16.1 Without prejudice to any other rights SEW may have against the Supplier, SEW may terminate this Agreement in whole, or in part, by giving the Supplier written notice with immediate effect (or with effect from a specified date) for convenience or if the Supplier:

- (a) fails to provide the Goods or the Services in accordance with this Agreement;
- (b) breaches any provision of this Agreement and, where that breach is capable of remedy, fails to remedy the breach within 10 days after receiving written notice requiring it to do so (or such later date as may be specified in that notice);
- (c) breaches any provision of the Agreement that is not capable of remedy;
- (d) goes into liquidation or a receiver and manager or mortgagee's or chargee's agent is appointed or becomes subject to any form of insolvency, administration or arrangements, or in the case of an individual, becomes bankrupt or enters into a scheme or arrangement with creditors;
- (e) or any of its Personnel involved in the supply of the Goods or provision of the Services, commits fraud, dishonesty or any other serious misconduct;
- (f) commits any act or does anything that may be prejudicial or otherwise detrimental to the reputation, interests and operation of SEW or the Crown in right of the State of Victoria;
- (g) assigns or subcontracts the Agreement in whole or part without the prior written consent of SEW;
- (h) ceases or threatens to cease to carry on its business; or
- (i) fails to rectify any non-compliance in accordance with clause 10.5(c).

16.2 Waiver of SEW of any specific default by the Supplier or failure by SEW to terminate this Agreement or any part thereof, when a right of termination arises, does not constitute waiver by SEW of any of the rights pursuant to this Agreement.

16.3 A Purchase Order may be cancelled by SEW if SEW has ordered the Goods or Services in order to satisfy a contract it has entered into with a third party, and that contract is cancelled or amended. In this event the Supplier is only entitled to claim actual damage suffered (excluding loss of profit).

16.4 If SEW terminates the Agreement for convenience:

- (a) SEW must pay the Supplier:
 - (i) for the Goods delivered and Services provided in accordance with the Agreement up to the date of the termination; and

- (ii) the unavoidable and substantiated costs incurred by the Supplier as a direct result of the termination, excluding any loss of profit,

and SEW has no other liability to the Supplier in relation to that termination; and

- (b) the Supplier must immediately comply with any directions given in the notice and do all that is possible to mitigate its losses arising from the termination of the Agreement.

16.5 The Supplier may terminate the Agreement by giving at least 30 days written notice to SEW if SEW fails to pay amounts due under this Agreement.

16.6 Termination or expiry of this Agreement will not prejudice any right of action or remedy which may have accrued to either party prior to termination or expiry.

16.7 All provisions of this Agreement which, expressly or by implication from their nature, are intended to survive rescission, termination or expiration of this Agreement will survive the rescission, termination or expiration of this Agreement, including any provision in connection with SEW's rights to set-off and recover money, intellectual property, confidentiality and privacy, insurance, any indemnity, release or financial security given under this Agreement, any limitation of liability and any right or obligation arising on termination of this Agreement.

17. Independent Contractor

The relationship between SEW and the Supplier is that of principal and independent contractor and nothing in this Agreement shall be taken as constituting SEW and the Supplier or any of their Personnel as being in the relationship of joint venture, master and servant, employer and employee, or partners, nor shall anything in this Agreement constitute the Supplier or any of its Personnel as being agent of SEW.

18. Compliance with Laws

18.1 The Supplier must, in performing its obligations under this Agreement, comply with all relevant and applicable statutes, ordinances, by-laws, codes of practice, regulations, code of conduct and with the Victorian Industry Participation Policy (if applicable).

18.2 The Supplier acknowledges that:

- (a) the Code of Conduct issued by the Victorian Government for suppliers providing goods or services to the Victorian Government, as amended from time to time ("Supplier Code of Conduct") is an important part of the State of Victoria's approach to procurement and describes the State's minimum expectations regarding the conduct of its suppliers;
- (b) it has read and aspires to comply with the Supplier Code of Conduct; and
- (c) the expectations set out in the Supplier Code of Conduct are not intended to reduce, alter or supersede any other obligations which may be imposed on the Supplier, whether under the Agreement or at Law.

