Schedule of Government Policy Requirements

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# INTRODUCTION

# Interpretation and application

## Structure

1. This Schedule of Government Policy Requirements comprises:
   1. this Introduction;
   2. Part A - Mandatory Government Policy Requirements; and
   3. Part B - Project Specific Government Policy Requirements.

## Interpretation

* 1. In this Schedule of Government Policy Requirements, references to "the Contract" mean any of the following Victorian Public Construction Contracts approved by the Secretary to the Department of Treasury and Finance pursuant to Ministerial Directions for Public Construction 7.1.1 issued under the *Project Development and Construction Management Act 1994* (Vic):
     1. Medium Works Contract (with option for Design) (**Medium Works Contract**);
     2. Medium Works Contract (Short Form); and
     3. Minor Works Contract (Short Form),

(each an **Approved Contract**).

* 1. Capitalised terms used in this Schedule of Government Policy Requirements that are defined in an Approved Contract have the meanings given to them in the applicable Approved Contract unless otherwise defined in this Schedule of Government Policy Requirements.
  2. Where reference is made in this Schedule of Government Policy Requirements to a "clause", then unless it is otherwise stated or a contrary intention appears, it means a clause in this Schedule of Government Policy Requirements.

## Specific application

1. Any failure of the Contractor to comply with clause 2 or clause 3 of Part A of this Schedule of Government Policy Requirements will be a failure to which clause 11.2(a)(iv) of the Medium Works Contract applies.

# PART A – MANDATORY GOVERNMENT POLICY REQUIREMENTS

# Definitions

1. In this Part A, terms defined in the Contract have the meanings given to them in the Contract, and:
2. **Code of Practice** means any code of practice as defined in, and approved under, the *Privacy and Data Protection Act 2014* (Vic) and, where applicable, any analogous codes under the *Privacy Act 1988* (Cth) or other relevant Legislation of the Commonwealth of Australia.
3. **Contractor's Records** has the meaning given clause 10.1(a).
4. **Information Privacy Principles** means the principles so identified and set out in the *Privacy and Data Protection Act 2014* (Vic) and, where applicable, any analogous principles under the *Privacy Act 1988* (Cth) or other relevant Legislation of the Commonwealth of Australia.
5. **Modern Slavery Legislation** means the *Modern Slavery Act 2018* (Cth) and any similar legislation in force from time to time in Victoria.
6. **Personal Information** means information or an opinion (including information or an opinion forming part of a database) that is recorded in any form and whether true or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.
7. **Principal Data** means all point and array information, text, drawings, statistics, analysis and other materials (including geological, geotechnical and environmental information, maps, images, survey results, drill core and cutting samples) embodied in any form which is:
   1. supplied by or on behalf of the Principal in connection with the Contract (**Input Data**); or
   2. generated, recorded, placed, stored, processed, retrieved, printed, accessed or produced utilising the Input Data or for the purposes of the Contract (**Generated Data**).
8. **Probity Event** means:
   1. an event that relates to the Contractor which has or may have a material adverse effect on, or on the perception of:
      1. the character, honesty or integrity of the Contractor; or
      2. the public interest or public interest in the project the subject of the Contract;
   2. a failure of the Contractor to achieve or maintain reasonable standards of ethical behaviour or other standards of conduct that would otherwise be expected of a party involved in a State government project, in the role in which that person is involved; or
   3. a conflict of interest involving the Contractor which has or will have a material adverse effect on the ability of the Contractor to carry out and observe its obligations under the Contract.
9. **Probity Investigation** means an investigation into the character, integrity or honesty of the Contractor including:
   1. investigations into commercial structure, business and credit history, prior contract compliance or any criminal records or pending charges; or
   2. interviews of any person or research into any activity that is or might reasonably be expected to be the subject of criminal or other regulatory investigation.
10. **Prohibited Cladding Products** means:
    1. 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; or
    2. expanded polystyrene products used in an external insulation and finish (rendered) wall system.
11. **Protective Data Security Standards** has the meaning given to that term in the *Privacy and Data Protection Act 2014* (Vic).
12. **Public Sector Data** has the meaning given to that term in the *Privacy and Data Protection Act 2014* (Vic).
13. **Regular Performance Reports** has the meaning given in clause 10.2.
14. **Supplier Code of Conduct** means the Supplier Code of Conduct issued by the Victorian Government for suppliers providing works or services to the Victorian Government (as amended from time to time).
15. **Type A Construction** has the meaning given to it in Part C1 of the National Construction Code Volume One.
16. **Type B Construction** has the meaning given to it in Part C1 of the National Construction Code Volume One.

# Privacy

### The Contractor agrees in respect of Personal Information held in connection with the Contract to (and must ensure that all Subcontracts contain terms which require the Subcontractor to), be bound by the Information Privacy Principles and any applicable Code of Practice with respect to any act done or practice engaged in by the Contractor for the purposes of the Contract, in the same way and to the same extent as the Principal would have been bound by the Information Privacy Principles and any applicable Code of Practice in respect of that act or practice had it been directly done or engaged in by the Principal.

### The Contractor must immediately notify the Principal if it becomes aware of any breach of clause 2(a) by it or any of its agents, employees or Subcontractors.

### This clause 2 survives the termination or expiration of the Contract.

# Protective Data Security Standards

### The Contractor acknowledges that the Principal is bound by the Protective Data Security Standards.

### The Contractor must not do any act or engage in any practice that would contravene or give rise to a breach of a Protective Data Security Standard in respect of any Public Sector Data collected, held, used, managed, disclosed or transferred by the Contractor on behalf of the Principal, under or in connection with the Contract.

# Principal Data

### All Input Data remains the property of the Principal and all Generated Data hereby vests in the Principal.

### The Principal grants to the Contractor a licence (with the right to sub-license to its Subcontractors) to use Principal Data solely for the purpose of performing its obligations under the Contract.

### The Contractor must do everything possible to perfect the vesting of Generated Data in accordance with clause 4(a), including assigning to the Principal from the date of creation all Intellectual Property Rights in Generated Data.

# Probity

### The Contractor agrees that the Principal may from time to time conduct or require the Contractor to conduct a Probity Investigation and must procure all relevant consents from people who will be the subject of a Probity Investigation.

### The Contractor must:

#### immediately notify the Principal in writing on becoming aware that a Probity Event has occurred or is likely to occur; and

#### if a notice if given under clause 5(b)(i) or the Principal otherwise becomes aware of a Probity Event or likely Probity Event, take any action directed by the Principal to remedy or otherwise address the Probity Event.

### The costs incurred by the Principal in connection with a Probity Event or Probity Investigation will be a debt due and payable by the Contractor to the Principal.

### This clause 5 survives the termination or expiration of the Contract.

# Supplier Code of Conduct

1. The Contractor acknowledges that:

### the Supplier Code of Conduct is an important part of the Principal's approach to procurement and describes the Principal's minimum expectations regarding the conduct of its suppliers;

### it has read the Supplier Code of Conduct; and

### 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 Contractor, whether under the Contract or at Law.

# 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;

### indemnify the Principal from and against any loss, damage, expense or Claim (including any third party Claim against the Principal) arising out of or in connection with any breach by the Contractor of its obligations under clause 7(a); and

### if it becomes aware of the use of any Prohibited Cladding Products on the project, immediately notify the Principal's Representative.

