

Central Highlands Water - General Conditions for the Provision of Services

1 Provision of Services

The Supplier must provide the Services to Central Highlands Water (CHW) in accordance with the Agreement, and must:

- (a) commence the Services on the Commencement Date, complete the Services to CHW's satisfaction by the Completion Date and comply with any other dates for delivery specified in the Agreement;
- (b) provide the Services in a proper, timely and efficient manner using that standard of care, skill, diligence, prudence and foresight that would reasonably be expected from a prudent, expert and experienced provider of services that are identical with or similar to the Services;
- (c) promptly notify CHW as soon as it becomes aware of any delay or possible delay in the supply of the Services in accordance with the Agreement;
- (d) ensure the provision of the Services to the highest quality of work, compliance with all relevant Australian Standards and the delivery of the Services with the utmost efficiency;
- (e) use appropriately skilled and qualified Personnel to provide the Services;
- (f) act in good faith and in the best interests of CHW;
- (g) comply with any reasonable directions in relation to the Services given by CHW from time to time;
- (h) provide any services, functions and responsibilities (including any incidental services, functions and responsibilities) not expressly specified in the Agreement as within the scope of the Supplier's responsibilities but which are reasonably and necessarily required for, or related to, the proper performance and provision of the Services;
- (i) obtain and pay for all permits, licences, certificates, registrations, approvals and authorisations required for the performance and completion of the Services; and
- (j) provide any and all equipment and other resources necessary for the performance of the Services.

2 Price for the Services

The Fees applicable to the Services are those set out in the Purchase Order and are fixed for the duration of the Agreement. Any sum for additional expenses or additional Services may only be charged if provided for in the Purchase Order, or with the prior written approval of CHW.

3 Invoicing and payment

- (a) The Supplier must submit to CHW a tax invoice in respect of the Fees for the Services once they are completed, or at such other time or times as agreed by the parties in writing. A tax invoice submitted for payment must contain the information necessary to be a tax invoice for the purposes of the GST Act, together with such information as CHW may reasonably require, and must be sent to the address specified in the Purchase Order.
- (b) On or following acceptance of the Services, CHW will pay the invoiced amount within 30 days of receipt of an accurate invoice. However, if CHW disputes the invoiced amount it must pay the undisputed amount (if any) and notify the Supplier of the amount in dispute and the reason for the reduced payment. The parties will endeavour to resolve any such dispute by negotiation in good faith.
- (c) Payment of an invoice is not evidence that the Services have been supplied in accordance with the Agreement or conform with the Specification but is merely payment on account.
- (d) CHW will, on demand by the Supplier, pay simple interest on a daily basis on any Overdue Amount, at the rate for the time being fixed under the *Penalty Interest Rates Act 1983* (Vic).

4 Failure to perform

- (a) Without limiting any other available remedy, if the Supplier fails to provide any of the Services in accordance with the Agreement, CHW will not be required to pay for those Services until they are provided correctly and may require the Supplier to remedy any default in, or re-perform, the Services within the time specified by CHW (which time must be reasonable having regard to the nature of the relevant Services).
- (b) If the default referred to in **clause 4(a)** is not capable of being remedied or the Services are not capable of being re-performed, or if the Supplier fails within the time specified by CHW to remedy the default or re-perform the Services, CHW may, in its absolute discretion, either have the Services remedied or re-performed by a third party or do so itself. In either case, the Supplier must pay to CHW on demand the reasonable costs incurred by CHW in doing so, and CHW may deduct those costs from any sum payable by it to the Supplier.
- (c) Nothing in this **clause 4** derogates or otherwise limits any other remedy available to CHW at law.

5 Defects

- (a) Where a Defect in the Services is discovered within 90 days of completion of the Services, CHW may direct the Supplier:
 - (i) to rectify the Defect and the Supplier must rectify that Defect within 7 days or such other period directed by CHW; or
 - (ii) that it accepts a Defect, in which case the Defect shall be deemed to be a variation and valued accordingly.
- (b) If the Supplier fails to rectify any Defect to CHW's satisfaction within the required time, CHW may carry out the rectification work itself or by another contractor and the cost of doing so shall be a debt due from the Supplier to CHW.

