Schedule 14 – Relevant State Policies

***[Drafting Note: Agencies to consider including or deleting any additional policies that apply on a project specific basis.]***

#

# Supplier Code of Conduct

## Definitions

1. Unless otherwise expressly defined below, expressions used in section 1 have the meanings given to them in this Deed:
2. **Supplier Code of Conduct** means the document entitled "Procurement - Supplier Code of Conduct" issued by the State of Victoria and, as at the date of this Deed, available at <http://www.procurement.vic.gov.au/Suppliers/Supplier-Code-of-Conduct>.

## Supplier Code of Conduct

1. The Contractor acknowledges and agrees that:

### (**State’s** **minimum expectations**): the Supplier Code of Conduct is an important part of the Principal's approach to procurement and describes the State of Victoria's minimum expectations regarding the conduct of its suppliers;

### (**compliance**): it has read and aspires to comply with the Supplier Code of Conduct, and will periodically check with reasonable frequency for updates and amendments to the Supplier Code of Conduct; and

### (**impact on obligations**): 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 this Deed or at Law.

# Local Jobs First Policy

## Definitions

1. Unless otherwise expressly defined below, expressions used in section 2 have the meanings given to them in this Deed:
2. **Apprentice** means a person (other than a Cadet or Trainee) who is employed to undetake training in a trade under a Training Contract. The Local Jobs First Policy requires employers to employ apprentices under a l Training Contract registered with VRQA which combines structured training with paid employment related to a Local Jobs First applicable project. For an Apprentice to be counted towards the MPSG Requirement 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.
3. **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), which cannot count towards MPSG Requirement.
4. [**Deemed Hours Formula** has the meaning given in the LIDP.] ***[Drafting Note: As per the Local Jobs First Agency Guidelines, the 'Deemed Hours Formula' is optional for calculating the MPSG requirement for all applicable projects. Agencies to amend as appropriate and delete all other references to the 'Deemed Hours Formula' in this section, if the Deemed Hours Formula is not used.]***
5. **Department** has the meaning given in section 3(1) of the Local Jobs First Act.
6. **Industry Capability Network (Victoria)** means Industry Capability Network (Victoria) Limited ACN 007 058 120.
7. **LIDP** means the Local Industry Development Plan submitted by the Contractor at the time of the Contractor's Delivery Phase Offer and certified by Industry Capability Network (Victoria) by providing an acknowledgement letter.
8. **LIDP Commitments** means the obligations and undertakings of the Contractor as detailed in its LIDP.
9. **LIDP Monitoring Table** means the table of milestones and LIDP Commitments contained in the LIDP.
10. **Local Content** has the meaning given in section 3(1) of the Local Jobs First Act.
11. **Local Content Requirements** has the meaning given in section 2.2(a)(i).
12. **Local Content Requirements Liquidated Damages** means the amount calculated in accordance with section 2.10.
13. **Local Jobs First Act** means the *Local Jobs First Act 2003* (Vic).
14. **Local Jobs First Commissioner** means the person appointed under section 12 of the Local Jobs First Act.
15. **Local Jobs First Policy** means the policy of the Victorian Government made under section 4 of the Local Jobs First Act.
16. **Local Jobs First Requirements** has the meaning given in section 2.2(a).
17. **Major Project Skills Guarantee Liquidated Damages** means the amount calculated in accordance with section 2.11.
18. **MPSG** means the Major Projects Skills Guarantee policy that provides job opportunities for Apprentices, Trainees and Cadets on high value construction projects.

**MPSG Requirement** has the meaning given in section 2.2(a)(ii).

1. **Responsible Minister for LJF** means the Minister with responsibility for administering the Local Jobs First Act.
2. **Revised LIDP** has the meaning given in section 2.3(a)(iv).
3. **Total Estimated Labour Hours** means, in respect of the Contractor's Activities, the total estimated labour hours as determined in accordance with the [Deemed Hours Formula]. ***[Drafting Note: Agencies to amend as appropriate if the Deemed Hours Formula is not used.]***
4. **Trainee** means an employee engaged by an employer (other than an Apprentice or Cadet) employed under a Training Contract registered with VRQA 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 MPSG Requirement 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 MPSG Requirement.
5. **Training Contract** has the meaning given in the *Education and Training Reform Act 2006* (Vic).
6. **Victorian Management Centre** or **VMC** means the 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, MPSG (if applicable) and, supply chain monitoring and reporting.
7. **VRQA** means the Victorian Registration and Qualification Authority.

## Local Industry Development Plan (LIDP)

### (**Comply with LIDP and Local Jobs First Policy**): the Contractor must, in performing its obligations under this Deed:

#### comply with the LIDP, including to:

##### utilise Local Content in the carrying out of the Contractor's Activities so that the Local Content aggregated for all goods and services utilised:

###### in undertaking the Contractor's Activities generally is [##]%; and

###### in undertaking the procurement and supply of Equipment as part of the Contractor's Activities, is [##]%;

##### ensure that all Subcontractors and other advisers preference solutions that maximise the use of local materials, finishes, products, goods and services in construction, including Equipment, wherever possible,

##### (**Local Content Requirements**); and

##### ***[Drafting Note: The percentage for the Local Content Requirements will be updated to reflect the Contractor's Offer.]***

#### ensure that a minimum of [##]% of the Total Estimated Labour Hours are performed by Apprentices, Trainees and Cadets (**MPSG Requirement**);

#### perform all obligations required to be performed under the LIDP, including the LIDP Commitments, by the due date for performance; and

#### comply with the Local Jobs First Policy,

#### (**Local Jobs First Requirements**).

### (**Application of the LIDP**): The Contractor acknowledges and agrees that its obligations as set out in the LIDP apply until all of its reporting obligations under section 2.4 been satisfied.

## Revised LIDP

### (**Revised LIDP**): If at any time:

#### an amendment to this Deed or a Variation is proposed which involves or effects a change in the nature of the LIDP Commitments;

#### following receipt of a report from the Contractor submitted in accordance with section 2.4, the Principal at the time of submission of the report in accordance with section 2.4, notifies the Contractor that it is not satisfied that:

##### the Contractor is meeting the Local Jobs First Requirements; or

##### the Contractor will be able to meet the Local Jobs First Requirements; or

#### the Contractor considers that the Local Jobs First Requirements are not being met,

### the Contractor must, unless otherwise agreed with the Principal:

#### prepare a revised LIDP which demonstrates the Contractor's ability to meet the Local Jobs First Requirements in collaboration with and certified by Industry Capability Network (Victoria) (**Revised LIDP**); and

#### submit the Revised LIDP to the Principal for review in accordance with the Review Procedures.

### (**Provision of Revised LIDP**): When requested by the Principal, the Contractor must provide the Revised LIDP within the time stated in the Principal's request.

