



Agreement for the Provision of Services – Standing Offer

**Between
GWMWater
And**

Version	Date

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Parties Agreement Details

Date:

Grampians Wimmera Mallee Water
of 11 McLachlan St Horsham, Victoria 3401

and

- a) The Supplier wishes to provide the Services to GWMWater.
- b) GWMWater has agreed to engage the Supplier to make a standing offer to provide the Services in accordance with this Agreement.
- c) The Parties agree to work together throughout the Term in accordance with the terms of this Agreement to continuously improve the provision of Services under this Agreement for the benefit of both Parties.

Supplier Information			
Trading name:			
Registered name:			
Australian Company Number:		Date of issue:	
Australian Business Number:		Date of issue:	
Locality of registered office:			
Principal office in Victoria (if applicable):			
Contact Person:			
Address:		Town:	
Email:			
Website:			
Telephone Number:		Mobile Number:	

Agreement Commencement Date:	
Agreement Expiry Date:	

1. General conditions for the provision of Services

1.1 Term of Agreement

- a) The Agreement begins on the Commencement Date and continues until the Completion Date, unless extended in accordance with clause b) or terminated earlier in accordance with these terms. If no Completion Date is specified, the Agreement will come to an end when all Services have been completed and all payments required to be made under the Agreement have been made.
- b) A party may, by the provision of notice in writing, request the Agreement be extended beyond the Completion Date. The Agreement may only be extended for the period or periods as agreed to by the parties in writing.

1.2 Provision of Services

- a) The Supplier must provide the Services to GWMWater in accordance with this Agreement and any reasonable directions given by GWMWater from time to time.
- b) The Supplier must:
 - (i) complete the Services by the Completion Date and any other date(s) for delivery of the Services specified in the Purchase Order;
 - (ii) promptly notify GWMWater as soon as it becomes aware of any delay or possible delay in the supply of the Services in accordance with the Agreement;
 - (iii) provide fit for purpose Services in a timely and efficient manner using the standard of care, skill, diligence, prudence and foresight that would reasonably be expected from a prudent, expert and experienced provider of services that are similar to the Services; and
 - (iv) use appropriately skilled and qualified Personnel to provide the Services.
- c) After performance of the Services or delivery of any deliverable provided as part of the Services, GWMWater will undertake such reviews as it considers necessary to determine whether the Services or deliverable(s) are fit for purpose and comply with this Agreement. After reviewing the Services or deliverable(s), GWMWater may notify the Supplier in writing:
 - (i) of its acceptance of the Services or deliverable(s) if it is satisfied that the Services or deliverable(s) are fit for purpose and comply with this Agreement; or
 - (ii) if the Services or deliverable(s) are not fit for purpose or do not comply with this Agreement, in which case clause d) will apply.
- d) If GWMWater notifies the Supplier that the Services or deliverable(s) are not fit for purpose or do not comply with this Agreement, the Supplier must promptly rectify the non-compliance following which GWMWater will undertake further review of the Services or deliverable(s) under clause (c). This process will continue until, at GWMWater's discretion, GWMWater:
 - (i) waives, in writing, the requirement for the Services or deliverable(s) to comply with this Agreement;

- (ii) is satisfied that the Services or deliverable comply with this Agreement and accepts the Services or deliverable(s) in accordance with clause (i);
- (iii) conditionally accepts the Services or deliverable(s), subject to the Supplier agreeing to rectify the non-compliance within a reasonable timeframe and on such terms as GWMWater specifies; or
- (iv) subject to GWMWater having provided the Supplier with at least two opportunities to rectify the non-compliance under clause (ii), immediately terminate this Agreement by written notice to the Supplier.

If GWMWater terminates this Agreement under this clause (iv), GWMWater will be entitled to a full refund of all moneys paid to the Supplier in respect of the Services or deliverables which GWMWater is unable to use following termination.

1.3 Price for the Services

- a) The Rates and Fees payable for the Services are fixed, and inclusive of all taxes (excluding GST), for the duration of the Agreement, as per Annexure A.
- b) Where rates and fees are not part of Annexure A, a quotation for the goods and or services will be sought from the supplier.
- c) A Purchase Order Contract is formed, and the Purchase Order will become binding on the Supplier and GWMWater, upon receipt of the Purchase Order by the Supplier.
- d) Unless and until a Purchase Order Contract is formed:
 - (i) a Quote will not be binding on the Supplier or GWMWater;
 - (ii) the Supplier must not start performing or charge GWMWater for any Services; and
 - (iii) GWMWater has no liability to pay for any Services.
- e) The Supplier must promptly in writing confirm to GWMWater its receipt of a Purchase Order and the formation of the Purchase Order Contract.
- f) The Supplier may not charge GWMWater for any additional fees or charges, or recover any expenses or other costs from GWMWater.