19. Indemnity and Release

19.1 The Supplier indemnifies, and will at all times keep SEW and its Personnel indemnified against any Loss arising out of, or in any way in connection with, any:

- (a) personal injury, including sickness and death;
- (b) property damage;

- (c) breach of an obligation of confidence or privacy, whether under this Agreement or otherwise;
 - (d) fraudulent acts or omissions;
 - (e) wilful misconduct or unlawful acts or omissions;
 - (f) breaches of security;
 - (g) loss or corruption of the Data;
 - (h) breach of this Agreement (including any representation or warranty being breached, or being incorrect or misleading in any way);
 - (i) negligent act or omission or failure to act; and
 - (j) infringement or alleged infringement of the IP Rights or any other rights of any person, including a third party,
- which was caused, or contributed to, by any act or omission of the Supplier or any of its Personnel.
- 19.2 The Supplier's liability to indemnify SEW under clause 19.1 is reduced to the extent that any wilful, unlawful or negligent act or omission by SEW or its Personnel contributed to the Loss.
- 19.3 To the extent that the indemnity in clause 19.1 refers to persons other than SEW, SEW holds the clause on trust for those other persons.
- 19.4 The Supplier, to the full extent permitted by Law, releases and forever discharges SEW from all Claims and Losses which the Supplier or any of its Personnel have, or at any future time may have or may bring, or but for this Agreement might have had or brought, against SEW or its Personnel in relation to:
- (a) anything permitted by or done in accordance with this Agreement;
 - (b) the Supplier or its Personnel breaching this Agreement (including a breach arising from the act, omission or negligence of the Supplier or its Personnel); or
 - (c) a breach of the IP Rights of the Supplier,
- except to the extent caused or contributed to by a breach of this Agreement by, or a wilful, unlawful or negligent act or omission of SEW or its Personnel.
20. SEW's Property, Confidentiality and Privacy
- 20.1 All Data remains (and if necessary, will become) the sole property of SEW. The Supplier must assign to SEW from the date of creation all IP Rights in any Data created by or on behalf of the Supplier.
- 20.2 Any such Data or any substantial portion or description thereof must not be produced or reproduced in any material form without the written authority of SEW.
- 20.3 Upon expiry or termination of this Agreement the Supplier must, at its cost, return to SEW or destroy (following instructions given by SEW) any finished or unfinished work relevant to this Agreement and any Data.
- 20.4 The Supplier must only use the Data to the extent necessary to perform its obligations under this Agreement.
- 20.5 The Data is confidential information. The Supplier and its Personnel must not use (otherwise than is necessary for this Agreement), nor disclose any of the Data or other information relating to SEW and its business and customers, to any third party without SEW's prior written consent.
- 20.6 Without limiting any other obligation of the Supplier at Law, the Supplier must comply with the *Privacy and Data Protection Act 2014* (Vic) (including the Information

Privacy Principles), *Health Records Act 2001* (Vic) (including the Health Privacy Principles) and any code or guidelines relating to the handling of personal information, as binding on SEW, and will keep confidential personal information supplied to it or collected by it in relation to this Agreement.

- 20.7 The Supplier acknowledges that SEW is bound by the PDSS. The Supplier will 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 any Data collected, held, used, managed, disclosed or transferred by the Supplier, on behalf of the State of Victoria, under or in connection with the Agreement.
- 20.8 The Supplier irrevocably and unconditionally grants to SEW a non-exclusive, perpetual, royalty free, worldwide and transferable licence (including the right to sub-license) to use any IP Rights in relation to any:
- (a) Goods supplied;
 - (b) materials (including any IP Rights) which the Supplier creates (whether alone or jointly with any other person) in providing the Services ("Contract Materials"); and
 - (c) of the Supplier's pre-existing IP Rights incorporated in or otherwise required to use the Contract Materials or the Services,
- to the extent necessary to allow SEW the full use and enjoyment of the Goods and the Services. The Supplier must, upon request by SEW, do all things as may be necessary (including executing any documents) to give full effect to this clause 20.8.
21. Notices
- 21.1 Any notices required pursuant to this Agreement shall be in writing and shall be validly given only if signed by a duly authorised person on behalf of either party and addressed to the parties at the address specified on the Purchase Order and shall be deemed to be duly given or made:
- (a) in the case of letter, the expiration of 5 Business Days after the time of posting by pre-paid ordinary post or at the time of actual receipt by the addressee, whichever occurs first;
 - (b) in the case of a personal delivery, when delivered; and
 - (c) in the case of electronic mail, if the message is correctly addressed to and successfully transmitted to that party's email address, when the sender receives confirmation on its server that the message has been transmitted.
22. Advertising
- The Supplier must not, without first obtaining the written consent of SEW, in any manner advertise or publish the fact that the Supplier has contracted with SEW for the supply of Goods or Services.
23. Environmental Requirements
- 23.1 The Supplier must deliver the Goods and perform all aspects of the Services so as to minimise risks of harm to human health and the Environment. The Supplier warrants that it has the skills, expertise, systems and processes to comply with this obligation, and acknowledges that it has the management of and control over all aspects of the performance of the Services.
- 23.2 Without limiting clause 18, the Supplier must comply with Environmental Law and SEW's Environmental policies as notified by SEW to the Supplier.