6 Warranties

The Supplier warrants to CHW that:

- (a) **(Capacity)** it has the right to enter into the Agreement and perform the Services;
- (b) **(Purpose)** where CHW has, either expressly or by implication, made known to the Supplier any particular purpose for which the Services are required, the Services will be performed in such a way as to satisfy that purpose;
- (c) **(Potable Water)** if the Services relate to the supply of potable water, the Services shall comply in all respects with whichever are the more onerous requirements of the applicable WSAA Standards or Australian / New Zealand Standard 4020 (Testing of Products for use in contact with drinking water);
- (d) **(Conflict)** it and its Personnel do not hold any office or possess any property, are not engaged in any business or activity and do not have any obligations whereby duties or interests are or might be created in conflict with or might appear to be created in conflict with its obligations under the Agreement;
- (e) **(No inducement)** no inducement, payment or promise has been made by the Supplier to any CHW Personnel in connection with the Agreement or the Services to be provided by the Supplier under it;
- (f) **(IP)** it is entitled to use and deal with any Intellectual Property Rights which may be used or created by or on behalf of it in connection with the Services and to grant to CHW the licences contemplated by the Agreement;
- (g) **(Trust)** it has not entered into the Agreement on behalf of a trust; and
- (h) **(No infringement)** the receipt of the Services and the possession or use of any outputs of the Services by CHW will not infringe the Intellectual Property Right or other rights of any person or any Laws.

7 Liability

The Supplier must at all times indemnify, and will continue to indemnify and hold harmless and defend, CHW and each of its Personnel (**Indemnified Party**) against any liabilities, losses, damages, claims, actions costs and expenses (including consequential losses, indirect losses, loss of revenue and legal expenses, determined on a full indemnity basis) which any of them suffers or incurs as a result of any of the following:

- (a) personal injury, including sickness and death;
- (b) property damage;
- (c) a breach of an obligation of confidence or privacy, whether under the Agreement or otherwise;
- (d) any fraudulent act or omission of the Supplier or its Personnel;
- (e) any wilful misconduct or unlawful act or omission by the Supplier or its Personnel;
- (f) breaches of logical or physical security caused or contributed to by the Services;
- (g) loss or corruption of Data;
- (h) any infringement or alleged infringement of the Intellectual Property Rights or other rights of any person, including any third party,

except to the extent that any such liability or loss is caused by the negligence or other wrongful act or omission of the Indemnified Party.

To the extent that the indemnity in this **clause 7** refers to persons other than CHW, CHW holds this clause on trust for those other persons.

8 Intellectual Property Rights

- (a) Subject to **clause 8(c)**, all Contract Intellectual Property vests in and is the property of CHW from the time of its creation and the Supplier irrevocably and unconditionally assigns to CHW, free of additional charge, all of its right, title and interest in and to the Contract Intellectual Property. The Supplier must sign all documents and do all things reasonably required to ensure that such assignment is effected.
- (b) The Supplier warrants that it has or will procure from all relevant persons who are authors or makers of any Contract Intellectual Property a written assignment to CHW of all Intellectual Property Rights of such persons in the Contract Intellectual Property as necessary to give effect to **clause 8(a)** and a written consent from all individuals involved irrevocably consenting to CHW exercising its rights in the Contract Intellectual Property in a manner that, but for the consent, would otherwise infringe the moral rights of those individuals.
- (c) All Pre-Existing Intellectual Property used by the Supplier in connection with the provision of Services or the creation of Contract Intellectual Property remains the property of the Supplier or its licensors. However, the Supplier hereby irrevocably and unconditionally grants to CHW, free of additional charge, a perpetual, non-exclusive, worldwide licence to exercise all Intellectual Property Rights in the Pre-Existing Intellectual Property (including the right to sub-licence these rights to a third party) for the purposes of receiving the full benefit of the Contract Intellectual Property and/or the Services.
- (d) The Supplier acknowledges that all materials, equipment and tools, drawings, Specifications, and data supplied by CHW to the Supplier (**CHW Materials**) and all rights in the CHW Materials are and shall remain the exclusive property of CHW. The Supplier holds the CHW Materials as bailee of the CHW Materials for CHW and shall keep the CHW Materials in safe custody at its own risk, maintain them in good condition until returned to CHW, and not dispose or use the same other than in accordance with CHW's written instructions. CHW is permitted to retake possession of the CHW Materials at any time.
- (e) CHW grants the Supplier a non-exclusive, non-transferable, royalty-free licence to use the CHW Materials for the sole purpose of performing, and only to the extent required to perform, the Services