### (**Amendment**): The Revised LIDP must be submitted, reviewed and amended in accordance with the Review Procedures before any amendment to this Deed or Variation can take effect, unless the parties agree that a Revised LIDP is unnecessary.

### (**Agreed LIDP**): Once the Revised LIDP is agreed by the parties, the Revised LIDP replaces the LIDP and forms part of this Deed.

## Reporting

### (**Records**): The Contractor must prepare and maintain records demonstrating its compliance with the LIDP.

### (**Reporting**): The Contractor must provide to the Principal:

#### a table in the form of 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

#### a statutory declaration in the form set out as part of the online LIDP and made by a director of the Contractor or the Contractor's Chief Executive Officer or Chief Financial Officer to confirm that the information contained in the LIDP Monitoring Table is true and accurate,

##### within 20 Business Days after the date which is 6 Months after the Contract Date, and thereafter, at six monthly intervals and upon:

#### the earlier of the Date of Practical Completion and 1 Month after the Date for Practical Completion; and

#### the Date of Close-Out.

### (**Victorian Management Centre**): Without limiting section 2.4(b), the Contractor must use the VMC for monitoring and reporting.

### (**Further information**): At the request of the Principal Representative, the Contractor must provide further information or explanation of any departures from the LIDP as reported in the LIDP Monitoring Table.

## Damages for failure to comply

1. ***[Drafting Note: Procuring agencies to consult with the relevant LJF policy holder to determine on a project specific basis whether and what consequences should apply if the Contractor fails to deliver the local content outcomes committed to in its LIDP. As currently drafted, a failure to comply with the LIDP will result in liquidated damages being payable at the Date of Completion and may result in a Major Default.]***

### (**Certification by the Principal Representative**): On the Date of Practical Completion (or, if there are Separable Portions, the last Date of Practical Completion to occur), the Principal Representative must certify:

#### the percentage of Local Content used by the Contractor to the Date of Practical Completion in undertaking the Contractor's Activities; and

#### the percentage of actual total labour hours for the Contractor’s Activities performed by Apprentices, Trainees and Cadets to the Date of Practical Completion,

#### by issuing a certificate.

### (**Principal’s entitlement to liquidated damages**): Without limiting section 2.5(d) if, by the Date of Practical Completion, the Contractor has not met:

#### the Local Content Requirements in undertaking the Contractor's Activities to the Date of Practical Completion as determined in accordance with section 2.5(a), the Contractor will be liable to the Principal for the Local Contents Requirements Liquidated Damages and such amount will be a debt due and payable by the Contractor to the Principal; and

#### the MPSG Requirement to the Date of Practical Completion as determined in accordance with section 2.5(a), the Contractor will be liable to the Principal for the Major Project Skills Guarantee Liquidated Damages and such amount will be a debt due and payable by the Contractor to the Principal.

### (**Calculation of liquidated damages**): The parties acknowledge and agree that:

#### the liquidated damages referred to in section 2.5(b):

##### will be calculated in accordance with the formula set out in sections 2.10 and 2.11; and

##### the relevant formulas have been agreed by the parties in good faith and the adjustment resulting from their application is a genuine pre-estimate of the anticipated or actual Liability the Principal will suffer if the Contractor fails to meet the Local Content Requirements and the MPSG Requirement (as applicable) in undertaking the Contractor's Activities by the Date of Practical Completion;

#### each party wishes to avoid the difficulties of proof of damages in connection with a failure by the Contractor to meet the aggregate Local Content Requirements and the MPSG Requirement in undertaking the Contractor's Activities by the Date of Practical Completion; and

#### the liquidated damages payable in accordance with section 2.5(b) are reasonable and are not intended as a penalty.

### (**Principal's entitlement to common law damages**): Notwithstanding section 2.5(e), to the extent that all or any part of this section 2.5 is found for any reason to be void, invalid, unenforceable or otherwise inoperative so as to disentitle the Principal from receiving the amount of liquidated damages payable in accordance with section 2.5(b), the Principal will be entitled to recover common law damages for the failure by the Contractor to meet the Local Content Requirements and the MPSG Requirement (as applicable) in undertaking the Contractor's Activities but, the Contractor's Liability for such damages will not be any greater than the Liability which it would have had if this section 2.5 had not been void, invalid, unenforceable or otherwise inoperative.

### (**Sole remedy**): Subject to sections 2.5(d) and 2.5(f), payment by the Contractor of liquidated damages in accordance with section 2.5 will be the Principal’s sole financial remedy for a failure by the Contractor to meet the Local Content Requirements and the MPSG Requirement in undertaking the Contractor's Activities to the Date of Practical Completion.

### (**Default**): Section 2.5(e) does not limit the Principal's rights under clauses 43 and 44 of the Deed, in circumstances where the Contractor breaches section 2.2 and that breach becomes a Major Default under paragraph (m) of the definition of Major Default.

## Verification of the Contractor's compliance with LIDP

### (**Review of performance**): The Contractor must:

#### permit the Principal, or any person authorised by the Principal, (including any accountant or auditor engaged by the Principal or the Department), from time to time during Business Hours and upon notice, to inspect, verify and make copies, at the Principal's expense, of all records maintained by the Contractor for the purposes of ensuring the Contractor's compliance with the LIDP, at the Contractor's premises, or provide copies of those records to the Principal at its request;

#### permit the Principal, or any person authorised by the Principal, (including any accountant or auditor engaged by the Principal or the Department), from time to time to undertake a review of the Contractor's performance in accordance with the LIDP; and

#### ensure that any the Contractor Associate gives all reasonable assistance to any person authorised by the Principal to take copies of records or undertake such inspection, verification or review in accordance with this section 2.6.

### (**Authorisations**): The Contractor acknowledges and agrees that the Principal, the Principal Representative, the Department, Industry Capability Network (Victoria) and any accountant or auditor engaged by the Principal or the Department are authorised to obtain information from any relevant persons, firms or corporations, including third parties, regarding the Contractor's compliance with the LIDP.