24. Title and Risk

Title in the Goods passes to SEW upon acceptance of the Goods. Risk in the Goods passes to SEW when delivered to SEW in accordance with the Purchase Order. The Supplier acknowledges and agrees that SEW may on-sell the Goods to third parties.

25. Recall

If the Supplier identifies a need to recall any of the Goods, it will promptly advise SEW in writing, make arrangements to retrieve the Goods at its expense and provide SEW with a replacement or refund in accordance with clause 10.

26. Dispute Resolution

If any dispute arises under or in connection with this Agreement ("Dispute") the nominated senior executive officer (or equivalent) of each of SEW and the Supplier must promptly meet and discuss in good faith with a view to resolving the Dispute. If any Dispute is unable to be resolved by the senior executive officers, the parties agree to endeavour in good faith to settle the Dispute by mediation administered by the Australian Disputes Centre (in accordance with its mediation guidelines) before having recourse to arbitration or litigation. The parties to a Dispute must continue to perform their obligations under this Agreement, pending the resolution of a Dispute. Nothing in this clause is to be taken as preventing any party to a Dispute from seeking urgent interlocutory relief in respect of such Dispute.

27. Insurance

27.1 The Supplier must (and must ensure that any sub-contractor appointed by it under clause 13) obtain and maintain for the duration of the Agreement including the rectification of all defects (unless specified otherwise below) the following insurances for the amounts specified (unless another amount is agreed between the Supplier and SEW):

- (a) public liability insurance - \$20 million;
- (b) product liability insurance - \$10 million;
- (c) professional indemnity insurance - \$10 million (which must be maintained for the 7 years after the expiry or termination of this Agreement); and
- (d) any other insurance reasonably required by SEW.

27.2 The Supplier must provide SEW with evidence of the currency of any required insurances upon request by SEW.

27.3 All insurances required must be taken out with a reputable insurer, and on terms (including any excess) which a prudent insured providing the Goods and/or Services would reasonably effect and maintain.

27.4 Where the required insurance is due to expire, the Supplier must take out replacement insurance and provide SEW with evidence that such replacement insurance has been effected.

28. Occupational Health and Safety

28.1 Without limiting clause 18, the Supplier must:

- (a) comply with OHS Requirements and Safety Legislation at all times to ensure the safety and health of all persons affected by the Goods and/or Services, as far as reasonably practicable;
- (b) ensure that its Personnel, and any other person over whom the Supplier is capable of exercising control, comply with and implement their respective obligations under the Safety Legislation;

- (c) must ensure that a monthly health and safety performance report is prepared and submitted to SEW no later than the first Business Day of each calendar month. The report must be in the format as specified by SEW from time to time

28.2 Without limiting this clause, the Supplier must:

- (a) assist SEW to comply with its obligations under Safety Legislation in relation to the Goods and/or Services;
- (b) so far as is reasonably practicable, consult, cooperate and coordinate with SEW and any other person who has obligations under the Safety Legislation in relation to the same matter;
- (c) take all measures necessary to protect the health and safety of people and property on or adjacent to the Work Site.

28.3 If SEW considers that any work being undertaken by the Supplier or the Supplier's Personnel in relation to the Goods and/or Services, or any plant, equipment, or other item, is unsafe or exposes any person to a risk of harm:

- (a) SEW may direct the Supplier, and the Supplier will comply with any direction, to immediately cease the unsafe works at its cost; and
- (b) the Supplier must, at its cost, rectify the unsafe situation, or ensure that the unsafe situation is rectified, prior to continuing the works.

28.4 To the maximum extent permitted by law, the Supplier indemnifies SEW against any cost, expense or Loss incurred by SEW arising out of or in connection with any breach by the Supplier of any requirement of this clause 28. For the avoidance of doubt, this clause is not intended to provide SEW with an indemnity which is prohibited under Safety Legislation.