# Modern Slavery

1. The Contractor acknowledges and agrees that the Contractor must:

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

### in any event, facilitate the Principal complying with any of the Modern Slavery Legislation applicable to the Principal, by reporting in a timely manner and providing all information concerning its supply chain and that of its Subcontractors which the Principal may (acting reasonably) require, such reporting and other information being provided no later than 60 days after expiry of the period to which the reporting relates, or earlier where required in order for the Principal to meet its obligations under the applicable Modern Slavery Legislation; and

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

# Auditing

## Audit of and access to records

### The Contractor must permit an accountant or auditor on behalf of the Principal to, from time to time during ordinary business hours and on reasonable notice, inspect and verify all records maintained by the Contractor for the purposes of the Contract and the Contractor, its servants, agents and Subcontractors must give all reasonable assistance to any person authorised to undertake such audit or inspection.

### Any information provided or to which an accountant or auditor has access under this clause 9 will, subject to clause 9.1(c), be treated as confidential information and will not be used other than for the purposes of the Contract or disclosed other than as required to comply with the written request of the Auditor General for Victoria.

### The confidentiality obligations in clause 9.1(b) do not extend to:

#### information already in the public domain other than due to a breach of the Contract; or

#### any disclosure required by Law or as otherwise permitted in accordance with the Contract.

### If an audit conducted in accordance with this clause 9 discloses a failure on the part of the Contractor to comply with any of its obligations under the Contract then, without limiting the Principal's rights in relation to that failure, the Contractor must promptly, after being notified of the failure, take such steps as are necessary to remedy or mitigate the failure and its effect.

## Public Audit

### In this clause 9.2, except where the context otherwise requires:

* 1. **Public Audit** means any audit, investigation or enquiry conducted by a Public Auditor or pursuant to any Public Audit Legislation.
  2. **Public Audit Legislation** means Section 94A of the *Constitution Act 1975* (Vic) and the *Audit Act 1994* (Vic) or any other applicable legislation.
  3. **Public Auditor** means any auditor or officer appointed under any Public Audit Legislation or any authorised nominee or representative of such auditor or officer.

### The Contractor must, at its cost and without any additional entitlement under the Contract:

#### permit a Public Audit required by any Public Auditor;

#### procure that the Contractor's Subcontractors and agents permit a Public Audit required by any Public Auditor;

#### comply with the requirements or requests of, and cooperate with any Public Auditor during the conduct of a Public Audit;

#### procure that the Contractor's Subcontractors and agents comply with the requirements or requests of, and cooperate with, any Public Auditor during the conduct of a Public Audit; and

#### provide to the Public Auditor reasonable working accommodation and associated facilities and services required by the Public Auditor for the purposes of undertaking a Public Audit.

### Any obligations of confidence which one party has to the other under the Contract or by reason of entering into the Contract or performing the Contract will be subject to the obligations, duties, rights and entitlements of the parties in relation to any Public Audit.

### This clause 9.2 survives the termination or expiration of the Contract.

# Records and reporting

## Contractor's Records

1. The Contractor must:

### create and maintain complete and accurate accounts and records relating to the Contractor's Activities and otherwise in connection with the Contract, as would be expected of a Competent Contractor engaged in respect of activities of a similar nature to the Contractor's Activities (**Contractor's Records**);

### ensure that the Contractor's Records are available to the Principal and any person authorised by the Principal at any time during business hours for examination, audit, inspection, transcription and copying; and

### keep the Contractor's Records for a minimum of 7 years, or any other period directed in writing by the Principal's Representative, after the earlier to occur of:

#### the expiry of the last Defects Liability Period; and

#### the termination of the Contract.

## Reporting

1. The Contractor must submit written reports regarding the Contractor's performance under the Contract (**Regular Performance Reports**) to the Principal's Representative regularly, and at least monthly at the end of each calendar month (or as otherwise directed by the Principal) while the Contractor's Activities are being undertaken including in relation to the following:

### management of the Contractor's Activities, including overall progress of the Contractor's Activities and key issues affecting, or likely to affect, the progress of the Contractor's Activities;

### key issues and actions arising from the Contractor's Activities including:

#### financial issues;

#### occupational health and safety, environment, quality, project organisation structure and staffing, industrial relations, Contractor and Subcontractor issues; and

#### incidents notified to the Principal or the Principal's Representative and outcomes of investigations,

including where relevant the Contractor's response to those issues;

### compliance with the commitments made under the Local Jobs First Policy and Social Procurement Framework (to the extent applicable); and

### any additional information required under the Contract.

# Evidence of financial standing

### Obligations under this clause 11 relating to a Guarantor only apply if the Contract requires a Deed of Guarantee and Indemnity to be provided.

### The Contractor warrants to the Principal that, at all relevant times, the Contractor and the Guarantor will have sufficient financial capacity to meet all of their obligations under the Contract and the Deed of Guarantee and Indemnity (as applicable).

### The Contractor must, upon request by the Principal and within the time specified in the Principal's request, provide the Principal with evidence reasonably required by the Principal demonstrating that the Contractor and the Guarantor have the financial capacity to meet all of their obligations under the Contract and the Deed of Guarantee and Indemnity (as applicable).

### The Contractor acknowledges and agrees that it will be reasonable for the Principal to request the following evidence under clause 11(c):

#### certified copies of the audited or unaudited financial statements for the previous financial year for the Contractor and Guarantor; and

#### certified copies of cashflow and profit and loss statements for the Contractor and the Guarantor.

### The Contractor must promptly notify the Principal's Representative of any material change in the Contractor's or the Guarantor's financial standing which will or may adversely affect their financial capacity to meet their obligations under the Contract or the Deed of Guarantee and Indemnity (as applicable).

# PART B – PROJECT SPECIFIC GOVERNMENT POLICY REQUIREMENTS

# Definitions

1. Terms defined in the Contract have the meanings given to them in the Contract unless otherwise defined in this Part B.

# Shared Reporting

### In this clause 2:

#### **Shared Reporting Contract** has the meaning given in clause 2(b)(i).

#### **Shared Reporting Information** has the meaning given in clause 2(c)(ii).

#### **Shared Reporting Process** has the meaning given in clause 2(b)(ii).

#### **Shared Reporting Regime** means the regime set out in clause 2.

### The Contractor acknowledges and agrees that:

#### the Contract is subject to the Shared Reporting Regime if the Contract Sum exceeds $500,000 (inclusive of GST) (**Shared Reporting Contract**); and

#### if the Contract is a Shared Reporting Contract, then details of the Contractor's performance under the Contract, including the reports submitted to the Principal and the Shared Reporting Information, may be made available by the Principal to other government departments or agencies or municipal, public or statutory authorities (**Shared Reporting Process**), and taken into account by the Principal or those other government departments or agencies or authorities when considering the Contractor for future tendering and contracting opportunities.

### If the Contract is a Shared Reporting Contract, the Contractor must:

#### cooperate with, and provide any assistance reasonably required by, the Principal in relation to the Shared Reporting Process; and

#### without limiting any other provision of the Contract, provide to the Principal any information required by the Principal from time to time, within the time requested, for the purposes of the Shared Reporting Process (**Shared Reporting Information**).

# Local Jobs First Policy

## Definitions

The following definitions apply in this clause 3:

**Acknowledgement Letter** has the meaning given in the Local Jobs First Policy.

**Apprentice** means a person (excluding Cadets and Trainees) whom the Contractor has employed and undertaken to train under a Training Contract:

* 1. that is registered with the VRQA;
  2. combining structured training with paid employment in an entry-level role related to a Local Jobs First applicable project; and
  3. under which, where the Major Projects Skills Guarantee applies, the structured training:
     1. relates directly to the person's role on the Local Jobs First applicable project; and
     2. is otherwise consistent with the Training Contract.