1.4 Invoicing and payment

- a) Upon completion of the Services, or as otherwise specified in the Purchase Order, the Supplier must submit an invoice to GWMWater at the address specified in the Purchase Order. Each invoice submitted by the Supplier must contain all information required in a tax invoice for the purposes of the GST Act, together with such other information as GWMWater may reasonably require.
- b) On or following acceptance of the Services, GWMWater will pay the invoiced amount, less any amount required by Law, within 30 days of receipt of an accurate invoice. If GWMWater disputes the invoiced amount, it must pay the undisputed amount (if any) and notify the Supplier of the amount in dispute. The parties will endeavour to resolve any such dispute in accordance with clause 1.17.
- c) Payment of an invoice is not to be taken as evidence that the Services have been supplied in accordance with the Agreement but must be taken only as payment on account.

- d) Simple interest, as at the penalty interest rate fixed for the time being under the *Penalty Interest Rates Act 1983 (Vic)*, accrues on a daily basis on any Overdue Amount and is payable by GWMWater to the Supplier on demand.

1.5 Failure to perform

- a) If the Supplier fails to perform any Services or deliver any deliverable(s) in accordance with this Agreement GWMWater:
- i) will not be required to pay for those Services or deliverable(s) until they are provided in accordance with the Agreement; and
 - ii) may issue a notice to the Supplier requiring the Supplier to remedy any default or re-perform the Services or deliverable(s) within the time specified by GWMWater (which time must be reasonable having regard to the nature of the relevant Services or deliverable(s)).
- b) If:
- i) the default referred to in clause a) above is incapable of being remedied or re-performed; or
 - ii) the Supplier fails to remedy the default or re-perform the non-compliant Service(s) or deliverable(s) within the time specified in the notice issued under clause 1.5(a)(ii), GWMWater may either have the Services or deliverable(s) remedied or re-performed by a third party or do so itself. In either case, the Supplier must pay the reasonable costs incurred by GWMWater in doing so.
- c) Nothing in this clause 1.5 derogates or otherwise limits any other remedy available to GWMWater at Law.

1.6 Intellectual Property Rights

- a) Ownership of any Contract Materials will vest in the Supplier from the time of its creation. The Supplier irrevocably and unconditionally grants to GWMWater a perpetual, non-exclusive, royalty-free, worldwide and transferable licence (including the right to sub-license) to exercise all Intellectual Property Rights in the Contract Materials to the extent necessary to allow GWMWater the full use and enjoyment of the Services.
- b) All Pre-Existing Intellectual Property used by the parties in connection with the provision of the Services or the creation of Contract Materials remains the property of the relevant party or its licensors.
- c) The Supplier hereby irrevocably and unconditionally grants to GWMWater a perpetual, non-exclusive, royalty-free, worldwide and transferable licence (including the right to sub-license) to use any of the Supplier's Pre-Existing Intellectual Property incorporated in or otherwise required to use the Contract Materials or the Services. The licence granted to GWMWater under this clause is limited to use of the relevant Pre-Existing Intellectual Property by GWMWater for the purposes of GWMWater and for no other purpose.
- d) GWMWater grants the Supplier a non-exclusive, non-transferable, royalty-free licence to use GWMWater's Pre-Existing Intellectual Property for the sole purpose of performing,

and only to the extent required to perform, the Services and comply with its obligations under the Agreement during the Term.

- e) The Supplier undertakes that the Services may be used in any way by GWMWater, without identifying any person as the individual responsible for creating any particular material comprised in it, without infringing the Moral Rights of any person.
- f) The Supplier must, upon request by GWMWater, do all things necessary (including executing any documents) to give full effect to this clause 1.6.

1.7 Data

- a) Data will remain (and, if necessary, will become) the property of GWMWater. The Supplier will assign to GWMWater from the date of creation all Intellectual Property Rights in any Data created by or on behalf of the Supplier.
- b) The Supplier must only use the Data to the extent necessary to perform its obligations under the Agreement.

1.8 Liability

- a) The Supplier indemnifies, and will at all times keep GWMWater and each of its Personnel indemnified, against any liabilities, losses, damages, costs and expenses (including all legal and settlement costs determined on a full indemnity basis) or compensation arising out of, or in any way in connection with, any:
 - i) personal injury, including sickness and death;
 - ii) property damage;
 - iii) breach of an obligation of confidence or privacy, whether under this Agreement or otherwise;
 - iv) fraudulent acts or omissions;
 - v) wilful misconduct or unlawful act or omission;
 - vi) breaches of logical or physical security;
 - vii) loss or corruption of Data;
 - viii) third party claim arising out of a breach of the Agreement by the Supplier or its Personnel (including breach of warranty) or any negligent act or omission of the Supplier or its Personnel; or
 - ix) infringement or alleged infringement of the Intellectual Property Rights or any other rights of any person, including any third party,

which was caused, or contributed to by, any act or omission of the Supplier or any of its Personnel.