and complying with its obligations under the Agreement during the term of the Agreement.

9 Termination

- (a) Without limiting its other rights or remedies, CHW may terminate the Agreement with immediate effect by giving written notice to the Supplier if the Supplier:
 - (i) fails to provide the Services in accordance with the Agreement;
 - (ii) is in breach of the Agreement and:
 - (A) the breach is not capable of remedy; or
 - (B) the breach is capable of remedy but the Supplier fails to remedy the breach within 30 days of receiving notice from CHW of the breach;
 - (iii) or any of its Personnel involved in the provision of the Services is guilty of fraud, dishonesty or any other serious misconduct;
 - (iv) or any of its Personnel is in breach of the warranty in **clause 6(e)**;
 - (v) commits any act or does anything that may be prejudicial or otherwise detrimental to the reputation of the State; or
 - (vi) suffers from an Insolvency Event.
- (b) CHW may terminate the Agreement at any time by giving written notice to the Supplier who must, on receipt, immediately cease all work, comply with any directions given in the notice and take appropriate action to mitigate any loss and prevent further costs being incurred with respect to the Services.
- (c) If the Agreement is terminated pursuant to **clause 9(b)**, CHW will pay the Supplier:
 - (i) all reasonable amounts due in accordance with **clause 2** for all Services performed by the Supplier in accordance with the Agreement up to the date of 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 CHW has no liability to the Supplier for any other amount.

- (d) The Supplier may terminate the Agreement by giving at least 60 days' written notice to CHW if CHW fails to pay amounts due under this Agreement. This **clause 9(d)** constitutes the Supplier's sole and exclusive right to terminate this Agreement.
- (e) Termination or expiry of the Agreement will not prejudice any right of action or remedy which may have accrued to either party prior to termination or expiry.
- (f) On termination or expiry of the Agreement, the Supplier must immediately cease using all materials that contain any Data, CHW Materials or Confidential Information by either destroying the materials or returning the materials at no additional cost to CHW.

10 Insurance

- (a) The Supplier must obtain and maintain insurance coverage at all relevant times and, if requested by CHW, for a period of up to 7 years after the Services have been completed, sufficient to cover any loss or costs that may be incurred by CHW and for which the Supplier is liable in connection with the provision of the Services, including professional indemnity insurance and, if applicable, public and products liability insurance, contract works insurance in respect of loss and damage to the works forming part of the Services and insurance of motor vehicles, plant and equipment covering loss, damage, theft and third party injury.
- (b) On request, the Supplier must provide CHW with evidence of the currency of any insurance it is required to obtain under the Agreement.

- (c) Where the required insurance is due to expire, on request by CHW, the Supplier must provide evidence of the replacement insurance prior to the expiry of the initial insurance.

11 Confidentiality, privacy and data protection

- (a) The Supplier and its Personnel, including its partners, shareholders and consultants, must keep the Confidential Information confidential and secure and must not disclose or otherwise make available any Confidential Information to any other person.