## Use of LIDP information

1. The Contractor acknowledges and agrees that:

### (**assessment**): Industry Capability Network (Victoria) will assess the Contractor’s performance against the LIDP; and

### (**disclosure**): the statistical information contained in the LIDP and the LIDP Monitoring Table may be:

#### included in the Principal’s report of operations under Part 7 of the *Financial Management Act 1994* (Vic) in respect of the Principal’s compliance with the Local Jobs First Policy in the financial year to which the report of operations relates;

#### provided to the Responsible Minister for LJF for inclusion in the Responsible Minister for LJF's report to the Parliament for each financial year on the implementation of the LIDP during that year; and

#### disclosed in the circumstances set out in clause 53.1 of the Deed and section 2.4 or as otherwise required by Law.

## Subcontracting

### The Contractor must ensure that any Subcontracts contain clauses requiring Subcontractors:

### (**comply with Local Jobs First Policy and LIDP**): to comply with the Local Jobs First Policy and the LIDP to the extent that they apply to work performed under the Subcontract;

### (**provide information**): to provide necessary information that allows the Contractor to comply with its reporting obligations under section 2.4; and

### (**permit inspection and verification**): to permit the Principal and the Department to exercise their inspection and verification rights under section 2.6.

## Local Jobs First Commissioner

### (**Acknowledgments**): The Contractor acknowledges and agrees that:

#### it is required to comply with any information notice issued to it by the Local Jobs First Commissioner in accordance with section 24 of the Local Jobs First Act;

#### it is required to comply with any compliance notice issued to it by the Local Jobs First Commissioner in accordance with section 26 of the Local Jobs First Act;

#### its failure to comply with a compliance notice referred to in section 2.9(a)(ii) may result in the issue of an adverse publicity notice by the Responsible Minister for LJF under section 29 of the Local Jobs First Act; and

#### the Local Jobs First Commissioner may:

##### monitor and report on compliance with the Local Jobs First Policy and the LIDP; and

##### request the Principal to conduct an audit in relation to the Contractor's compliance with the Local Jobs First Policy and the LIDP.

### (**Enforcement proceedings**): the Contractor acknowledges and agrees that the Local Jobs First Commissioner may recommend that the Principal take enforcement proceedings against the Contractor if the Contractor has failed to comply with the Local Jobs First Policy or the LIDP by:

#### applying to a court to obtain an injunction; or

#### taking action available under this Deed.

### (**Default**): Section 2.9(b) does not limit the Principal's rights under clauses 43 and 44 of the Deed, in circumstances where the Contractor breaches section 2.2 and that breach becomes a Major Default under paragraph (m) of the definition of Major Default.

## Local Content Requirements Liquidated Damages

1. The Local Content Requirements Liquidated Damages (**LCRLD**) will be calculated as follows:

**LCRLD**= the Local Content Requirements Liquidated Damages as determined in the table below:

|  | **LCRLD** |
| --- | --- |
| If LCP is less than or equal to [2.00]% | [$0]  |
| If LCP calculated is greater than [2.00]% and less than or equal to [4.00]% | (LCP – [2.0]%) x 100 x $[##]  |
| If LCP calculated is greater than [4.00]% | $[####] + (LCP – [4.0]%) x 100 x $[####] |

Where:

**LCP** =  the amount calculated as LCR – ALC.

**LCR** = the Local Content Requirements represented as a percentage of [##]%.

**ALC** = the actual percentage of Local Content used by the Contractor to the Date of Practical Completion in undertaking the Contractor's Activities, as certified by the Principal Representative in accordance with section 2.5(a)(i).

***[Drafting Note: Amounts to be amended on a project specific basis.]***

## Major Project Skills Guarantee Liquidated Damages

1. The Major Project Skills Guarantee Liquidated Damages (**MPSGLD**) is calculated as follows:

**MPSGLD = (MPSGR – A) x [100] x $[350,000] *[Drafting Note: Amounts to be amended on a project specific basis.]***

Where:

**MPSGR** = the MPSG Requirement [##]%.

**A** = the percentage of actual total labour hours for the Contractor's Activities performed by Apprentices, Trainees and Cadets to the Date of Practical Completion, as certified by the Principal Representative in accordance with section 2.5(a)(ii).

# Fair Jobs Code

## Definitions

1. Unless otherwise expressly defined below, expressions used in section 3 have the meanings given to them in this Deed:
2. **Adverse Ruling** means a ruling (by any court, tribunal, board, commission or other entity with jurisdiction or legal authority to determine the matter) that the Contractor has breached an applicable employment, industrial relations or workplace health and safety law.
3. **DJPR** means the Department of Jobs Precincts and Regions (and any successor Government department) as the Department responsible for the FJC.
4. **Enforceable Undertaking** means a promise or agreement made by the Contractor with a regulator, court or other body (including the Fair Work Ombudsman, WorkSafe Victoria and Wage Inspectorate Victoria) in respect of a breach or alleged/suspected breach of an applicable employment, industrial relations or workplace health and safety law.
5. **FJC** means the Fair Jobs Code issued by the State of Victoria available at https://www.buyingfor.vic.gov.au/fair-jobs-code.
6. **FJC Plan Addendum** means the Contractor's Fair Jobs Code Plan Addendum, addressing industrial relations, occupational health and safety requirements and commitments and standards as required by the FJC.
7. **FJC Subcontractor** means a Subcontractor who enters into a contract valued at $10 million or more (exclusive of GST) with the Contractor in connection with the Contractor's Activities.
8. **FJC Unit** means the Fair Jobs Code Unit, an administrative group within DJPR with responsibilities in relation to the FJC.
9. **Pre-Assessment Certificate** means a certificate issued to the Contractor by the FJC Unit prior to entering into this Deed, or which is renewed prior to Close-Out.

## Fair Jobs Code

### The Contractor warrants that on Contract Date, it holds a valid Pre-Assessment Certificate.

### In performing its obligations under this Deed, the Contractor acknowledges and agrees that it must:

#### continue to hold a valid Pre-Assessment Certificate;

#### comply with its FJC Plan Addendum;

#### perform all obligations required to be performed under the FJC Plan Addendum by the date required under the FJC Plan Addendum; and

#### comply with the FJC.

### If at any time prior to Close-Out, the Contractor's Pre Assessment Certificate is revoked by the FJC Unit, that revocation will constitute a breach of this section 3.

### The Contractor acknowledges and agrees that the obligations for holding and maintaining a valid Pre-Assessment Certificate apply until all of its reporting obligations as set out in section 3.4 are fulfilled.

## Verification of the Contractor's compliance with the Fair Jobs Code

### The Contractor must, on request by the Principal, provide a copy of the Pre-Assessment Certificate or any related correspondence with the FJC Unit.

### If the Contractor's Pre-Assessment Certificate expires prior to Close-Out, the Contractor must provide notice to the Principal of the expiry within 10 Business Days.

### If the Contractor fails to promptly take steps to renew an expired Pre-Assessment Certificate as soon as practicable after notifying the Principal of the expiration, the expiration will constitute a breach of this section 3.