- b) The Supplier's liability to indemnify GWMWater under clause 1.8(a) is reduced to the extent that any wilful, unlawful or negligent act or omission of GWMWater or its Personnel contributed to the liability, loss, damage, cost, expense or compensation.
- c) To the extent that the indemnity in clause (a) refers to persons other than GWMWater, GWMWater holds this clause on trust for those other persons.

1.9 Warranties

The Supplier represents and warrants to GWMWater that:

- a) (**Capacity**) it has the right to enter into the Agreement and perform the Services;
- b) (**Purpose**) where GWMWater 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 achieve that result;
- c) (**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;
- d) (**IP**) it is entitled to use and deal with any Intellectual Property Rights which may be used by it in connection with the provision of the Services and to grant to GWMWater the licences contemplated by this Agreement;
- e) (**Trust**) it has not entered into the Agreement on behalf of a trust; and
- f) (**No infringement**) the receipt of the Services and the possession or use of any deliverables by GWMWater will not infringe the Intellectual Property Rights or other rights of any person or any Laws.

1.10 Termination

- a) GWMWater may terminate the Agreement with immediate effect (or with effect from a specified date) by giving notice in writing to the Supplier if the Supplier:
 - i) fails to provide the Services in accordance with the Agreement;
 - ii) breaches any provision of the Agreement and, where that breach is capable of remedy, fails to remedy the breach within 2 Business Days after receiving written notice requiring it to do so (or such later date as may be specified in that notice);
 - iii) breaches any provision of the Agreement that is not capable of remedy;
 - iv) or any of its Personnel involved in the provision of the Services commits fraud, dishonesty or any other serious misconduct;
 - v) commits any act or does anything that may be prejudicial or otherwise detrimental to the reputation of GWMWater; or
 - vi) suffers from an Insolvency Event.
- b) GWMWater may terminate the Agreement without cause on notice to the Supplier.
- c) If the Agreement is terminated pursuant to clause (b), GWMWater will pay the Supplier:
 - i) for the Services performed in accordance with the Agreement up to the date of the termination; and
 - ii) the unavoidable and substantiated costs incurred by the Supplier as a direct result of the termination, excluding any loss of profit,and GWMWater has no other liability to the Supplier in relation to that termination.
- d) When GWMWater issues a notice under clause (b), the Supplier will immediately comply with any directions given in the notice and do all that is possible to mitigate its losses arising from the termination of the Agreement.

- e) The Supplier may terminate the Agreement by giving at least 20 Business Days written notice to GWMWater if GWMWater fails to pay amounts due under this Agreement.
- f) Termination or expiry of this Agreement will not prejudice any right of action or remedy which may have accrued to either party prior to termination or expiry.
- g) On termination or expiry the Supplier must immediately, following instructions by GWMWater, cease using all materials that contain any Data or Confidential Information by either destroying the materials or returning the materials at no additional cost to GWMWater.

1.11 Insurance

The Supplier must obtain and maintain insurance cover during the Term and, if requested by GWMWater, 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 and for which the Supplier may be liable in connection with the Agreement, including professional indemnity and, if applicable, public and product liability insurance to the value specified by Pegasus™ or, if no value is specified, to a value sufficient to cover any loss or costs that may be incurred.

On request, the Supplier must, provide GWMWater with evidence of the currency of any insurance it is required to obtain under this Agreement.

Where the required insurance is due to expire, on request by Pegasus™, the Supplier must provide evidence of the replacement insurance prior to the expiry of the initial insurance.

1.12 Confidentiality, privacy and data protection

- a) The Supplier and its Personnel 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 consents to GWMWater publishing or otherwise making available information in relation to the Supplier (and the provision of the Services):
 - i) as may be required to comply with the Contract Publishing System;
 - ii) to other Victorian Public Entities or Ministers of the State 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) to the office of the Auditor General appointed under section 94A of the *Constitution Act 1975* (Vic) or the ombudsman appointed under the *Ombudsman Act 1973* (Vic);
 - v) to comply with Law, including 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, Health Privacy Principles and any applicable Code of Practice (together, **Privacy Obligations**) with respect to any act done or practice engaged in by the Supplier for the purposes of the Agreement, in the same way and to the same extent as the Privacy

Obligations would have applied to GWMWater in respect of that act or practice had it been directly done or engaged in by GWMWater.