**Cadet** means a person (excluding Apprentices and Trainees) who is concurrently:

* 1. enrolled in and undertaking tertiary education provided by:
     1. a vocational education and training provider registered with the Australian Skills Quality Agency; or
     2. a higher education provider registered with the Tertiary Education Quality and Standards Agency; and
  2. employed by the Contractor in an entry-level role and undertaking paid practical work experience:
     1. in respect of a Local Jobs First applicable project; and
     2. that is connected to the person's tertiary education; and
  3. where the Major Projects Skills Guarantee applies:
     1. receiving learning opportunities in the course of their employment; and
     2. undertaking work that is directly related to their tertiary education.

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

**LIDP** means the Local Industry Development Plan (as defined in the *Local Jobs First Act 2003* (Vic)), which is set out in the Contract, together with an Acknowledgement Letter issued by Industry Capability Network (Victoria) in respect of that Local Industry Development Plan.

1. **LIDP Commitments** means the obligations and undertakings of the Contractor as set out in the LIDP.
2. **LIDP Monitoring Table** means the table of milestones and LIDP Commitments set out in the LIDP.
3. **Local Content** has the meaning given in section 3(1) of the *Local Jobs First Act 2003* (Vic).
4. **Local Jobs First Commissioner** means the person appointed under section 12 of the *Local Jobs First Act 2003* (Vic).
5. **Local Jobs First Policy** means the policy of the Victorian Government made under section 4 of the *Local Jobs First Act 2003* (Vic).
6. **LJF Department** has the meaning given in section 3(1) of the *Local Jobs First Act* *2003* (Vic).
7. **LJF Responsible Minister** means the Minister with responsibility for administering the *Local Jobs First Act 2003* (Vic).

**Major Projects Skills Guarantee** has the meaning given in the *Local Jobs First Act 2003* (Vic).

1. **Trainee** means a person (excluding Apprentices and Cadets) whom the Contractor has employed and undertaken to train under a Training Contract:
   1. that is registered with the VRQA;
   2. combining training with paid employment in an entry level role related to a Local Jobs First applicable project; and
   3. under which, where the Major Projects Skills Guarantee applies, the training:

#### relates directly to the person's role on the Local Jobs First applicable project; and

#### is otherwise consistent with the Training Contract.

1. **Training Contract** has the meaning given in the *Education and Training Reform Act 2006* (Vic).
2. **Victorian Management Centre** or **VMC** means the automated information management system administered by Industry Capability Network (Victoria).
3. **VRQA** means the Victorian Registration and Qualification Authority.

## Local Industry Development Plan

### The Contractor must, in performing its obligations under the Contract:

#### comply with the LIDP;

#### 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.

### The Contractor acknowledges and agrees that its obligations as set out in the LIDP apply during the term of the Contract, any extensions to the term and until all of its reporting obligations as set out in clause 3.4 are fulfilled.

### The Contractor's failure to comply with this clause 3.1 will constitute a material breach of the Contract.

## Revised LIDP

### If at any time a Variation to the Contract is proposed which involves or effects a change in the nature of any LIDP Commitments, the Contractor must prepare a revised LIDP in collaboration with and certified by Industry Capability Network (Victoria) (**Revised LIDP**).

### When requested by the Principal's Representative, the Contractor must provide the Revised LIDP to the Principal.

### The Revised LIDP must be agreed by the parties before any Variation to the Contract can take effect unless the parties agree that a Revised LIDP is unnecessary.

### Once the Revised LIDP is agreed by the parties, the Revised LIDP replaces the LIDP and forms part of the Contract.

## Reporting

### The Contractor must prepare and maintain records demonstrating its compliance with the LIDP and performance of the LIDP Commitments.

### The Contractor must use the Victorian Management Centre for LJF monitoring and reporting.

### If the Contract is for a project valued at $20 million or more, the Contractor must provide a six-monthly report demonstrating its progress towards implementing the LIDP through reporting on the VMC.

### Prior to or at Practical Completion, the Contractor must provide to the Principal's Representative:

#### 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 to confirm that the information contained in the LIDP Monitoring Table is true and accurate. The Statutory Declaration must be made by a director of the Contractor or the Contractor’s Chief Executive Officer or Chief Financial Officer.

### At the request of the Principal's Representative, the Contractor must provide further information or explanation of any differences between expected and achieved LIDP outcomes.

### The reporting obligations in this clause 3 are in addition to and do not derogate from any other reporting obligations as set out in the Contract.

## Verification of Contractor's compliance with LIDP

### The Contractor agrees that each of the Principal and the LJF Department will have the right to inspect its records in order to verify compliance with the LIDP.

### The Contractor must:

#### permit the Principal's Representative, an accountant or auditor on behalf of the Principal or the LJF Department, or any other person authorised by the Principal or the LJF Department, from time to time during ordinary business hours and upon notice, to inspect and verify all records maintained by the Contractor for the purposes of the Contract;

#### permit the Principal or the LJF Department from time to time to undertake a review of the Contractor's performance in accordance with the LIDP; and

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

### The Contractor acknowledges and agrees that the Principal, the LJF Department, their duly authorised representatives and Industry Capability Network (Victoria) are authorised to obtain information from any relevant persons, firms or corporations, including third parties, regarding the Contractor's compliance with the LIDP.

### The obligations set out in this clause 3 are in addition to and do not derogate from any other obligation under the Contract.

## Use of information

The Contractor acknowledges and agrees that:

### Industry Capability Network (Victoria) will assess the Contractor's performance against the LIDP; and

### the statistical information contained in the LIDP and the measures of the Contractor's compliance with the LIDP as reported in the LIDP Monitoring Table:

#### will 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;

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

#### may be disclosed in the circumstances authorised or permitted under the terms of the Contract or as otherwise required by Law.

## Subcontracting

### The Contractor must ensure that any Subcontracts entered into by the Contractor in relation to the Contractor's Activities contain clauses requiring Subcontractors to:

#### comply with the Local Jobs First Policy and the LIDP 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 clause 3.4; and

#### permit the Principal and the LJF Department to exercise their inspection and verification rights under section 3.5.

### The subcontracting obligations set out in this clause 3.7 are in addition to and do not derogate from any other obligations under the Contract.

### The Contractor's failure to comply with this clause 3.7 will constitute a material breach of the Contract.

## Local Jobs First Commissioner

### The Contractor acknowledges that:

#### it is required to comply with any information notice issued to it by the Local Jobs First Commissioner in accordance with s 24 of the *Local Jobs First Act 2003* (Vic);

#### it is required to comply with any compliance notice issued to it by the Local Jobs First Commissioner in accordance with s 26 of the *Local Jobs First Act 2003* (Vic);

#### its failure to comply with the compliance notice referred to in clause 3.8(a) may result in the issue of an adverse publicity notice by the LJF Responsible Minister under s 29 of the *Local Jobs First Act 2003* (Vic); and

#### the Local Jobs First Commissioner may:

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

### The Contractor acknowledges that the 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 the Contract.

# Social Procurement

Where the Contract specifies that the Social Procurement Framework applies, then the alternative applying will be as specified in the Contract:

### **Alternative 1** - Social Procurement Framework (without Building Equality Policy);

### **Alternative 2** - Social Procurement Framework (with Building Equality Policy); or

### **Alternative 3** - Building Equality Policy only.

**Alternative 1:** **Social Procurement Framework (without Building Equality Policy)**

## Definitions

In this clause 4, the following terms have the following meanings:

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

**Social Procurement Commitment** means an obligation required to be performed by the Contractor, as set out in the Social Procurement Commitment Schedule, in relation to delivering Social Procurement Framework Outcomes.