## Reporting

### The Contractor must prepare and maintain records demonstrating its compliance with, and implementation of, the FJC Plan Addendum.

### The Contractor must provide reports which demonstrate the Contractor's progress towards implementing the FJC Plan Addendum at a time or times to be determined by the Principal but not less than once per year.

### Prior to or on the Date of Practical Completion, or on such other dates as notified by the Principal Representative, the Contractor must provide to the Principal Representative:

#### a final report identifying FJC Plan Addendum commitments and actual achievements; and

#### a statutory declaration, made by a director of the Contractor or the Contractor's Chief Executive Officer or Chief Financial Officer, declaring that the information contained in the final FJC Plan Addendum report is true and accurate.

### At the request of the Principal Representative, the Contractor must provide further information or explanation of any differences between expected and achieved FJC Plan Addendum outcomes.

### The reporting obligations in this Schedule are in addition to and do not derogate from any other reporting obligations as set out in this Deed.

## Ongoing duty of disclosure and cooperation and audits

### If prior to Close-Out, the Contractor is the subject of an Adverse Ruling or Enforceable Undertaking it must provide notice to the Principal and the FJC Unit within 10 Business Days of the Adverse Ruling or Enforceable Undertaking being made.

### The Contractor must:

#### cooperate with all reasonable requests from the Principal seeking evidence of the Contractor's compliance with the FJC and the FJC Plan Addendum;

#### permit the Principal Representative, an accountant or auditor on behalf of the Principal, DJPR or any other person authorised by the Principal or DJPR, from time to time during ordinary business hours and upon notice, to inspect and verify all records maintained by the Contractor relating to compliance with the FJC and FJC Plan Addendum under this Deed; and

#### ensure that its employees, agents and subcontractors give all reasonable assistance to any person authorised by the Principal or DJPR to undertake such audit or inspection.

### The Principal will bear all costs associated with undertaking any audit in accordance with section 3.5(b).

###  The Contractor acknowledges and agrees that the Principal, DJPR, the Principal's and DJPR's duly authorised representatives (including the FJC Unit) are authorised to obtain information from any relevant persons, firms or corporations, including third parties, regarding the Contractor's compliance with the FJC.

### The obligations set out in this section 3.5 are in addition to and do not derogate from any other obligation under this Deed.

### A failure to comply with this section 3.5 will constitute a breach of this section 3.

## FJC Subcontracting

###  The Contractor warrants that any FJC Subcontractors engaged or proposed to be engaged to perform work under this Deed hold a valid Pre-Assessment Certificate when they are engaged or proposed to be engaged.

### The Contractor must ensure that any subcontracts entered into by the Contractor with FJC Subcontractors in relation to work under this Deed contain clauses requiring FJC Subcontractors to:

#### comply with the FJC;

#### hold a valid Pre-Assessment Certificate;

#### notify the Contractor if its Pre-Assessment Certificate is revoked, or if its Pre-Assessment Certificate expires without being replaced with a new Pre-Assessment Certificate;

#### comply with the ongoing duty of disclosure and cooperation set out in section 3.5, as if references to the Contractor were references to the FJC Subcontractor;

#### comply with the FJC Plan Addendum, to the extent that it applies to work performed under the subcontract;

#### provide necessary information that allows the Contractor to comply with its reporting obligations under section 3.4; and

#### permit the Principal and DJPR to exercise their inspection and audit rights under section 3.5.

### The subcontracting obligations set out in this section 3.6 are in addition to and do not derogate from any other obligations under this Deed.

### The Contractor's failure to comply with this section 3.6 will constitute a breach of this section 3.

## Use of information

1. The Contractor acknowledges and agrees that:

### FJC Unit will assess the Contractor's compliance with the FJC.

### Information regarding the Contractor's compliance with the FJC including any disclosures regarding Adverse Rulings or Enforceable Undertakings:

#### will be reported by the Principal to the FJC Unit in compliance with the Principal's obligations under the FJC; and

#### may be disclosed in the circumstances authorised or permitted under the terms of this Deed or as otherwise required by Law; and

### nothing in this provision removes the obligation for the Contractor to report Adverse Rulings or Enforceable Undertakings to the FJC Unit as per section 3.5.

# Social Procurement Framework

## Definitions

1. Unless otherwise expressly defined below, expressions used in section 4 have the meanings given to them in this Deed:
2. **Apprentice** [means](http://means) a person whom an employer has undertaken to train under a Training Contract. For the purposes of the Building Equality Policy Commitments, only Apprentices primarily working onsite and undertaking an apprenticeship related to onsite building and construction work may be counted against the minimum Building Equality Policy Commitments.
3. **Building Equality Policy** means the Victorian government’s Building Equality Policy which came into effect on 1 January 2022, accessible at [www.vic.gov.au/building-equality-policy](http://www.vic.gov.au/building-equality-policy), as amended from time to time.
4. **Building Equality Policy Actions** means the three actions that the Contractor is required to deliver under the Building Equality Policy:

### Action 1 – meet project specific gender equality targets;

### Action 2 – engage women as apprentices and trainees to perform building and construction work; and

### Action 3 – implement Gender Equality Action Plans.

1. **Building Equality Policy Commitment** means a commitment made by the Contractor, as set out in the Social Procurement Commitment Schedule, to deliver the Building Equality Policy Actions.
2. **Deemed Hours Formula** has the same meaning as Deemed Hours Formula in the Local Jobs First Policy Agency Guidelines as amended from time to time and accessible at www.localjobsfirst.vic.gov.au/.
3. **Gender Equality Action Plan** or **GEAP** means the Organisation Wide Gender Equality Action Plan and the Project Specific Gender Equality Action Plan.
4. **Kinaway** means Kinaway Chamber of Commerce Victoria Limited (ACN 600 066 199).
5. **Local Jobs First Policy** means the policy of the Victorian Government made under section 4 of the Local Jobs First Act.
6. **Map for Impact** means the online map produced by the Victorian Social Enterprise Mapping Project (accessible at <https://mapforimpact.com.au/>), as amended from time to time.
7. **Organisation Wide Gender Equality Action Plan** means the plan attached at Annexure A to the Social Procurement Commitment Schedule.
8. **Project Specific Gender Equality Action Plan** means Plan attached at Annexure B to the Social Procurement Commitment Schedule.