- d) The Supplier acknowledges that GWMWater is bound by the Protective Data Security Standards. The Supplier will not do any act or engage in any practice that would contravene or give rise to a breach of a Protective Data Security Standard in respect of any Data collected, held, used, managed, disclosed or transferred by the Supplier, on behalf of the State, under or in connection with the Agreement.

1.13 Access

When at GWMWater's premises, the Supplier must, and must ensure that its Personnel:

- a) protect people and property;
- b) prevent nuisance;
- c) act in a safe and lawful manner;
- d) comply with the Safety Standards and policies of GWMWater (as notified to the Supplier); and
- e) comply with any lawful directions of GWMWater or its Personnel.

1.14 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 GWMWater (which may be given conditionally or withheld in its absolute discretion).
- b) The Supplier will not, as a result of any sub-contracting arrangement, be relieved from the performance of any obligation under the Agreement and will be liable for all acts and omissions of a sub-contractor as though they were the actions of the Supplier itself.
- c) Sub-contractors must be prequalified with Pegasus™ as per clause 2.2 (d).

1.15 Compliance with Law and Policy

- a) The Supplier must, in performing its obligations under the Agreement, comply with the Laws relevant to the provision of Services by the Supplier under the Agreement and with the 'Victorian Industry Participation Policy' (not applicable if less than \$1M).
- 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 Code 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.

1.16 GST

- a) The terms used in this clause have the same meanings given to them 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 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 the consideration for the taxable supply is to be paid or provided in accordance with the Agreement.

1.17 Dispute Resolution

- a) If any dispute arises under or in connection with this 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 15 Business Days it will be referred to mediation (**Mediation**) conducted by the Australian Disputes Centre (**ADC**) in accordance with the ADC 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.

1.18 General

- a) The Agreement is governed by and is to be construed in accordance with the Laws. Each party irrevocably and unconditionally submits to the 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) Time is of the essence in relation to the provision of the Services.
- c) The Agreement may only be varied or replaced by a written document executed by the parties.
- d) 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 a party fails to do, or delays in doing, something the party is entitled to do under the Agreement does not amount to a waiver.

- e) Any provision of the Agreement which is invalid or unenforceable is to be read down, if possible, so as to be valid and enforceable, and, if that is not possible, the provision will, to the extent that it is capable, be severed to the extent of the invalidity or unenforceability, without affecting the remaining provisions.
- f) GWMWater may set off against any sum owing to the Supplier under the Agreement any amount then owing by the Supplier to GWMWater.
- g) Subject to clause h), a party may not assign any right under the Agreement without the prior written consent of the other party. The Supplier will be responsible for acts and omissions of any assignee.
- h) GWMWater may, by notice in writing to the Supplier, assign its rights, transfer its obligations or novate the Agreement to any Victorian Public Entity in the event of any State government restructure or other re-organisation or change in policy.

1.19 Entire Understanding and order for precedence

- a) In the event and to the extent of any inconsistency between these General conditions for the supply of services and the Purchase Order, the General conditions will prevail to the extent of the inconsistency. If the inconsistency remains incapable of resolution by reading down, the inconsistent provisions will be severed from the Purchase Order without otherwise diminishing the enforceability of the remaining provisions of the Purchase Order.
- b) This Agreement contains everything the parties have agreed in relation to the Services. No party can rely on an earlier written document or anything said or done by or on behalf of another party before this Agreement was executed.

1.20 Survival

Clauses 1.3, 1.4, 1.6, 1.7, 1.8, 1.9, 1.10(c),(d),(f),(g), 1.11, 1.14, 1.17, 1.18, 1.20, 1.21, 1.22 of this Agreement survive the termination or expiry of this Agreement or the completion of the provision of Services and may be enforced at any time.

1.21 Definitions

In this Agreement, unless the context otherwise requires:

Agreement means the agreement for the provision of the Services consisting of these General conditions for the provision of services and the Purchase Order.

Business Day means a day which is not a Saturday, Sunday or public holiday (being a public holiday appointed as such under the *Public Holidays Act 1993* (Vic)) in Melbourne.

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

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

Commencement Date means the date on which the provision of the Services will commence, as specified in the Purchase Order.

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

- a) is in or which subsequently enters the public domain, other than as a result of a breach of an obligation of confidentiality;
- b) the Supplier can demonstrate was in its possession prior to the date of the Agreement;
- c) the Supplier can demonstrate was developed by it independently of any disclosures previously made by GWMWater;
- d) is lawfully obtained by the Supplier on a non-confidential basis from a person who is not bound by a confidentiality agreement with GWMWater or otherwise prohibited from disclosing the information to the Supplier; or
- e) is required to be disclosed pursuant to Law, court order or other legal process.

Contractor means the same as supplier and is the entity supplying the Services under the Agreement.