**Social Procurement Commitment Schedule** means the plan set out in the Contract which includes the Social Procurement Commitments.

**Social Procurement Framework** means Victoria’s Social Procurement Framework, as amended from time to time (accessible, as at the Contract Date, at <https://www.buyingfor.vic.gov.au/social-procurement-framework>).

**Social Procurement Framework Outcome** has the meaning given in the Social Procurement Framework.

**Social Procurement Performance Report** means a report submitted by the Contractor, to the Principal's Representative, which details the Contractor’s performance against the Social Procurement Commitments made in the Contractor’s Social Procurement Commitment Schedule.

1. **Victorian Management Centre** or **VMC** means the automated information management system administered by Industry Capability Network (Victoria).

## Social Procurement Commitment Schedule

### The Contractor must, in performing its obligations under the Contract:

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

#### perform all Social Procurement Commitments by the due date for performance as set out in the Social Procurement Commitment Schedule or as directed by the Principal's Representative.

### The Contractor acknowledges and agrees that the Social Procurement Commitment Schedule (including the Social Procurement Commitments) applies during the term of the Contract, any extensions to the term and until all of its reporting obligations as set out in clause 4.4 are fulfilled.

### The Contractor’s failure to undertake all reasonable measures to achieve compliance with clause 4.2(a) may be determined by the Principal to constitute a material breach of the Contract.

## Reporting

### The Contractor must prepare and maintain records demonstrating its:

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

#### performance against the Social Procurement Commitments.

### The Contractor must, during the term of the Contract, submit Social Procurement Performance Reports to the Principal's Representative at the intervals set out in the Contract.

### The Principal's Representative may direct the Contractor to meet to discuss the contents of the Social Procurement Commitment Report and other issues concerning the progress towards the Social Procurement Commitments including any identified reporting deficiencies and timeframes for rectification.

### The Social Procurement Commitment Report submitted in accordance with clause 4.3(b) must:

#### be submitted (where possible) by the Contractor using the Victorian Management Centre, or as otherwise agreed by the Principal's Representative;

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

#### include all supporting information reasonably required by the Principal's Representative to verify the contents of the Social Procurement Commitment Report.

### In addition to the Social Procurement Performance Reports, within 2 months of the Date of Practical Completion or the date the Contract is completed or terminated, whichever is the earlier, the Contractor must provide the Principal's Representative with:

#### a final Social Procurement Performance Report; and

#### a statutory declaration in the form set out in Attachment 1 to this Schedule of Government Policy Requirements (**Social Procurement Framework Statutory Declaration**) to confirm that the information contained in the final Social Procurement Performance Report is true and correct. The Contractor must ensure that the Social Procurement Framework Statutory Declaration is made by a director of the Contractor or the Contractor’s Chief Executive Officer or Chief Financial Officer.

### At the request of the Principal's Representative, the Contractor must provide further information about, or explanation of, any:

#### non-compliance with the Social Procurement Commitment Schedule; or

#### failure to perform the Social Procurement Commitments by the due date for performance.

### The reporting obligations set out in this clause 4.3 are in addition to, and do not derogate from, any other obligations set out in the Contract.

## Verifying compliance

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

### The Contractor must:

#### permit the Principal, or a duly authorised nominee of the Principal and any department and agencies responsible for the Social Procurement Framework, from time to time during ordinary business hours and upon reasonable notice, to inspect and verify all records maintained by the Contractor for the purposes of this clause 4.4;

#### permit the Principal, or a duly authorised nominee of the Principal and any department and agencies responsible for the Social Procurement Framework, from time to time to undertake a review of the Contractor’s performance against the Social Procurement Commitments; and

#### ensure that its employees, agents and Subcontractors give all reasonable assistance to the Principal, a duly authorised nominee of the Principal and any department and agencies responsible for the Social Procurement Framework, to undertake such audit, inspection, verification or review.

### The Contractor acknowledges and agrees that the Principal, or a duly authorised nominee of the Principal and any department and agencies responsible for the Social Procurement Framework are authorised to obtain information from any relevant persons, firms or corporations, including third parties, in connection with the Contractor’s performance against the Social Procurement Commitments.

### The obligations set out in this clause 4.4 are in addition to, and do not derogate from, any other obligations as set out in the Contract.

## Use of information

The Contractor acknowledges and agrees that the statistical information contained in the Social Procurement Performance Reports and the measures of the Contractor's compliance with the Social Procurement Commitment Schedule as reported in the final Social Procurement Performance Report:

### will be provided to any departments and agencies responsible for the Social Procurement Framework, for combined reporting purposes for each financial year on the compliance and performance of the Social Procurement Framework 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 the Contract or as otherwise required by Law.

## Subcontracting

### The Contractor must ensure that any Subcontracts entered into in relation to the Contract contain clauses requiring its Subcontractors to:

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

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

#### permit the Principal to exercise its verification and inspection rights under clause 4.4.

### The obligations set out in clause 4.6 are in addition to, and do not derogate from, any other obligations as set out in the Contract.

### The Contractor's failure to comply with its obligations in clause 4.6 in relation to Subcontracts and Social Procurement Commitments may be determined by the Principal to constitute a breach of the Contract.

**Alternative 2:** **Social Procurement Framework (with Building Equality Policy)**

## Definitions

In this clause 4, the following terms have the following meanings:

**Apprentice** means a person (excluding Trainees) whom the Contractor has employed and undertaken to train under a Training Contract:

### that is registered with the VRQA;

### combining structured training with paid employment in an entry-level role;

### under which the structured training:

#### relates directly to the person's role; and

#### is otherwise consistent with the Training Contract; and

### under which, for the purposes of the Building Equality Policy Commitments, the paid employment:

#### requires the person to work primarily onsite at the Site; and

#### relates to onsite building and construction work.

**Building Equality Policy** means the Victorian Government's Building Equality Policy, as amended from time to time (accessible, as at the Contract Date, at <https://www.vic.gov.au/building-equality-policy>).

**Building Equality Policy Actions** means the three actions that the Contractor is required to deliver under the Building Equality Policy, being:

**Action 1:** meet project specific gender equality targets

**Action 2:** engage women as Apprentices, Trainees and Cadets to perform building and construction work

**Action 3:** implement Gender Equality Action Plans.

**Building Equality Policy Commitment** means a commitment made by the Contractor, as set out in the Social Procurement Commitment Schedule (as varied by any alternative appropriate obligations which are agreed in accordance with clause 4.4), to deliver the Building Equality Policy Actions.

**Cadet** means a person (other than an Apprentice or Trainee) who is enrolled in vocational education registered with the Australian Skills Quality Agency, or higher education registered with the Tertiary Education Quality and Standards Agency. The Cadet must be

### employed in an entry-level role, undertake paid practical work experience in connection to their qualification and receive learning opportunities in the course of their employment

### perform onsite building or construction work related to a Building Equality Policy applicable project.

Hours spent offsite for training and education are counted towards the 4 percent requirement. Cadets count towards Building Equality Policy Action 1 Management /Supervisory and Specialist Labour (staff) targets and Action 2 apprentices, trainees and cadets.

**Gender Equality Action Plan** or **GEAP** means the Organisation Wide Gender Equality Action Plan and the Project Specific Gender Equality Action Plan.