- (b) The Supplier hereby consents to CHW publishing or otherwise making available information in relation to the Supplier (and the provision of the Services) as may be required:

- (i) to comply with the Contract Publishing System;
- (ii) to other VPEs or Ministers of the State of Victoria in connection with the use of the Services;
- (iii) to any public sector agency (of the State, any other state or territory or the Commonwealth) for the purposes of benchmarking, provided that it will not identify the Supplier;
- (iv) by 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);
- (v) to comply with the *Freedom of Information Act 1982* (Vic); or
- (vi) to the IBAC.

- (c) The Supplier acknowledges that it will be bound by the Information Privacy Principles and any applicable Code of Practice with respect to any act it does or any practice it engages in, in the same way and to the same extent as CHW would have been bound by the Information Privacy Principles and any applicable Code of Practice had CHW done the act or engaged in the practice. Accordingly, the Supplier:

- (i) agrees to hold, manage, use, disclose or transfer information it collects from CHW in accordance with the Information Privacy Principles and any applicable Code of Practice; and
- (ii) in respect to information the Supplier discloses to CHW, the Supplier warrants that such information has been collected and disclosed to CHW in accordance with the Information Privacy Principles and any applicable Code of Practice.

- (d) The Supplier acknowledges that CHW is bound by the Protective Data Security Standards and 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 it collects, holds, uses, manages, discloses or transfers, on behalf CHW, under or in connection with the Agreement.

12 Access

- (a) When working on the premises of CHW or any site under the control of CHW (**Site**), the Supplier must and must ensure that its Personnel protect people and property, prevent nuisance, act in a safe and lawful manner, comply with the safety standards and policies of CHW (as notified to the Supplier from time to time) and comply with any lawful directions of CHW or its Personnel.

- (b) CHW:

- (i) must give the Supplier sufficient access to the Site to allow it to commence work on the Site within the required time;
- (ii) is not obliged to provide the Supplier with sole access to the Site; and
- (iii) may engage others to work upon or in the vicinity of the Site at the same time as the Supplier.

- (c) The Supplier:

- (i) must advise CHW of its intention to commence work on Site prior to commencing work on Site;

- (ii) must at all reasonable times give CHW and any authorised persons access to the Services, the Site or any areas off Site where the Supplier is working; and

- (iii) shall only work on the Site during the hours agreed with CHW.

13 Sub-contracting

- (a) The Supplier must not sub-contract to any third person any of its obligations in relation to the Services without the prior written consent of CHW (which may be given conditionally or withheld by CHW in its absolute discretion).

- (b) The Supplier will not, as a result of any sub-contracting arrangement, be relieved from the performance of any of its obligations under the Agreement and will be liable to CHW for all acts and omissions of a sub-contractor as though they were the actions or omissions of the Supplier itself.

14 Compliance with Law and Policy

- (a) The Supplier must, in the provision of the Services, comply with all Laws and with the lawful requirements or policy of any government, government department or other body or a governmental, semi-governmental, judicial, municipal, statutory or public entity or authority which affect or are applicable to the provision of the Services by the Supplier and with the Victorian Industry Participation Policy (if applicable).

- (b) Where, in the course of providing the Services, the Supplier or its Personnel:

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

the Supplier must (and must ensure that its Personnel) comply with the VPSC Code of Conduct.

- (c) The Supplier acknowledges that:

- (i) the Supplier Code of Conduct is an important part of the State's approach to procurement and describes the State's minimum expectations regarding the conduct of its suppliers;
- (ii) it has read and aspires to comply with the Supplier Code of Conduct; and
- (iii) 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.

15 GST

- (a) Terms defined in the GST Act have the same meaning in these Conditions as in the GST Act.

- (b) Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under or in accordance with the Agreement are expressed exclusive of GST.