### **Social or Sustainable Outcome** means an outcome listed in Tables 1 or 2 of the Social Procurement Framework.

1. **Social Procurement Commitment** means a commitment to deliver a Social or Sustainable Outcome through an individual procurement activity, as identified in the Social Procurement Commitment Schedule.
2. **Social Procurement Commitment** **Schedule** means the agreed Social Procurement Commitment Proposal which includes the agreed Social Procurement Commitments, the agreed Building Equality Policy Commitments and the Gender Equality Action Plans.
3. **Social Procurement Framework** means Victoria's Social Procurement Framework published 26 April 2018 by the Victorian Government, as amended from time to time.
4. **Social Procurement Performance Report** has the meaning given in section 4.2(g)(i).
5. **Social Procurement Target** means the requirement that the Contractor expend an amount equivalent to at least [1.5]% of the Initial TOC in accordance with the Social Procurement Commitment Schedule***. [Drafting Note: The percentage will be updated to reflect amount in the Contractor's Offer, to the extent that it exceeds [1.5]% of the Initial TOC. As appropriate, agencies may replace the percentage with an agreed fixed amount.]***
6. **Social Traders** means Social Traders Limited (ACN 132 665 804).
7. **Supply Nation** means Australian Indigenous Minority Supplier Office Limited (trading as Supply Nation) (ACN 134 720 362).
8. **Trainee** means a person (other than an Apprentice) employed under a Training Contract. For the purposes of the Building Equality Policy Commitments, only Trainees primarily working onsite and undertaking a traineeship related to onsite building and construction work may be counted against the minimum Building Equality Policy Commitments.
9. **Training Contract** means a training contract lodged with the Victorian Registration and Qualification Authority (**VRQA**) or a person nominated by the VRQA in accordance with the *Education and Training Reform Act* *2006* (Vic).
10. **Victorian Aboriginal business** means a business that:

### is at least 50 per cent Aboriginal and/or Torres Strait Islander-owned;

### undertakes commercial activity; and

### operates and has business premises in Victoria.

1. **Victorian Social Enterprise** means an organisation that is:

### certified by Social Traders, and operates and has a business premises in Victoria; or

### listed on the Map for Impact.

1. **VMC** means the information management platform that collects data to support government and industry with the Social Procurement Framework and Local Jobs First policy, administered by the ICN and formerly the Victorian Management Centre.

## Social Procurement Framework

### (**Social Procurement Target**): The Contractor must meet or exceed the Social Procurement Target.

### (**Social Procurement Commitment Schedule**): The Contractor must, in undertaking the Contractor's Activities:

#### comply with the Social Procurement Commitment Schedule ; and

#### perform all Social Procurement Commitments and the Building Equality Policy Commitments by the due date for performance as set out in the Social Procurement Commitment Schedule or directed by the Principal.

### (**Acknowledgement**): The Contractor acknowledges and agrees that the Social Procurement Commitment Schedule (including the Social Procurement Commitments and the Building Equality Policy Commitments) applies until all of its reporting obligations as set out in section 4.2(g) are fulfilled.

### (**Application to the Contractor's Activities**): The Contractor agrees that the Social Procurement Commitments will bind the Contractor in relation to:

#### the Contractor's Activities as a whole, including any Variation; and

#### all Contractor's Activities conducted off site provided that the work has been specified as part of this Deed.

### (**Default**): Subject to section 4.2(ee), the Contractor's failure to undertake all reasonable measures to achieve compliance with sections 4.2(a) to 4.2(i) may be determined by the Principal to constitute a Default.

### (ee) (**No Default**): The Contractor's failure to comply with its obligations:

#### in section 4.2(b) in relation to its Building Equality Policy Commitments; or

#### in section 4.2(f) in relation to Subcontracts and Building Equality Policy Commitments,

### at any time prior to 1 January 2024 will not constitute a Default.

### (**Subcontracts**): The Contractor must ensure that any Subcontracts contain clauses requiring Subcontractors to:

#### comply with the Social Procurement Commitments and Building Equality Policy Commitments to the extent that it applies to work performed under the Subcontract;

#### provide necessary information that allows the Contractor to comply with its obligations under section 4; and

#### permit the Principal to exercise its inspection and verification rights under section 4.2(i).

### (**Reports**): The Contractor has the following reporting obligations:

#### the Contractor must submit written reports (**Social Procurement Performance Reports**) to the Principal demonstrating its:

##### compliance with the Social Procurement Commitment Schedule: and;

##### performance against the Social Procurement Commitments and the Building Equality Policy Commitments;

#### the Social Procurement Performance Report submitted in accordance with section 4.2(g) must:

##### be submitted (where possible) by the Contractor using the VMC - or as otherwise agreed by the Principal;

##### be in a form satisfactory to the Principal (acting reasonably);

##### include details specifying the Contractor's performance in complying with the Social Procurement Commitment Schedule; and

##### include any reasons for non-compliance with the Social Procurement Commitment Schedule; and include all supporting information reasonably required by the Principal to verify the contents of the Social Procurement Performance Report;

#### Social Procurement Performance Reports must be submitted by the Contractor to the Principal:

##### as specified in the Social Procurement Commitment Schedule; and

##### otherwise, at frequency of at least every 6 Months.

#### in addition to the Social Procurement Performance Reports, the Contractor must submit:

##### a final Social Procurement Performance Final Report no earlier than 12 months prior to the Date of Practical Completion; and

##### a statutory declaration made by a director of the Contractor or the Contractor's Chief Executive Officer or Chief Financial Officer declaring that the contents of the final Social Procurement Performance Report are true and correct.

### (**Failure to meet Building Equality Policy Commitments**): With regard to Building Equality Policy Commitments, the Contractor must:

#### notify the Principal as soon as practicable, but no later than 20 Business Days after becoming aware that it will not meet some or all of the Building Equality Policy Commitments; and

#### set out the steps proposed to be taken to meet the Building Equality Policy Commitments.

### (**Verification of the Contractor's compliance with Social Procurement Commitment Schedule**): The Contractor:

#### acknowledges and agrees that the Principal will have the right to inspect the Contractor's records to verify its compliance with the Social Procurement Commitment Schedule;

#### must:

##### permit the Principal, or any person authorised by the Principal, from time to time during Business Hours and upon notice, to inspect, verify and make copies, at the Principal's expense, of all records maintained by the Contractor for the purposes of ensuring the Contractor's compliance with the Social Procurement Commitment Schedule at the Contractor's premises, or provide copies of those records to the Principal at its request;

##### permit the Principal, or any person authorised by the Principal, from time to time to undertake a review of the Contractor's performance against the Social Procurement Commitments or the Building Equality Policy Commitments;

##### ensure that any the Contractor Associate gives all reasonable assistance to any person authorised by the Principal to undertake such inspection, verification or review; and

#### acknowledges and agrees that the Principal and the Principal Representative, are authorised to obtain information from any relevant persons, firms or corporations, including third parties, regarding the Contractor's compliance with the Social Procurement Commitment Schedule.