1. **Industry Capability Network (Victoria)** means Industry Capability Network (Victoria) Limited of Level 23, 370 Little Lonsdale Street, Melbourne VIC 3000 ACN 007 058 120.
2. **Management / supervisory and specialist labour (staff)** means people that spend at least 80 per cent of their time dedicated to a specific project engaged by the Contractor or a Subcontractor to perform work under the Contract onsite. Hours spent offsite that directly relate towards project delivery are counted towards the 35% requirement.
3. **Non-trade Construction Award covered labour** means Trainees and ancillary workers engaged by the Contractor or a Subcontractor to perform the work under the Contract onsite.
4. **Organisation Wide Gender Equality Action Plan** means the plan attached at Annexure A to the Social Procurement Commitment Schedule.
5. **Project Specific Gender Equality Action Plan** means the plan attached at Annexure B to the Social Procurement Commitment Schedule.
6. **Social Procurement Commitment** means an obligation required to be performed by the Contractor, as set out in the Social Procurement Commitment Schedule, in relation to delivering a Social Procurement Framework Outcome.
7. **Social Procurement Commitment Schedule** means plan set out in the Contract which includes the agreed Social Procurement Commitments, the agreed Building Equality Policy Commitments and the Gender Equality Action Plans.
8. **Social Procurement Framework** means Victoria’s Social Procurement Framework, as amended from time to time (accessible, as at the Contract Date, at <https://www.buyingfor.vic.gov.au/social-procurement-framework>).
9. **Social Procurement Framework Outcome** has the meaning given in the Social Procurement Framework.
10. **Social Procurement Performance Report** means a report submitted by the Contractor to the Principal's Representative, which details the Contractor’s performance against the Social Procurement Commitments and the Building Equality Policy Commitments made in the Social Procurement Commitment Schedule.
11. **Trade covered labour** means building / construction qualified trades and Apprentices engaged by the Contractor or a Subcontractor to perform work under the Contract onsite.
12. **Trainee** meansa person (excluding Apprentices) whom the Contractor has employed under a Training Contract:

### that is registered with the VRQA;

### combining training with paid employment in an entry-level role; and

### under which the training:

#### relates directly to the person's role; and

#### is otherwise consistent with the Training Contract; and

### under which, for the purposes of the Building Equality Policy Commitments, the paid employment:

#### requires the person to work primarily onsite at the Site; and

#### relates to onsite building and construction work.

1. **Training Contract** has the meaning given in the *Education and Training Reform Act 2006* (Vic).
2. **Victorian Management Centre** or **VMC** means the automated information management system administered by Industry Capability Network (Victoria).
3. **VRQA** means the Victorian Registration and Qualification Authority.

## Social Procurement Commitment Schedule

### The Contractor must, in performing its obligations under the Contract:

#### 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's Representative.

### The Contractor acknowledges and agrees that the Social Procurement Commitment Schedule (including the Social Procurement Commitments and the Building Equality Policy Commitments) applies during the term of the Contract and any extensions to the term and until all reporting obligations under clause 4.3 are fulfilled.

### The Contractor’s failure to comply with its obligations in:

#### clause 4.2(a) in relation to its Social Procurement Commitments may be determined by the Principal to constitute a breach of the Contract; and

#### clause 4.2(a) in relation to its Building Equality Policy Commitments, subject to clause 4.4(d),may be determined by the Principal to constitute a breach of the Contract.

## Reporting

### The Contractor must prepare and maintain records demonstrating its:

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

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

### The Contractor must, during the term of the Contract, submit Social Procurement Performance Reports to the Principal’s Representative at the intervals stated in the Contract.

### The Principal's Representative may direct the Contractor to meet to discuss the contents of the Social Procurement Performance Report and other issues concerning the progress towards the Social Procurement Commitments and the Building Equality Policy Commitments including any identified reporting deficiencies and timeframes for rectification.

### The Social Procurement Performance Report provided in accordance with clause 4.3(b) must:

#### be submitted (where possible) by the Contractor using the Victorian Management Centre or as otherwise agreed by the Principal’s Representative;

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

#### include all supporting information reasonably required by the Principal’s Representative to verify the contents of the Social Procurement Performance Report.

### In addition to the Social Procurement Performance Reports, within 2 months of the Date of Practical Completion or the date the Contract is completed or terminated, whichever is the earlier, the Contractor must provide the Principal’s Representative with:

#### a final Social Procurement Performance Report; and

#### a statutory declaration in the form set out in Attachment 1 to this Schedule of Government Policy Requirements (**Social Procurement Framework Statutory Declaration**) to confirm that the information contained in the final Social Procurement Performance Report is true and correct. The Contractor must ensure that the Social Procurement Framework Statutory Declaration is made by a director of the Contractor or the Contractor’s Chief Executive Officer or Chief Financial Officer.

### At the request of the Principal’s Representative, the Contractor must provide further information about, or explanation of, any:

#### non-compliance with the Social Procurement Commitment Schedule; or

#### failure to perform the Social Procurement Commitments or the Building Equality Policy Commitments by the due date for performance.

### The reporting obligations set out in clause 4.3 are in addition to, and do not derogate from, any other obligations set out in the Contract.

## Responses to Non-Compliance

### The Contractor must notify the Principal’s Representative in writing as soon as practicable, but no later than 20 Business Days after becoming aware of any actual or anticipated difficulties that may impact on its ability to meet any of the Building Equality Policy Commitments set out in the Social Procurement Commitment Schedule.

### The notice under clause 4.4(a) must include:

#### details of the Building Equality Policy Commitments that cannot be met by the Contractor and reasons for non-compliance;

#### evidence demonstrating the steps taken by the Contractor to meet the Building Equality Policy Commitments; and

#### all supporting information reasonably required by the Principal’s Representative to assess the nature and severity of the non-compliance and the capability and capacity of the Contractor to comply with the Building Equality Policy Commitments.

### At the request of the Principal’s Representative, the Contractor must meet the Principal’s Representative and the Principal in good faith to discuss the contents of the notice under clause 4.4(a) and agree on alternative appropriate obligations to achieve suitable levels of compliance with the Building Equality Policy Commitments.

### If the parties agree on alternative appropriate obligations to achieve suitable levels of compliance with the Building Equality Policy Commitments:

#### the Principal’s Representative will issue the Contractor with written confirmation of the agreed alternative obligations, including the relevant evidentiary and reporting requirements; and

#### the Building Equality Policy Commitments are deemed to be varied by such alternative appropriate obligations.

### If the parties are unable to agree on alternative appropriate obligations to achieve suitable levels of compliance with the Building Equality Policy Commitments, the Contractor’s failure to comply with the Building Equality Policy Commitments may be determined by the Principal to constitute a breach of the Contract.

### The Principal will take a graduated approach to responding to the Contractor’s non-compliance with the Building Equality Policy Commitments and will consider the nature and severity of the non-compliance and the capability and capacity of the Contractor to comply. Potential consequences of non-compliance with the Building Equality Policy Commitments may include, but are not limited to:

#### the responsible Minister of the Crown or the Secretary of the relevant government agency issuing the Contractor with a formal warning; and

#### the Contractor being placed on a register maintained by the State for increased compliance oversight and monitoring across the portfolio of projects the Contractor is currently undertaking for the Principal or other government agencies.

### Nothing in this clause limits any rights of the Principal under the Contract.

## Verifying compliance

### 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.

### The Contractor must:

#### permit the Principal, a duly authorised nominee of the Principal and any departments and agencies responsible for the Social Procurement Framework and the Building Equality Policy from time to time during ordinary business hours and upon reasonable notice, to inspect and verify all records maintained by the Contractor for the purposes of clause 4.5;

#### permit the Principal, a duly authorised nominee of the Principal and any departments and agencies responsible for the Social Procurement Framework and the Building Equality Policy from time to time to undertake a review of the Contractor’s performance against the Social Procurement Commitments or the Building Equality Policy Commitments; and

#### ensure that its employees, agents and Subcontractors give all reasonable assistance to the Principal, a duly authorised nominee of the Principal and any departments and agencies responsible for the Social Procurement Framework and the Building Equality Policy, to undertake such inspection, verification or review.