Contract Materials means any materials (including any Intellectual Property) which the Supplier creates (whether alone or jointly with any other person) in performing 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 GWMWater in connection with this Agreement (**Input Data**); or
- b) generated, placed, stored, processed, retrieved, printed, accessed or produced utilising the Input Data, the Services or the deliverables.

Emergency Response Plan is part of a Contractor's Health and Safety Plan. An Emergency Response Plan assists works to know what to do in the event of an emergency. It should be developed in accordance with the *Occupational Health and Safety (OHS) Act 2004* and *Occupational Health and Safety Regulations 2017*.

Fees mean a fixed fee 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).

Health Privacy Principles means the health privacy principles set out in the *Health Records Act 2001* (Vic).

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 has the meaning given 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 all intellectual property rights at any time recognised by law, including all present and future copyright, all proprietary rights in relation to inventions (including patents), registered and unregistered trademarks, trade secrets and know-how, registered designs, circuit layouts, and all other proprietary rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

Laws means:

- a) any statute, regulation or subordinate legislation of the Commonwealth of Australia, the State 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.

Moral Rights has the meaning given to that term in the *Copyright Act 1968* (Cth) and includes a right of a similar nature that is conferrable by statute, and that exists or comes into existence anywhere in the world.

Organisation means the department, body or agency of the State party to this Agreement.

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 this Agreement; 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).

Pegasus™ is GWMWater's Contractor Management Prequalification System.

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

Pre-Existing Intellectual Property means all materials owned by or licensed to a party as at the date of the Agreement or developed by or on behalf of a party independently of the Agreement.

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

Purchase Order means any form of order or purchase issued by GWMWater for the provision of Services, made under or incorporating these General conditions for the provision of services.

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

Rates means the monetary amount (whether charged on an hourly, daily, weekly or other time-related basis) payable to the Supplier for the provision of the Services, as specified in the Purchase Order.

Safety Standards is GWMWater's safety related policies, procedures, work instructions, forms, manuals and other applicable documents.

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

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

Supplier means the entity supplying the Services under the Agreement.

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).

Term means the duration of this Agreement from the Commencement Date to the Completion Date or otherwise as extended in accordance with clause 1.1(b).

Victorian Public Entity means:

- a) a public sector body as defined in section 4 of the *Public Administration Act 2004* (Vic);
- b) a statutory Organisation, a State owned company, a State body or a State business Organisation 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 issued by the Public Sector Commission pursuant to section 61 of the *Public Administration Act 2004* (Vic).

Works Supervisor means a GWMWater employee appointed to supervise works being conducted. This could be but not limited to a Water Services Operator, Water Treatment Plant Operator, Area Manager, Team Leader, On-Call Area Manager, On-Call Duty Manager.

1.22 Interpretation

Unless expressed to the contrary, in this Agreement:

- a) words in the singular include the plural and vice versa;
- b) any gender includes the other genders;
- c) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- d) 'includes' and 'including' are not words of limitation;

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- 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, Organisation 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; and
 - iv) a party or parties is a reference to GWMWater and the Supplier (as the case requires).

2. GWMWater Detailed Specifications

2.1 Overview

In October 2017, GWMWater introduced the Mandatory requirement for Contractors to be Prequalified with Pegasus™. This was in response to GWMWater's commitment to *"Zero Harm in the Workplace"*.

GWMWater only wants to engage contractors who uphold the same core values and whom actively display a commitment to health and safety, quality and the environment.

GWMWater also embeds "Value for Money" considerations into all service delivery procurement activities (purchasing of goods and services). Value for Money encompasses price, quality of works, risk mitigation, local supply, supplier ethics, enhancing competition, environmental practices and economic development/productivity.

In order to achieve the organisation's occupational health and safety and value for money objectives, GWMWater is establishing a Panel of Preferred Contractors.

The panel of preferred contractors will further enhance GWMWater's commitment to Health, Safety and the Environment, whilst also achieving Operational Efficiency and Value for Money.

GWMWater is establishing a panel of preferred contractors under an Agreement for the provision of services standing offer.

A contract is formed under a standing offer each time an entity purchases services under the panel arrangement.

The Agreement for the provision of services standing offer will be for a three-year period with an option to extend for up to another two years. The three-year period will commence from the date of agreement execution.

The panel of preferred contractors will be established across the GWMWater footprint.

A panel arrangement will provide GWMWater with a convenient, flexible, streamlined and efficient process for acquiring services that are purchased regularly.

GWMWater will make every effort to source from the panel of preferred contractors, however Invitees are reminded that GWMWater is required to achieve value for money from all purchases under the panel arrangement. Accordingly, no volume of work is guaranteed to any one contractor. GWMWater reserves the right to purchase outside of the panel of preferred contractors if value for money cannot be achieved.