### (**Use of Social Procurement Framework information**): The Contractor acknowledges and agrees that:

#### the statistical information contained in the Social Procurement Commitment Schedule and the measures of the Contractor's compliance with the Social Procurement Commitment Schedule as reported:

##### will be provided to any departments and agencies responsible for the Social Procurement Framework and the Building Equality Policy, for combined reporting purposes for each financial year on the compliance and performance of the Social Procurement Framework and the Building Equality Policy during that year;

##### may be considered in the assessment or review of the Contractor's eligibility to tender for future Victorian Government contracts; and

##### may be disclosed in the circumstances authorised or permitted under the terms of this Deed or as otherwise required by Law; and

#### the Principal, or any person authorised by the Principal may use any information provided by the Contractor to assess and review the impact of the Social Procurement Framework and Building Equality Policy on the building and construction industry.

### (**No derogation**): The obligations set out in section 4.2(f), (g) and (i) are in addition to, and do not derogate from, any other obligations set out in this Deed.

# Aboriginal Participation Requirements

## Definitions

1. Unless otherwise expressly defined below, expressions used in section 5 have the meanings given to them in this Deed:
2. **Aboriginal Participation Requirements** means the requirement that at least [#]% of the Contractor Workforce will be Aboriginal Persons undertaking Contractor's Activities in Victoria, calculated as an Annualised Employee Equivalent against the Contractor Workforce. ***[Drafting Note: The percentage for the Aboriginal Participation Requirements will be updated to reflect the commitments in the Contractor's Offer, to the extent that it exceeds [#]% of the Contractor Workforce.]***
3. **Aboriginal Persons** means persons who:

### are descended from an Australian Aboriginal or Torres Strait Islander;

### identify as an Australian Aboriginal or Torres Strait Islander; and

### are accepted as an Australian Aboriginal or Torres Strait Islander by an Australian Aboriginal or Torres Strait Island community (as applicable).

1. **Annualised Employee Equivalent (AEE)** means the figure calculated by dividing the total number of ordinary working hours that an employee worked and was paid for over the reporting period by the total number of fulltime ordinary working hours paid per annum summed over the reporting period. The employee's working hours include paid leave (e.g. sick leave, paternity leave, recreation leave, long service leave etc.) but not unpaid leave.
2. **APR Monitoring Table** has the meaning given in section 5.2(c).
3. **Contractor Workforce** means the workforce employed or otherwise engaged by:

### the Contractor;

### any Key Significant Subcontractor;

### any Significant Subcontractor; and

### any person who enters into a contract with any of the parties listed in paragraphs (a) to (c) in connection with the Contractor's Activities,

1. undertaking all or any part of the Contractor's Activities in Australia or New Zealand up to the Date of Practical Completion and includes persons performing a head office, corporate or governance role to the extent such role is in connection with the Project, provided that to the extent a person undertakes multiple roles in connection with the Project, that person may not be counted more than once.

**Cure Plan (APR)** has the meaning given in section 5.3(a).

## Aboriginal Participation Requirements

### (**Compliance**): The Contractor must comply with the Aboriginal Participation Requirements in the carrying out of the Project.

### (**Records**): The Contractor must prepare and maintain records demonstrating its compliance with the Aboriginal Participation Requirements.

### (**Reporting**): The Contractor must provide to the Principal:

#### a table:

##### detailing the Contractor's compliance with the Aboriginal Participation Requirements; and

##### identifying and explaining any departures from the Aboriginal Participation Requirements,

1. (**APR Monitoring Table**); and

#### a statutory declaration made by a director of the Contractor or the Contractor's Chief Executive Officer or Chief Financial Officer declaring that the information contained in the APR Monitoring Table is true and accurate,

##### within 20 Business Days after the end of each Financial Year and upon:

#### the earlier of the Date of Practical Completion and 1 Month after the Date for Practical Completion; and

#### the Date of Close-Out.

### (**Further information**): At the request of the Principal Representative, the Contractor must provide further information or explanation of any departures from the Aboriginal Participation Requirements as reported in the APR Monitoring Table.

## Cure Plan (APR)

### (**Cure Plan** **(APR)**): If at any time:

#### following receipt of a report from the Contractor submitted in accordance with section 5.3(b), the Principal’s Representative notifies the Contractor that it is not satisfied that:

##### the Contractor is meeting the Aboriginal Participation Requirements; or

##### the Contractor will be able to meet the aggregate Aboriginal Participation Requirements; or

#### the Contractor considers that the requirements of the Aboriginal Participation Requirements are not being met,

* 1. the Contractor must unless otherwise agreed with the Principal:

#### prepare a plan which demonstrates the Contractor’s ability to meet the aggregate Aboriginal Participation Requirements (**Cure Plan** (**APR**)); and

#### submit the Cure Plan (APR) to the Principal’s Representative for review in accordance with the Review Procedures.

### (**Provision of Cure Plan (APR)**): When requested by the Principal, the Contractor must provide the Cure Plan (APR) to the Principal’s Representative within the time stated in the Principal’s request.

### (**Compliance**): The Contractor must comply with the Cure Plan (APR).

## Certification

Within 20 Business Days of the Date of Practical Completion, the Principal Representative must certify the percentage of the Contractor Workforce which was comprised of Aboriginal Persons undertaking Contractor's Activities in Victoria, calculated as an Annualised Employee Equivalent against the Contractor Workforce, by issuing a certificate.

## Verification of the Contractor's compliance with APR

### (**Review of performance**): The Contractor must:

#### permit the Principal, or any person authorised by the Principal, from time to time during Business Hours and upon notice, to inspect, verify and make copies, at the Principal's expense, of all records maintained by the Contractor for the purposes of ensuring the Contractor's compliance with the Aboriginal Participation Requirements, at the Contractor’s premises, or provide copies of those records to the Principal at its request;

#### permit the Principal, or any person authorised by the Principal, from time to time to undertake a review of the Contractor’s performance in accordance with the Aboriginal Participation Requirements; and

#### ensure that any the Contractor Associate gives all reasonable assistance to any person authorised by the Principal to take copies of records or undertake such inspection, verification or review in accordance with this section 5.5.

### (**Authorisations**): The Contractor acknowledges and agrees that the Principal, and the Principal Representative, are authorised to obtain information from any relevant persons, firms or corporations, including third parties, regarding the Contractor’s compliance with the Aboriginal Participation Requirements.

### (**No derogation**): The obligations set out in section 5.5 are in addition to, and do not derogate from, any other obligations set out in this Deed.