### The Contractor acknowledges and agrees that the Principal, or a duly authorised nominee of the Principal and any departments and agencies responsible for the Social Procurement Framework and the Building Equality Policy, are authorised to obtain information from any relevant persons, firms or corporations, including third parties, in connection with the Contractor’s performance against the Social Procurement Commitments or the Building Equality Policy Commitments.

### The obligations set out in clause 4.5 are in addition to, and do not derogate from, any other obligations as set out in the Contract.

## Use of information

### The Contractor acknowledges and agrees that statistical information contained in the Social Procurement Performance Reports and the measures of the Contractor's compliance with the Social Procurement Commitment Schedule:

#### will be used by the State to prepare registers of:

##### high performing contractors who demonstrate exemplary levels of compliance; and

##### contractors who have not complied with the Social Procurement Commitment Schedule;

#### 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 and 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 the Contract or as otherwise required by Law.

### The Contractor acknowledges and agrees that the Principal, a duly authorised nominee of the Principal and any departments and agencies responsible for the Social Procurement Framework and the Building Equality Policy from time to time, 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.

## Subcontracting

### The Contractor must ensure that any Subcontracts it enters into in relation to the Contract contain clauses requiring its 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 all necessary information that allows the Contractor to comply with its obligations under this clause 4; and

#### permit the Principal to exercise its rights under clause 4.5.

### The obligations set out in this clause 4.7 are in addition to, and do not derogate from, any other obligations as set out in the Contract.

### The Contractor's failure to comply with its obligations in:

#### clause 4.7(a) in relation to Subcontracts and Social Procurement Commitments may be determined by the Principal to constitute a breach of the Contract; and

#### clause 4.7(a) in relation to Subcontracts and Building Equality Policy Commitments may be determined by the Principal to constitute a breach of the Contract.

**Alternative 3:** **Building Equality Policy only**

## Definitions

In this clause 4, the following terms have the following meanings:

**Apprentice** means a person (excluding Trainees) whom the Contractor has employed and undertaken to train under a Training Contract:

### that is registered with the VRQA;

### combining structured training with paid employment in an entry-level role;

### under which the structured training:

#### relates directly to the person's role; and

#### is otherwise consistent with the Training Contract; and

### under which, for the purposes of the Building Equality Policy Commitments, the paid employment:

#### requires the person to work primarily onsite at the Site; and

#### relates to onsite building and construction work.

**Building Equality Policy** means the Victorian Government's Building Equality Policy, as amended from time to time (accessible, as at the Contract Date, at <https://www.vic.gov.au/building-equality-policy>).

**Building Equality Policy Actions** means the three actions that the Contractor is required to deliver under the Building Equality Policy, being:

**Action 1:** meet project specific gender equality targets

**Action 2:** engage women as Apprentices, Trainees and Cadets to perform building and construction work

**Action 3:** implement Gender Equality Action Plans.

**Building Equality Policy Commitment** means a commitment made by the Contractor, as set out in the Social Procurement Commitment Schedule (as varied by any alternative appropriate obligations which are agreed in accordance with clause 4.4), to deliver the Building Equality Policy Actions.

**Cadet** means a person (other than an Apprentice or Trainee) who is enrolled in vocational education registered with the Australian Skills Quality Agency, or higher education registered with the Tertiary Education Quality and Standards Agency. The Cadet must be

### employed in an entry-level role, undertake paid practical work experience in connection to their qualification and receive learning opportunities in the course of their employment

### perform onsite building or construction work related to a Building Equality Policy applicable project.

Hours spent offsite for training and education are counted towards the 4 percent requirement. Cadets count towards Building Equality Policy Action 1 Management /Supervisory and Specialist Labour (staff) targets and Action 2 apprentices, trainees and cadets.

**Gender Equality Action Plan** or **GEAP** means the Organisation Wide Gender Equality Action Plan and the Project Specific Gender Equality Action Plan.

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

**Management / supervisory and specialist labour (staff)** means people that spend 80 per cent of their time dedicated to a specific project engaged by the Contractor or a Subcontractor to perform work under the Contract onsite. Hours spent offsite that directly relate towards project delivery are counted towards the 35% requirement.

**Non-trade Construction Award covered labour** means Trainees and ancillary workers engaged by the Contractor or a Subcontractor to perform the work under the Contract onsite.

**Organisation Wide Gender Equality Action Plan** means the plan attached at Annexure A to the Social Procurement Commitment Schedule.

**Project Specific Gender Equality Action Plan** means the plan attached at Annexure B to the Social Procurement Commitment Schedule.

**Social Procurement Commitment** means an obligation required to be performed by the Contractor, as set out in the Social Procurement Commitment Schedule, in relation to delivering a Building Equality Policy Commitment.

**Social Procurement Commitment Schedule** means the plan set out in the Contract which includes the Building Equality Policy Commitments and the Gender Equality Action Plans.

**Social Procurement Framework** means Victoria’s Social Procurement Framework, as amended from time to time (accessible, as at the Contract Date, at <https://www.buyingfor.vic.gov.au/social-procurement-framework>).

1. **Social Procurement Framework Outcome** has the meaning given in the Social Procurement Framework.

**Social Procurement Performance Report** means a report submitted by the Contractor to the Principal's Representative, which details the Contractor’s performance against the Building Equality Policy Commitments made in the Social Procurement Commitment Schedule.

**Trade covered labour** means building / construction qualified trades and Apprentices engaged by the Contractor or a Subcontractor to perform work under the Contract onsite.

1. **Trainee** meansa person (excluding Apprentices) whom the Contractor has employed under a Training Contract:

### that is registered with the VRQA;

### combining training with paid employment in an entry-level role; and

### under which the training:

#### relates directly to the person's role; and

#### is otherwise consistent with the Training Contract; and

### under which, for the purposes of the Building Equality Policy Commitments, the paid employment:

#### requires the person to work primarily onsite at the Site; and

#### relates to onsite building and construction work.

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

**Victorian Management Centre** or **VMC** means the automated information management system administered by Industry Capability Network (Victoria).

1. **VRQA** means the Victorian Registration and Qualification Authority.

## Social Procurement Commitment Schedule

### The Contractor must, in performing its obligations under the Contract:

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

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

### The Contractor acknowledges and agrees that the Social Procurement Commitment Schedule (including the Building Equality Policy Commitments) applies during the term of the Contract and any extensions to the term and until all reporting obligations under clause 4.3 are fulfilled.

### Subject to clause 4.4(d), the Contractor’s failure to comply with its obligations in clause 4.2(a) in relation to its Building Equality Policy Commitments may be determined by the Principal to constitute a breach of the Contract.

## Reporting

### The Contractor must prepare and maintain records demonstrating its:

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

#### performance against the Building Equality Policy Commitments.

### The Contractor must, during the term of the Contract, submit Social Procurement Performance Reports to the Principal's Representative at the intervals stated in the Contract.

### The Principal's Representative may direct the Contractor to meet to discuss the contents of the Social Procurement Performance Report and other issues concerning the progress towards the Building Equality Policy Commitments including any identified reporting deficiencies and timeframes for rectification.