- (c) If GST is imposed on any supply made under or in accordance with the Agreement, the recipient of the taxable supply must pay to the party making the taxable supply an amount equal to the GST payable on or for the taxable supply. Subject to the recipient first receiving a valid tax invoice, payment of the GST amount will be made at the same time that the consideration for the taxable supply is to be paid or provided in accordance with the Agreement.

16 Dispute Resolution

- (a) If any dispute arises under or in connection with the Agreement (**Dispute**), either party may at any time give written notice to the other (**Dispute Notice**) requesting that a meeting take place to seek to resolve the Dispute in good faith.

- (b) If the Dispute is not resolved in 14 days it will be referred to mediation (**Mediation**) conducted by the Australian Commercial Disputes Centre (**ACDC**) in accordance with the ACDC mediation guidelines (**Guidelines**) with each party bearing their own cost.
- (c) If the parties fail to settle the Dispute at Mediation, the parties may agree to submit the dispute for resolution to final and binding arbitration.
- (d) The parties will continue to perform their respective obligations under this Agreement pending the resolution of a Dispute.

17 General

- (a) The Agreement is governed by and is to be construed in accordance with the laws applicable in Victoria. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Victoria and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.
- (b) Subject to **clause 17(c)**, time is of the essence in relation to the performance by the Supplier of its obligations under the Agreement.
- (c) CHW may amend the Commencement Date or extend the Completion Date of the Services or any part thereof for any reason whatsoever, including any breach of the Agreement by CHW. The Supplier will not be entitled to recover from CHW any loss, expense or damages which it may incur as a consequence of CHW amending the Commencement Date or extending the Completion Date.
- (d) Subject to **clauses 17(c)** and **20**, no variation of the Agreement will be of any force or effect unless it is signed by CHW and the Supplier.
- (e) A waiver of any right, power or remedy under the Agreement must be in writing and signed by the party granting it. The fact that CHW fails to do, or delays in doing, something CHW is entitled to do under the Agreement, does not amount to waiver of any obligation of, or breach of obligation by the Supplier.
- (f) The Supplier must not assign or otherwise transfer any of its rights under the Agreement without the prior written consent of CHW.
- (g) CHW may set off any sums due from the Supplier to CHW under or in relation to the Agreement (including any sums due to CHW from the Supplier in respect of loss of or damage to any CHW Materials in the Supplier's possession or control) against any payments due from CHW to the Supplier under or in relation to the Agreement.

18 OHS

In performing its obligations under the Agreement, the Supplier, at its expense, must, and must ensure that any Personnel and subcontractors:

- (a) conduct the Services and maintain a workplace safely and without risk to the health, safety or welfare of any person and in accordance with the requirements of all OHS Laws and enable CHW to comply with OHS Laws;
- (b) if required by CHW, accept the appointment as 'Principal Contractor' for the Site and discharge the relevant duties under OHS Laws;
- (c) provide such information, instruction, training or supervision to any person as necessary to enable that person to perform their work in a way that is safe and without risks to health;
- (d) provide and comply with an AS4901:2001 (or equivalent) certified occupational health and safety system of work or comply with the occupational health and safety system of work provided by CHW, as is required by CHW;
- (e) repair and restore any structure, service or property damaged in any way by the Supplier's acts or omissions;
- (f) promptly notify CHW of any incident as required by the OHS Laws and any other injury, near miss, safety related incident, act, fact or circumstance associated with the Services relevant to the ability of the Supplier to conduct the Services in a manner that is safe and

without risks to health; and

- (g) upon CHW's request, demonstrate compliance with this **clause 18**.

19 Damage to Persons and Property

- (a) The Supplier must:
 - (i) provide all things and take all measures necessary to protect people and property (including property of CHW) against any damage or injury that may be caused by the Services or the Supplier; and
 - (ii) prevent, and promptly comply with reasonable requests for cessation of, nuisance, unreasonable noise and disturbance.
- (b) Where the Supplier or its Personnel or subcontractors damage any property, the Supplier must promptly, and at its own cost, rectify such damage.
- (c) The Supplier is responsible for care of the Services from and including the commencement date of the Agreement to the date of completion of the Services. If loss or damage occurs to the Services during the period of the Supplier's care, the Supplier shall, promptly at the direction of CHW and at its own cost, rectify such loss or damage. If the Supplier fails to rectify loss or damage in accordance with this **clause 19(c)**, CHW may rectify that loss or damage at the sole risk and expense of the Supplier.