## Use of APR information

1. The Contractor acknowledges and agrees that the statistical information in relation to the Aboriginal Participation Requirements may be:

### (**report of operations**): included in the Principal's report of operations under Part 7 of the *Financial Management Act 1994* (Vic) in respect of the Principal's compliance with the Aboriginal Participation Requirements in the Financial Year to which the report of operations relates;

### (**Aboriginal Participation Requirements Report**): provided to the responsible Minister for the Aboriginal Participation Requirements for inclusion in the responsible Minister for the Aboriginal Participation Requirements' report to the Parliament for each Financial Year on the implementation of the Aboriginal Participation Requirements during that year; and

### (**disclosure**): disclosed in the circumstances set out in clause 53.1 of this Deed or as otherwise required by Law.

# Modern Slavery

## Definitions

1. Unless otherwise expressly defined below, expressions used in section 6 have the meanings given to them in this Deed:
2. **Guiding Principles on Business and Human Rights** means the United Nations' Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework available at https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr\_en.pdf.
3. **Grievance Mechanism** means a process for handling a complaint or grievance about Modern Slavery practices that is consistent with the criteria set out in the Guiding Principles on Business and Human Rights.
4. **Modern Slavery** has the meaning given in the Modern Slavery Legislation.
5. **Modern Slavery Legislation** means the *Modern Slavery Act 2018* (Cth) and any similar legislation in force from time to time in Victoria.
6. **Modern Slavery Risk Management Plan** has the meaning given in section 6.2(d).

## Modern Slavery

### (**Modern Slavery Legislation**): The Contractor must:

#### comply with the Modern Slavery Legislation to the extent that such legislation is applicable to the Contractor;

#### facilitate the Principal complying with any Modern Slavery Legislation applicable to the Principal, by providing in a timely manner all information concerning its supply chain and that of the Contractor Associates which the Principal may reasonably require; and

#### ensure that such reporting and other information is accurate, complete and in such form as the Principal requires.

### (**Modern Slavery practices**): The Contractor must take reasonable steps to identify, assess and address risks of Modern Slavery practices in the operations and supply chains used in the provision of the Contractor's Activities.

### (**Modern Slavery training**): The Contractor will ensure any Contractor Associates who are responsible for managing the operations and supply chains used in the performance of the Contractor's Activities have undertaken suitable training to be able to identify and report Modern Slavery.

### (**Modern Slavery Risk Management Plan**): Within one month of the Contract Date, the Contractor will prepare and implement a Modern Slavery Risk Management Plan in relation to its performance of the Contractor's Activities and, if requested by the Principal, provide a copy of this plan to the Principal for review in accordance with the Review Procedures. The Modern Slavery Risk Management Plan must, at a minimum, detail:

#### the Contractor's steps to identify and assess risks of Modern Slavery practices in the operations and supply chains used in the performance of the Contractor's Activities;

#### the Contractor's processes for addressing any Modern Slavery practices of which it becomes aware in the operations and supply chains used in the performance of the Contractor's Activities;

#### the content and timing of training for the Contractor Associates regarding Modern Slavery; and

#### the Grievance Mechanisms available to the Contractor Associates,

### (**Modern Slavery Risk Management Plan**).

### (**Compliance with Modern Slavery Risk Management Plan**): The Contractor must comply with the Modern Slavery Risk Management Plan in its performance of the Contractor's Activities. For the avoidance of doubt, nothing in this section derogates from the Contractor's other obligations arising under this Deed or otherwise in relation to the provision of the Contractor's Activities.

### (**Action to address Modern Slavery**): If at any time the Contractor becomes aware of Modern Slavery practices in the operations or supply chains used in the performance of the Contractor's Activities, the Contractor must as soon as reasonably practicable:

#### take all reasonable action to address or remove these practices, including where relevant by addressing any practices of other entities in its supply chains; and

#### take all reasonable steps to remediate any adverse impacts caused or contributed to by the Contractor from these practices in accordance with the Guiding Principles on Business and Human Rights.

### (**Recruitment Fees**): Without limiting section 6.2(f), the Contractor must:

#### not require any the Contractor Associate to pay fees, charges, expenses or financial obligations incurred in order to secure their employment or placement (**Recruitment Fees**), regardless of the manner, timing or location of the imposition or collection of these Recruitment Fees;

#### not destroy or exclusively possess, whether permanently or otherwise, the travel or identity documents of any Contractor Associate; and

#### ensure the Contractor Associates can access a Grievance Mechanism to safely report any instances of Modern Slavery in the operations and supply chains used by the Contractor in its performance of the Contractor's Activities.

### (**Subcontractors**): The Contractor must take reasonable steps to ensure that all Subcontracts contain Modern Slavery provisions that are reasonably consistent with the provisions in this section 6 (including compliance with the Modern Slavery Laws to the extent applicable).

# Digital Asset Policy

## Definitions

1. Unless otherwise expressly defined below, expressions used in section 7 have the meanings given to them in this Deed:
2. **Digital Asset Policy** means the Victorian Government Digital Asset Policy prescribing requirements for the procurement and delivery of all Victorian capital project contracts greater than $20 million in value.
3. **High Value High Risk Projects** means projects classified as such under the HVHR Project Assurance Framework.
4. **HVHR Project Assurance Framework** means the high value high risk project assurance framework published by the Department of Treasury and Finance in October 2017, as may be updated from time to time.

## Digital Asset Policy

### (**Digital Asset Policy Requirements**): The Contractor must, in performing its obligations under this Deed, comply with the Digital Asset Policy to the extent practical.

### (**Principles**): The Contractor agrees to align with the aim of the Digital Asset Policy to use digital processes to support timely and effective decision making, by abiding by the following data principles:

#### data originates from a single source;

#### data is continuously shared and trusted;

#### data is integrated and federated;

#### data is produced with common standards and meta-data; and

#### data has transparency of origin, author, and an auditable history.

### (**Duration**): The Contractor acknowledges and agrees that its obligations set out in the Digital Asset Policy apply until all its reporting obligations set out in this section 7 are fulfilled.

### (**Reporting**): The Contractor must:

#### prepare and maintain records demonstrating its compliance with the Digital Asset Policy;

#### include, in its Monthly Progress Report, evidence demonstrating its progress towards its obligations required to be performed under the requirements set out in the Digital Asset Policy, which must:

##### be in a form satisfactory to the Principal (acting reasonably); and

##### include:

###### all supporting information reasonably required by the Principal or the Victorian Government to verify its compliance with the requirements of the Digital Asset Policy; and

###### any reasons for deviations from the Digital Asset Policy.

### (**Subcontracting**): The Contractor acknowledges and agrees that this section 7 applies to any Subcontract and must ensure that each Subcontract includes an obligation on the Subcontractor to:

#### use its best endeavours to comply with the requirements in the Digital Asset Policy, to the extent that it applies to the works performed under the Subcontract; and

#### provide the necessary information that allows the Contractor to comply with its reporting obligations under section 7.2(e).