### The Social Procurement Performance Report provided in accordance with clause 4.3(b) must:

#### be submitted (where possible) by the Contractor using the Victorian Management Centre or as otherwise agreed by the Principal's Representative;

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

#### include all supporting information reasonably required by the Principal's Representative to verify the contents of the Social Procurement Performance Report.

### In addition to the Social Procurement Performance Reports, within 2 months of the Date of Practical Completion or the date the Contract is completed or terminated, whichever is the earlier, the Contractor must provide the Principal's Representative with:

#### a final Social Procurement Performance Report; and

#### a statutory declaration in the form set out in Attachment 1 to this Schedule of Government Policy Requirements (**Social Procurement Framework Statutory Declaration**) to confirm that the information contained in the final Social Procurement Performance Report is true and correct. The Contractor must ensure that the Social Procurement Framework Statutory Declaration is made by a director of the Contractor or the Contractor’s Chief Executive Officer or Chief Financial Officer.

### At the request of the Principal, the Contractor must provide further information about, or explanation of, any:

#### non-compliance with the Social Procurement Commitment Schedule; or

#### failure to perform the Building Equality Policy Commitments by the due date for performance.

### The obligations set out in this clause 4.3 are in addition to, and do not derogate from, any other obligations set out in the Contract.

## Responses to Non-Compliance

### The Contractor must notify the Principal’s Representative in writing as soon as practicable, but no later than 20 Business Days after becoming aware of any actual or anticipated difficulties that may impact on its ability to meet any of the Building Equality Policy Commitments set out in the Social Procurement Commitment Schedule.

### The notice under clause 4.4(a) must include:

#### details of the Building Equality Policy Commitments that cannot be met by the Contractor and reasons for non-compliance;

#### evidence demonstrating the steps taken by the Contractor to meet the Building Equality Policy Commitments; and

#### all supporting information reasonably required by the Principal’s Representative to assess the nature and severity of the non-compliance and the capability and capacity of the Contractor to comply with the Building Equality Policy Commitments.

### At the request of the Principal’s Representative, the Contractor must meet the Principal’s Representative and the Principal in good faith to discuss the contents of the notice under clause 4.4(a) and agree on alternative appropriate obligations to achieve suitable levels of compliance with the Building Equality Policy Commitments.

### If the parties agree on alternative appropriate obligations to achieve suitable levels of compliance with the Building Equality Policy Commitments:

#### the Principal’s Representative will issue the Contractor with written confirmation of the agreed alternative obligations, including the relevant evidentiary and reporting requirements; and

#### the Building Equality Policy Commitments are deemed to be varied by such alternative appropriate obligations.

### If the parties are unable to agree on alternative appropriate obligations to achieve suitable levels of compliance with the Building Equality Policy Commitments, the Contractor’s failure to comply with the Building Equality Policy Commitments may be determined by the Principal to constitute a breach of the Contract.

### The Principal will take a graduated approach to responding to the Contractor’s non-compliance with the Building Equality Policy Commitments and will consider the nature and severity of the non-compliance and the capability and capacity of the Contractor to comply. Potential consequences of non-compliance with the Building Equality Policy Commitments may include, but are not limited to:

#### the responsible Minister of the Crown or the Secretary of the relevant government agency issuing the Contractor with a formal warning; and

#### the Contractor being placed on a register maintained by the State for increased compliance oversight and monitoring across the portfolio of projects the Contractor is currently undertaking for the Principal or other government agencies.

### Nothing in this clause limits any rights of the Principal under the Contract.

## Verifying compliance

### 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.

### The Contractor must:

#### permit the Principal, a duly authorised nominee of the Principal and any departments and agencies responsible for the Building Equality Policy, from time to time during ordinary business hours and upon reasonable notice, to inspect and verify all records maintained by the Contractor for the purposes of this clause 4.5;

#### permit the Principal, a duly authorised nominee of the Principal and any departments and agencies responsible for the Building Equality Policy, from time to time to undertake a review of the Contractor’s performance against the Building Equality Policy Commitments; and

#### ensure that its employees, agents and Subcontractors give all reasonable assistance to the Principal, a duly authorised nominee of the Principal and any departments and agencies responsible for the Building Equality Policy, to undertake such inspection, verification or review.

### The Contractor acknowledges and agrees that the Principal, a duly authorised nominee of the Principal and any departments and agencies responsible for the Building Equality Policy, are authorised to obtain information from any relevant persons, firms or corporations, including third parties, in connection with the Contractor’s performance against the Building Equality Policy Commitments.

### The obligations set out in this clause 4.5 are in addition to, and do not derogate from, any other obligations as set out in the Contract.

## Use of information

### The Contractor acknowledges and agrees that statistical information contained in the Social Procurement Performance Reports and the measures of the Contractor's compliance with the Social Procurement Commitment Schedule as reported in the final Social Procurement Performance Report:

#### will be used by the State to prepare registers of:

##### high performing contractors who demonstrate exemplary levels of compliance; and

##### contractors who have not complied with the Social Procurement Commitment Schedule;

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

#### may be considered in the assessment and 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 the Contract or as otherwise required by Law.

### The Contractor acknowledges and agrees that the Principal, a duly authorised nominee of the Principal and any departments and agencies responsible for the Building Equality Policy from time to time, may use any information provided by the Contractor to assess and review the impact of the Building Equality Policy on the building and construction industry.

## Subcontracting

### The Contractor must ensure that any Subcontracts it enters into in relation to the Contract contain clauses requiring its Subcontractors to:

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

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

#### permit the Principal to exercise its verification and inspection rights under clause 4.5.

### The obligations set out in this clause 4.7 are in addition to, and do not derogate from, any other obligations as set out in the Contract.

### The Contractor's failure to comply with its obligations in clause 4.7(a) in relation to Subcontracts and Building Equality Policy Commitments may be determined by the Principal to constitute a breach of the Contract.

# Fair Jobs Code

## Alternative applying

Where the Contract specifies that:

### **Alternative 1** – Fair Jobs Code Pre-Assessment Certificate with related requirements only applies, then only clauses 5.2, 5.3(a), 5.3(b)(i), 5.3(b)(iv), 5.3(c), 5.3(d), 5.4, 5.6, 5.8 and 5.9 apply; or

### **Alternative 2** – Fair Jobs Code Pre-Assessment Certificate with related requirements and FJC Plan Addendum with related requirements applies, then the entirety of this clause 5 applies.

## Definitions

In this clause 5:

**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.

**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.

**FJC Department** means the Department of Jobs, Skills, Industry and Regions (and its successor Government departments) as the Department responsible for the Fair Jobs Code.

**FJC Guidelines** means Fair Jobs Code Guidelines, available, as at the Contract Date, at [www.buyingfor.vic.gov.au/fair-jobs-code-and-guides](http://www.buyingfor.vic.gov.au/fair-jobs-code-and-guides).

**FJC Plan Addendum** means the Contractor’s Fair Jobs Code Plan Addendum set out in the Contract, addressing industrial relations, occupational health and safety requirements and commitments and standards as required by the Fair Jobs Code.

**FJC Plan Addendum Performance Report** means a report submitted by the Contractor to the Principal’s Representative, which details the Contractor’s performance against the FJC Plan Addendum.

**Fair Jobs Code** or **FJC** means the Fair Jobs Code issued by the State of Victoria available, as at the Contract Date, at <https://www.buyingfor.vic.gov.au/fair-jobs-code>.

**Fair Jobs Code Unit** means the Fair Jobs Code Unit, an administrative group within the FJC Department with responsibilities in relation to the Fair Jobs Code.

**Pre-Assessment Certificate** means a certificate issued to the Contractor by the Fair Jobs Code Unit prior to entering into the Contract, or which is renewed during the term of the Contract.