Contractor engagements will be made on an as required basis. Engagements will depend on contractor location, equipment availability, qualifications and licences. Each engagement situation will be assessed against the organisations requirements and business needs.

Contractors will be required to commence and complete works within a specified timeframe. By accepting the purchase order, the contractor is accepting the engagement and is agreeing to deliver works within the specified timeframe. Failure to commence works within the specified timeframe may result in GWMWater cancelling the purchase order and engaging another contractor to commence and/or complete the works.

The preferred contractor panel size will vary according to the region size and work activity type. GWMWater will not establish a maximum or minimum number of preferred contractors.

2.2 Contractor Prequalification

Contractors, along with their employees and sub-contractors are required to be prequalified with Pegasus™.

The process for becoming prequalified with Pegasus™ is outlined on the GWMWater website, via <http://www.gwmwater.org.au/working-with-us/contractors>.

The Pegasus™ Contractor management system implementation supports GWMWater's safety objective of *Zero Harm in the Workplace*. This safety objective is a commitment to the health, safety and wellbeing of everyone who will potentially access GWMWater worksites or perform works on GWMWater infrastructure.

GWMWater requires that:

- a) A business organisation be registered and deemed compliant with Pegasus™ before being engaged to perform works on behalf of GWMWater.
- b) Any Employee performing activities on behalf of the prequalified business, in relation to a GWMWater engagement, must be registered with Pegasus™.
- c) All employee competencies relating to activities that will be undertaken as outlined in this Purchase Order must be uploaded and registered with Pegasus™ prior to engagement.
- d) All sub-contractors who are engaged by the prequalified business to perform works relating to a GWMWater engagement must be prequalified.
- e) The prequalification compliance status for clauses 2.3 (a), (b), (c) and (d) must be maintained for the term of this agreement. Failure to maintain compliance will terminate this agreement.
- f) Pegasus™ prequalification requirements may change during the term of the Agreement. The Contractor is to comply with all changes and additions to Pegasus™ requirements throughout the term of the Agreement.

2.3 GWMWater Inductions

Contractors, contractor employees and sub-contractors will be required to complete the GWMWater online induction program facilitated by Pegasus™, prior to commencement. A hardcopy of the GWMWater Worksite Induction Manual is available via <http://contractors.gwmwater.org.au/gwmwater-forms-and-information/> for future reference.

2.4 Electronic Work Orders

GWMWater are transitioning to an electronic work order system for contractors. The contractor may be required to participate in pilot trials of this technology. Once implemented the Panel will be required to utilise the GWMWater electronic work order system, to receive and complete GWMWater works.

Where possible, the information in the work order should be complete in real time. The contractor will be required to provide their own device such as a smart phone, iPad or tablet, to receive electronic work orders that has 3G or above capability and access to a web browser.

2.5 Task/Job Analysis

Contractors are required to complete a task/job analysis before attending site. The analysis will utilise existing information located in the work order. The analysis will cover:

- a) How the work will be performed
- b) What is being completed
- c) What the initial diagnosis may be from the information provided
- d) What tools and spare parts are required to complete the task
- e) What skills sets are required to complete the work safely
- f) When is the best time to complete the task
- g) Who will be attending the job

It is expected that the contractor will endeavour to complete the task with one site visit. Further site visits will need to be approved by GWMWater.

2.6 Gifts, Benefits and Hospitality

The offer of Gifts, Benefits and Hospitality must not be offered to GWMWater employees and Board Directors by the Contractor, or contractor associates.

2.7 Total Fire Ban Days (TFB)

Works may be carried out on TFB days after assessing the risks involved and compliance with the Country Fire Authority Permit Conditions (if applicable). All works deemed to be high risk on TFB days should be suspended. The suspension of works applies to contractors as well as staff. The Day of Total Fire Ban Procedure CMS/2343 is available via <http://contractors.gwmwater.org.au/gwmwater-forms-and-information/>.

2.8 GWMWater Policies and Procedures

Contractors are required to be abreast and abide by all GWMWater Policies, Procedures, Work Instructions, Guidelines, Forms and other applicable documents that are relevant to Contractors. All documents can be found by visiting the following link: <http://contractors.gwmwater.org.au/faqs-and-documents/>

2.9 Materials

Contractors performing works on GWMWater assets and infrastructure are to ensure that materials supplied are in accordance with the appropriate Australian Standards and relevant Water Industry Standards.

2.10 Complaints Procedure

Any complaint about this agreement or the agreement process should be in the first instance, discussed with the Manager Network Systems and Planning. If the complaint has not been resolved, the complainant is to commence the complaints process as detailed on GWMWater's website.