28.5 In relation to Indecent Notifications and Reporting, the Supplier must:

- (a) give immediate verbal notification to SEW of a Safety Incident; and
- (b) cooperate with SEW in any investigation arising out of the occurrence of a Safety Incident, as requested by SEW;
- (c) where Safety Legislation requires a Government Authority to be notified of a Safety Incident, the Supplier must notify the relevant Government Authority as soon as practicable, but not later than 6 hours after the Safety Incident. SEW must be provided with evidence of such notification; and
- (d) the Supplier must ensure that within 21 days after the occurrence of the Safety Incident a Safety Incident Investigation Report is delivered to SEW that: sets out the cause(s) of the Safety Incident and details the corrective actions and steps taken to prevent recurrence.

28.6 In relation to audits and providing access to documents:

- (a) where the Supplier engages an independent workplace health and safety auditor or other auditor to audit the Supplier's health and safety systems, the Supplier must promptly provide SEW with a copy of the audit report and work to promptly rectify any non-conformances identified in that report;
- (b) SEW or its representatives may at any reasonable time review, inspect, monitor or otherwise observe the health and safety systems, work practices and procedures related to the Goods and/or Services and all

obligations under this clause must be complied with as though such review, inspection, monitoring or observation were a Workplace Health and Safety Compliance Audit; and

- (c) The Supplier must, upon the request of SEW, provide access to any documentation relevant to workplace health and safety.

29. Publication

29.1 The Supplier consents to SEW publishing or otherwise making available information in relation to the Supplier (and the supply of the Goods and provision of the Services):

- (a) as may be required to comply with the system of the Victorian Government requiring publication of details of contracts entered into by Victorian Government departments, bodies and agencies including any replacement or amended system;
- (b) to other Victorian Public Entities or Ministers of the State of Victoria in connection with the use of the Goods or Services;
- (c) to any public sector agency (of the State of Victoria, any other state or territory or the Commonwealth) for the purposes of benchmarking, provided that it will not identify the Supplier;
- (d) to the office of the Auditor General appointed under section 94A of the *Constitution Act 1975* (Vic) or the ombudsman appointed under the *Ombudsman Act 1973* (Vic);
- (e) to comply with law, including the *Freedom of Information Act 1982* (Vic); or
- (f) to the commission established under the *Independent Broad-based Anti-Corruption Commission Act 2011* (Vic) and includes any other organisation that may, from time to time, perform the functions of the commission.

30. Security Matters

The Supplier must provide SEW with information reasonably requested by SEW for the purpose of complying with SEW's responsibilities under the *Security of Critical Infrastructure Act 2018* (Cth) and any subordinate legislation or rules.

31. Data and Cyber Security

31.1 Supplier must only use or collect the Data for the sole purpose of providing the Goods and/or Services and must not disclose, access or store Data outside of Victoria, except with the prior written consent of SEW

31.2 The Supplier must:

- (a) only disclose or access Data on a secure internet connection that is not subject to inspection or interception (for example, not using public Wi-Fi or a mobile hotspot);
- (b) take reasonable steps, when requested by SEW, to assist SEW to comply with its obligations under the *Privacy and Data Protection Act 2014* (Vic) including regulatory notification requirements, and any privacy statements or policies issued by it;
- (c) establish and maintain safeguards against the misuse, interference and loss, as well as unauthorised access, modification or disclosure of Data in the possession or control of Supplier that would reasonably be expected of similarly skilled and experienced suppliers of goods and/or services which are similar to the Goods

and/or Services to be provided by Supplier under this Agreement and that comply with all applicable Laws and any reasonable instructions of SEW;

- (d) implement the essential 8 mitigation strategies to mitigate cybersecurity incidents published by the Australian Signals Directorate, as amended from time to time; and

- (e) immediately report to SEW any suspected, likely or actual Data Breach within 48 hours of becoming aware of the Data Breach (which shall include full details of the Data Breach as known at that time) and provide regular updated, information and assistance reasonably requested by SEW in relation to the Data Breach.

31.3 The Supplier must:

- (a) not upload or disclose any Data or other confidential information of SEW to Artificial Intelligence in connection with the Goods, Services or deliverables without SEW's prior written consent;
- (b) notify SEW in writing prior to the use of Artificial Intelligence in connection with the Goods, Services or deliverables and provide SEW with any information reasonably requested by SEW in respect of such use; and
- (c) maintain a record of any Artificial Intelligence, combined or used in accordance with the Goods and/or Services and provide SEW with all licence terms applicable to the relevant Artificial Intelligence.