20 Variations

- (a) The Supplier may not vary the Services except as directed by CHW through the issuing of a new Purchase Order.
- (b) Any Purchase Order issued by CHW pursuant to **clause 20(a)** will:
 - (i) reference the initial Purchase Order;
 - (ii) reference that it is issued pursuant to clause **20** of these Conditions;
 - (iii) constitute a variation for the purposes of the Agreement; and
 - (iv) not have the effect of creating a separate contract.
- (c) If the Supplier considers that a direction (other than a direction under **clause 19(c)**) issued by CHW will or may give rise to a variation, it must promptly, and before commencing the work, notify CHW of this in writing.
- (d) If the Supplier fails to provide a notice in accordance with **clause 20(c)**, it shall have no entitlement to claim any additional payment, adjustment to the Fees or extension to the dates for delivery whether under the Agreement or otherwise at Law in connection with that work.
- (e) The value of the variation will be as agreed in writing by the parties.

21 Entire Agreement

- (a) The issue by CHW of a Purchase Order does not constitute acceptance by CHW of any term or condition of supply provided to CHW by the Supplier unless expressly included in the Agreement or otherwise agreed in writing by CHW.
- (b) The Agreement constitutes the entire agreement between CHW and the Supplier, and replaces any previous written or oral agreements between CHW and the Supplier. Any terms and conditions provided by the Supplier are excluded from the Agreement.

22 Interpretation

In these Conditions, unless the context otherwise requires:

Agreement means all documents relevant to the agreement for the provision of the Services, including these Conditions, the Specification and the Purchase Order.

Central Highlands Water and CHW means the **Central Highlands Region Water Corporation** (trading as Central Highlands Water) ABN 75 224 340 348 of 7 Learmonth Road, Wendouree, Victoria, 3353.

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

Commencement Date means the date set out in the Purchase Order on which the Supplier must commence providing the Services, as may be adjusted under, the Agreement.

Completion Date means the date or dates set out in the Purchase Order by which provision of the Services or any component part thereof must be effected by the Supplier, as may be adjusted under, the Agreement.

Conditions means these General Conditions for the Provision of Services.

Confidential Information means any technical, scientific, commercial, financial or other information of, about or in anyway related to, CHW, including any information designated by CHW as confidential, which is disclosed, made available, communicated or delivered to the Supplier, but excludes information:

- (a) which is in or which subsequently enters the public domain other than as a result of a breach of these Conditions;
- (b) which the Supplier can demonstrate was in its possession prior to the date of the Agreement;
- (c) which the Supplier can demonstrate was independently developed by the Supplier;
- (d) which is lawfully obtained by the Supplier from another person entitled to disclose such information; or
- (e) which is required to be disclosed pursuant to Law, court order or other legal process.

Contract Intellectual Property means all Intellectual Property Rights created by or on behalf of the Supplier in the course of or in connection with the provision of the Services.

Contract Publishing System means 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.

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 CHW in connection with the Agreement (**Input Data**); or
- (b) generated, placed, stored, processed, retrieved, printed, accessed or produced utilising the Input Data, the Services or any deliverables.

Defect means any defect, omission, error, fault or damage in any work or material or any work or material is provided otherwise than in accordance with the Agreement.

Fee means the fees payable to the Supplier for the provision of the Services, as specified in the Agreement.

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

IBAC means 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.