<http://www.gwmwater.org.au/contact-us/make-a-complaint>

Occupational Health and Safety (OHS)

2.11 General Occupational Health & Safety Requirements

GWMWater is obligated to provide and maintain, so far as is practicable, a working environment for its employees and members of the public, that is safe and without risk to health. As a condition of this agreement, GWMWater requires that any Contractors or subcontractors that may be engaged to perform a service on its behalf will at all times identify and exercise all necessary precautions for the health and safety of all persons including Contractor employees, Organisation employees and members of the public who may be affected by the services.

The Contractor will inform itself of all occupational health and safety policies, procedures or measures implemented or adopted by GWMWater and/or the occupiers of any premises at or within which the Contractor will perform works under this contract. The Contractor will comply with all such policies, procedures or measures; and in the event of any inconsistency, will comply with such procedures or measures as they produce the highest level of health and safety.

The Contractor will forthwith comply with any and all directions by GWMWater relating to occupational health and safety.

GWMWater Policies and Procedures are available by visiting the following link:

<http://contractors.gwmwater.org.au/faqs-and-documents/>

2.12 Legislative Compliance

The Contractor must comply with and ensure that its employees, subcontractors and agents comply with any Acts, Regulations, local laws and by-laws, Codes of Practice, Australian Standards and Organisation OHS Policy and Procedures (unless alternatives approved by GWMWater are available) which are in any way applicable to this contract or the performance of the services under this contract.

2.13 Contractor OHS Management Systems

If the Contractor has an OHS Management System, the OHS management system of the Contractor must as a minimum requirement demonstrate compliance with all duties of an employer specified in the *Occupational Health and Safety Act 2004*.

The Contractor is required to submit a complete copy of their company OHS management system documentation to Pegasus™ as part of the Contractor Prequalification compliance process. The OHS management system must include as a minimum requirement:

- a) OHS Policy and management
- b) OHS Information and Guidance
- c) OHS training and induction
- d) OHS consultation procedures
- e) Hazard identification processes
- f) Risk control measures
- g) Emergencies, Incidents and non-compliance procedures and resources
- h) Reviewing and improving OHS.

If the Contractor does not maintain their OHS management system as required GWMWater may terminate the Agreement.

If the Contractor does not have an OHS Management System, the Contractor must adopt the Policies, Procedures and Standards of GWMWater to meet the requirements listed above in clause 12 (a),(b),(c),(d),(e),(f),(g),(h).

2.14 Hazard Identification and Risk Control

Contractors shall identify hazards associated with the proposed works, and determine appropriate risk control measures. A generic Safe Work Method Statement (SWMS) or SWMS from similar works conducted by the Contractor shall be submit to Pegasus™ as part of the Contractor Prequalification process. The SWMS shall be used to indicate the risk control methods to be employed by the Contractor.

Site Specific Safe Work Method Statements (SWMS) for works (any Work performed during the contract) shall be submitted for review by GWMWater's Representative, prior to commencement of the works.

SWMS must cover all high risk construction work, and any other significant risks associated with the works. Subsequent SWMS shall be the responsibility of the Contractor to maintain.

2.15 Minor Contracts: Contractor's Health and Safety Plan

The Contractor shall ensure that the following are made available for review by a GWMWater representative, prior to the commencement of each task/job engagement:

- a) An Emergency Response Plan, if completing high-risk construction activities, as defined in the *Occupational Health and Safety Regulations 2017*, section 322. The Emergency Response Plan should detail the following:
 - (i) The order of emergency response actions for on-site personnel;
 - (ii) A list of the emergency contacts relevant to the project and each specific site;
 - (iii) The communications procedure in case of an emergency;
 - (iv) A list of available qualified first aiders;
 - (v) Basic first aid assessment and treatment;

- (vi) Procedures for dealing with different types of incidents (e.g. fire, spills, gas leak, damage to vehicles or plant)
- b) A list of site plant with relevant certificates, risk assessments, maintenance records and daily pre-start checks.
- c) The Contractor shall continually update the initial Risk Assessments and ensure that Job Risk Assessment/Job Safety Analysis (JRA/JSA's) are developed with the personnel to be involved and recorded.
- d) All employees with relevant competencies and certificates engaged to perform the works are to be registered in Pegasus™ prior to engagement.

Site works cannot commence until the submission of this Health and Safety Plan requirements. Delays due to non-compliance with this section shall not be grounds for granting of an Extension of Time.

2.16 Contractor's OHS Performance Reporting

The Contractor must when requested by GWMWater provide evidence of ongoing performance of the Contractor's OHS management system. Without limiting the requirements of this obligation, the Contractor shall provide the following information on request in the form of a Contractor OHS Performance Report:

- a) Number of lost time injuries
- b) Working days lost due to injury
- c) Current status of any injured personnel, property or environmental damage or pollution
- d) Status of the implementation and outcomes of corrective actions undertaken as a result of OHS inspections, risk assessments and toolbox meetings
- e) Status of OHS management system audits undertaken

The OHS Performance Report shall be submitted by the Contractor, using the Contractor Monthly OHS Performance Report Form or an equivalent document.