# Tip Truck Owner Driver

## Definitions

1. Unless otherwise expressly defined below, expressions used in section 8 have the meanings given to them in this Deed:
2. **Excavation Work** means work that involves the removal of soil or rock from a site to form an open face, hole or cavity.
3. **Freight Broker** means a broker or agent in the business of procuring or arranging the engagement of independent contractors by hirers, including a person who provides an online platform that facilitates the engagement of contractors by hirers.
4. **Published Rates** means the rates and cost schedules for Tip Truck Owner Drivers developed and published in accordance with the *Owner Drivers and Forestry Contractors Act 2005* (Vic), as revised from time to time in accordance with the *Owner Drivers and Forestry Contractors Act 2005* (Vic).
5. **Relevant Published Rate** means those of the Published Rates applicable to the type of tip truck to be provided by the Tip Truck Owner Driver.
6. **Tip Truck Owner Driver** means an independent contractor who drives a tip truck in connection with Excavation Work in the building and construction industry.

## Tip Truck Owner Drivers

### (**Application**): This section 8 applies where any aspect of the delivery of the Contractor's Activities involves the use of a Tip Truck Owner Driver.

### (**Payment of Top Truck Owner Driver**): Where the Contractor engages a Tip Truck Owner Driver directly, or indirectly through a Subcontractor or Freight Broker, the Contractor must ensure that the Tip Truck Owner Driver is paid according to the following:

#### if the Tip Truck Owner Driver is to be paid at an hourly rate then that must be at least at the Relevant Published Rate plus any Freight Broker fees due and payable and road tolls reasonably incurred;

#### if the Tip Truck Owner Driver is to be paid on a per load rate then the per load rate must be arrived at based on a reasonable estimate of the time likely to be required to complete the specific job, multiplied by the Relevant Published Rate adjusted for any agreed incentive component, plus any Freight Broker fees due and payable and road tolls reasonably incurred;

#### for the purposes of calculating a per load rate, a reasonable estimate of the time likely to be required must:

##### take into account all of the relevant circumstances of the specific job, including the volume or weight of the load to be moved, distance to be travelled for transfer, local traffic conditions, time of day, expected waiting times, special site conditions and other special circumstances; and

##### be based on what a competent and experienced person in the position of the person engaging the Tip Truck Owner Driver would consider to be a reasonable estimate;

#### if a per load rate includes an incentive component in addition to the minimum rate, the incentive component may be reduced in proportion to any shortfall in the load moved, as agreed between the Tip Truck Owner Driver and the party engaging the Tip Truck Owner Driver; and

#### if the Tip Truck Owner Driver is underpaid, the Contractor must either pay the amount of the underpayment or otherwise ensure that it is paid by the relevant subcontractor or Freight Broker.

# Protective Data Security Standards

## Definitions

1. Unless otherwise expressly defined below, expressions used in section 9 have the meanings given to them in this Deed:
2. **PDP Act** means the *Privacy and Data Protection Act 2014* (Vic).
3. **Protective Data Security Plan** means the plan prepared by the Principal for the purposes of section 89 of the PDP Act, as provided by the Principal to the Contractor from time to time.
4. **Protective Data Security Standards** has the meaning given in the PDP Act.
5. **Public Sector Agency** has the meaning given in the PDP Act.
6. **Public Sector Data** has the meaning given in the PDP Act.
7. **Public Sector Data Systems** has the meaning given in the PDP Act.

## Protective Data Security Standards

1. Notwithstanding any other provision of this Deed, the Contractor must:

### not do any act or engage in a practice that if done by a Public Sector Agency would contravene a Protective Data Security Standard in respect of:

#### Public Sector Data; or

#### Public Sector Data Systems kept by the Contractor under or in connection with this Deed;

### in carrying out all Contractor's Activities, collect, hold, manage, use, disclose and transfer Public Sector Data only:

#### for the purposes of meeting the Contractor's obligations under this Deed;

#### in accordance with the parts of the Protective Data Security Plan relevant to the Contractor; and

#### in accordance with all other security requirements the Principal notifies to the Contractor in writing, where those requirements are reasonably necessary to ensure the parties comply with the PDP Act and the Protective Data Security Standards;

### where disclosing, transferring or otherwise making accessible Public Sector Data to any third party (including an Associate), ensure that the third party agrees to and complies with this section 9 to the same extent as the Contractor (except that the third party may not further transfer, disclose or otherwise make accessible Public Sector Data without the Principal's prior written consent); and

### on termination or expiry of this Deed or at any time on request by the Principal, return to the Principal or securely destroy (at the Principal's discretion) all copies or other records containing Public Sector Data.

# Freedom of Information Act

### The Contractor acknowledges and accepts that the Principal has obligations under the *Freedom of Information Act 1982* (Vic) in relation to the publication and disclosure of certain documents and provisions and particulars of this Deed.

### In order to comply with the Principal’s obligations under the *Freedom of Information Act* *1982* (Vic), the Contractor:

#### acknowledges and accepts that the documentation within the possession of the Principal, whether created by the Principal or received by the Principal from another party in respect of the performance of the Contractor's Activities may be subject to disclosure under the *Freedom of Information Act 1982* (Vic);

#### acknowledges and consents to the Principal making available all information in relation to the Contractor or this Deed as it decides to release, or releases in order to comply with a decision or order of the Victorian Civil and Administrative Tribunal, under the *Freedom of Information Act 1982* (Vic); and

#### must co-operate and comply with any requests from the Principal regarding any application under the *Freedom of Information Act 1982* (Vic) to access any documentation within the possession of the Principal, whether created by the Principal or received by the Principal from another party in respect of the performance of the Contractor's Activities.

### Possession in this context includes documentation that the Principal has an immediate right to possession of, including documents that the Principal is entitled to call, request or hold under this Deed.

# Cladding

## Definitions

1. Unless otherwise expressly defined below, expressions used in section 11 have the meanings given to them in this Deed:

**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.

1. **Prohibited Cladding Products** means:

### 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

### expanded polystyrene products used in an external insulation and finish (rendered) wall system.

1. **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.

## Cladding Products

1. The Contractor must:

### not install Prohibited Cladding Products into any building work in connection with buildings of Type A Construction or Type B Construction; and

### if it becomes aware of the use of any Prohibited Cladding Products being used on the Works, immediately notify the Principal.