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

Insolvency Event means, in relation to the Supplier, any of the following:

- (a) anything that reasonably indicates that there is a significant risk that the Supplier is or will become unable to pay debts as they fall due;
- (b) a step being taken to have a receiver, receiver and manager, liquidator or provisional liquidator appointed to the Supplier or any of its assets; or

- (c) the Supplier ceasing, or indicating that it is about to cease, carrying on business.

Intellectual Property Rights means intellectual property rights at any time recognised by law, including 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.

Law means:

- (a) any statute, regulation or subordinate legislation of the Commonwealth of Australia, the State of Victoria or local or other government in force in the State of Victoria, irrespective of where enacted; and
- (b) lawful requirements of any government or government department or other body or a governmental, semi-governmental, judicial, municipal, statutory or public entity or authority (including a statutory authority or a State-owned enterprise), a self-regulatory authority established under statute or a stock exchange (wherever created or located) or a person (whether autonomous or not) who is charged with the administration of a law.

OHS Laws means all applicable occupational health and safety, dangerous goods and electricity safety legislation and regulations made thereunder together with any directions on safety or notices issued by any national, state or local government, governmental department, or agency or administrative body or any code of practice or compliance code appropriate or relevant to the Services.

Overdue Amount means an amount (or part thereof) that:

- (a) is not, or is no longer, disputed;
- (b) is due and owing under a tax invoice properly rendered by the Supplier in accordance with these Conditions; and
- (c) which has been outstanding for more than 30 days from the date of receipt of the invoice (or the date that the amount ceased to be disputed, as the case may be).

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

Pre-Existing Intellectual Property means any and all Intellectual Property Rights owned by or licensed to the Supplier which existed in substantially the same form and with substantially the same contents prior to the Commencement Date.

Protective Data Security Standards means the protective data security standards set out in the *Privacy and Data Protection Act 2014* (Vic).

Public Sector Employee has the same meaning as in section 4(1) of the *Public Administration Act 2004* (Vic).

Purchase Order means any form of order or acknowledgment from CHW for the provision of the Services.

Services means the services (or any of them) specified in the Purchase Order (which may include works).

Site has the meaning given to that term in **clause 12(a)**.

Specification includes the specifications for the Services contained in the Agreement and/or as otherwise advised by CHW to the Supplier, either orally or in writing, prior to the issue of the Purchase Order.

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

Supplier means the person supplying the Services under these Conditions.

Supplier Code of Conduct means 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).

Victorian Public Entity or **VPE** means:

- (a) each Victorian Government department (as defined in section 3 of the *Financial Management Act 1994* (Vic));

- (b) a "Government Owned Entity", meaning a statutory corporation, a State owned company, a State body or a State business corporation as those terms are defined in the *State Owned Enterprises Act 1992* (Vic);
- (c) a "Council" as defined in the *Local Government Act 1989* (Vic); or
- (d) an entity which receives the majority of its funding from any of the entities listed in paragraphs (a) to (c) or any entity under the control of any of the entities listed in paragraphs (a) to (c).

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

WSAA Standards means all national codes, water industry standards and product specifications published by Water Services Association of Australia.

23 Interpretation

Unless expressed to the contrary, in these Conditions:

- (a) words in the singular include the plural and vice versa;
- (b) any gender includes the other genders;
- (c) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (d) 'includes' and 'including' means includes or including without limitation;
- (e) no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it;
- (f) the obligations of the Supplier, if more than one person, under the Agreement are joint and several and each person constituting the Supplier acknowledges and agrees that it will be causally responsible for the acts and omissions, including breaches of the Agreement, of the other as if those acts or omissions were its own;
- (g) the rights of the Supplier, if more than one person, under the Agreement, including the right to payment, jointly benefit each person constituting the Supplier (and not severally or jointly and severally); and
- (h) a reference to:
 - (i) a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority;
 - (ii) a person includes the person's legal personal representatives, successors, assigns and persons substituted by novation;
 - (iii) any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision;
 - (iv) an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation; and
 - (v) a party or parties is a reference to CHW and the Supplier (as the case requires).