The Contractor shall when requested by GWMWater provide reports on OHS inspections, audits or assessments undertaken during the course of the contract.

2.17 Site Inductions, Training and Competencies

The Contractor shall ensure and provide evidence to Pegasus™, that all employees have undertaken the Basic OHS Construction Industry Induction, previously 'Red Card' course prior to commencing works.

The Contractor shall ensure and provide evidence on request, that all employees, sub-contractors and agents working on site are formally inducted. The site-specific induction shall cover as a minimum:

- a) Description of the works
- b) Project management responsibilities and contact numbers.
- c) Emergency responses

- d) Emergency contact numbers
- e) General site information
- f) Specific hazards
- g) Site safety rules

The Contractor shall ensure and provide evidence on request, that all employees have had relevant supervision, training and achieved required competencies to undertake site works and use provided plant and equipment.

2.18 Lone Worker Procedure

Contractors that work alone are required to adhere to the GWMWater Working Alone Procedure. The document can be found by visiting the following link:

<http://contractors.gwmwater.org.au/gwmwater-ohs-procedures/>

2.19 Protection of Outdoor Workers from Ultraviolet Radiation

Contractors are required to adhere to the GWMWater Protection of Outdoor Workers from Ultraviolet Radiation Procedure. The document can be found by visiting the following link:

<http://contractors.gwmwater.org.au/gwmwater-ohs-procedures/>

2.20 Incident Notification

If the Contractor is required by the *Occupational Health and Safety Act 2004*, the *Occupational Health and Safety Regulations 2017* (Incident Notification) or by any other regulations to give any notice of an accident occurring during the performance by the Contractor of works under the contract, the Contractor shall at the same time or as soon thereafter as possible in the circumstances give a copy of the notice to GWMWater.

The Contractor must verbally notify GWMWater:

- a) immediately for all lost time incidents; after medical and or first aid treatment is administered (if required).
- b) within 24 hours of any incident, accident, injury, property or environmental damage or potentially serious near miss which occurs during the carrying out of the contract works.

To report an incident the contractor must call GWMWater's Works Supervisor, or if unavailable call 1800 188 586.

In addition, the Contractor must within 48 hours of any such incident provide a report giving complete details of the incident, including results of investigations into its cause, and any recommendations or strategies for prevention in the future.

The contractor is to email the report to info@gwmwater.org.au

2.21 Corrective Action

If during the performance of works under the contract GWMWater informs the Contractor (by serving of a Corrective Action Report) that it is the opinion of GWMWater that the Contractor is:

- not conducting the work in compliance with the Contractor's Health and Safety Plan, health and safety management procedures, relevant legislation or health and safety procedures provided by GWMWater from time to time, or
- conducting the work in such a way as to endanger the health and safety of Contractors employees or GWMWater or its Contractors' and subcontractors' employees, plant, equipment or materials,

The Contractor shall promptly remedy that breach of health and safety.

GWMWater may direct the Contractor to suspend the work until such time as the Contractor satisfies GWMWater that the work will be resumed in conformity with applicable health and safety provisions and the Corrective Action Report.

During periods of suspension referred to above, GWMWater shall not be required to make any payment whatsoever to the Contractor.

If the Contractor fails to rectify any breach of health and safety for which the work has been suspended, or if the Contractors performance has involved recurring breaches of health and safety, GWMWater may as its option terminate the work forthwith, without further obligation to the Contractor. In this event, GWMWater liability shall be limited to payment for the work performed and costs incurred by the Contractor up to the time of termination or an earlier suspension of works.

Executed as an Agreement

Signed by **Mark Williams, Managing Director** a duly authorised officer of **GWMWater** in the presence of: }

.....

.....
Signature of Witness

.....
Name of Witness (print)

.....
Date

Executed by acting by the following persons or, if the seal is affixed, witnessed by the following persons in accordance with s127 of the *Corporations Act 2001 (Cth)*:

Where the Supplier is a company incorporated in Australia with more than one director:

.....
Signature of Company Secretary/Director

.....
Signature of Director

.....
Name of Company Secretary/Director (print)

.....
Name of Director (print)

.....
Date

Where the Supplier is a company incorporated in Australia with a sole director:

.....
Signature of Sole Director and Company Secretary

.....
Signature of Witness

.....
Name of Sole Director and Company Secretary (print)

.....
Name of Witness (print)

.....
Date

Annexure A

Scope of Works

Pricing Schedule