**Significant Subcontractor** means an entity engaged, or to be engaged, under a Subcontract directly with the Contractor, where the value of that Subcontract is $1 million or more (exclusive of GST) .

## Fair Jobs Code

### The Contractor warrants that at the time of entering the Contract it holds a valid Pre-Assessment Certificate.

### In performing its obligations under the Contract 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 due date; and

#### comply with the Fair Jobs Code.

### If at any time during the term of the Contract the Contractor’s Pre‑Assessment Certificate is revoked by the Fair Jobs Code Unit that revocation will constitute a breach of this clause 5 which will enable the Principal to exercise its rights under clause 5.9.

### The Contractor acknowledges and agrees that the obligations for holding and maintaining a valid Pre-Assessment Certificate apply during the term of the Contract and any extensions to the term and until all of its reporting obligations as set out in clause 5.5 are fulfilled.

## Verification of Compliance with the Fair Jobs Code Pre-Assessment Certificate

### The Contractor must, on request by the Principal's Representative, provide a copy of the Pre-Assessment Certificate or any related correspondence with the Fair Jobs Code Unit.

### If, during the term of the Contract, the Contractor’s Pre-Assessment Certificate expires the Contractor must provide notice to the Principal's Representative 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's Representative of the expiration, the expiration will constitute a breach of this clause 5 which will enable the Principal to exercise its rights under clause 5.9.

## Reporting

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

### The Contractor must, during the term of the Contract, provide FJC Plan Addendum Performance Reports at the time or times set out in the Contract.

### In addition to the FJC Plan Addendum Performance Reports, prior to or at Practical Completion, and at such other reporting dates for the purpose of this clause 5.5(c) as stated in the Contract, the Contractor must provide to the Principal's Representative:

#### a final FJC Plan Addendum Performance Report (**final FJC Plan Addendum Performance Report**); and

#### a statutory declaration (FJC Statutory Declaration) to confirm that the information contained in the final FJC Plan Addendum Performance Report is true and accurate. The FJC Statutory Declaration must be made by a director of the Contractor or the Contractor’s Chief Executive Officer or Chief Financial Officer.

### At the request of the Principal's 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 clause 5 are in addition to and do not derogate from any other reporting obligations as set out in the Contract.

## Ongoing duty of disclosure and cooperation and audits

### If during the term of the Contract, the Contractor is the subject of an Adverse Ruling or Enforceable Undertaking it must provide notice to the Principal's Representative and the Fair Jobs Code Unit within 10 Business Days of the Adverse Ruling or Enforceable Undertaking being made.

### During the term of the Contract the Contractor must**:**

#### cooperate with all reasonable requests from the Principal's Representative seeking evidence of the Contractor’s compliance with the Fair Jobs Code and the FJC Plan Addendum (where applicable);

#### permit the Principal's Representative, an accountant or auditor on behalf of the Principal, the FJC Department or any other person authorised by the Principal or FJC Department, 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 Fair Jobs Code and FJC Plan Addendum under the Contract; and

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

### The Principal will bear all costs associated with undertaking any audit in accordance with clause 5.6(b)(ii).

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

### The obligations set out in this clause 5.6 are in addition to and do not derogate from any other obligation under the Contract.

### A failure to comply with this clause 5.6 will constitute a breach which will enable the Principal to exercise its rights under clause 5.9.

## Significant Subcontracting

### The Contractor warrants that any Significant Subcontractors engaged or proposed to be engaged to perform any Contractor's Activities 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 Significant Subcontractors in relation to Contractor's Activities contain clauses requiring Significant Subcontractors to:

#### comply with the Fair Jobs Code;

#### 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 clause 5.6, as if references to the Contractor were references to the Significant 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 clause 5.5; and

#### permit the Principal and the FJC Department to exercise their inspection and audit rights under clause 5.6.

### The subcontracting obligations set out in this clause 5.7 are in addition to and do not derogate from any other obligations under the Contract.

### The Contractor’s failure to comply with this clause 5.7 will constitute a breach which will enable the Principal to exercise its rights under clause 5.9.

## Use of information

1. The Contractor acknowledges and agrees that:

### the Fair Jobs Code Unit will assess the Contractor’s compliance with the Fair Jobs Code and may monitor FJC Plan implementation;

### information regarding the Contractor’s compliance with the Fair Jobs Code including any disclosures regarding Adverse Rulings or Enforceable Undertakings:

#### will be reported by the Principal's Representative to the Fair Jobs Code Unit in compliance with the Principal’s obligations under the Fair Jobs Code; and

#### may be disclosed in the circumstances authorised or permitted under the terms of the Contract 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 Fair Jobs Code Unit in accordance with clause 5.6.

## Consequences of breach

Any breach of the provisions of this clause 5 will enable the Principal to do any or all of the following:

### suspend the Contract until such time as the breach has been remedied to the satisfaction of the Principal and within a timeframe acceptable to the Principal;

### by written notice immediately terminate the Contract; or

### exercise any rights that it has under this Contract.

# Tip Truck Policy

## Application

1. This clause 6 applies where the Contractor's Activities involve the use of a Tip Truck Owner Driver.

## Definitions

1. In this clause 6:

### **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.

### **Published Rate** means a rate listed in the Rates and Cost Schedules for Tip Truck Owner Drivers developed by the Transport Industry Council.

### **Relevant Published Rate** means a rate listed in the Published Rates applicable to the type of tip truck to be provided by the Tip Truck Owner Driver.

### **Tip Truck Owner Driver** means an independent contractor who drives a tip truck in connection with excavation work in the building and construction industry.

### **Transport Industry Council** means the body constituted as such under the *Owner Drivers and Forestry Contractors Act 2005* (Vic).

## Obligations

### If the Contractor engages a Tip Truck Owner Driver either 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;

#### where the Contract states that an adjustment applies to account for project specific requirements, then payments to the Tip Truck Owner Driver must be increased by the percentage listed in the Contract; 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.

**Attachment 1 - Social Procurement Framework Statutory Declaration**

I [insert name] of [insert address] and [insert occupation] make the following statutory declaration under the **Oaths and Affirmations Act 2018 (Vic)**:

1. I am a [Director/Chief Executive Officer/Chief Financial Officer] of [insert name of the Contractor] (**Contractor**).

2. The contents of the report provided by the Contractor to the Principal (in accordance with clause 4.3(e)(ii) (Social Procurement) of the Schedule of Government Policy Requirements) are true and correct.

**Applicant signature**

**I declare that the contents of this statutory declaration are true and correct and I make it knowing that making a statutory declaration that I know to be untrue is an offence.**

Signature of person making the declaration: [insert signature]

Declared at: [City, town or suburb] in the state of Victoria.

Date: [insert date]

**Witness signature**

*A person authorised under section 30(2) of the* ***Oaths and Affirmations Act 2018*** **(Vic)** to witness the signing of a statutory declaration.

**I am an authorised statutory declaration witness and I sign this document in the presence of the person making the declaration**

Signature of authorised witness: [insert signature]

Date [insert date]

Name [insert name]

Capacity [insert capacity in which authorised person has authority to witness]

Address [insert address]

**The Statutory Declaration Witness and the person making**

**this statutory declaration must sign or initial this page**

**Declarant: [insert signature/initials] Witness: [insert signature/initials]**

**Certificate Identifying Exhibit**

This certificate is used to identify a document as an exhibit to the statutory declaration.

Title of document: [insert title of document]

Date of document (dd/mm/yyyy): [insert date]

**The attached document is an exhibit to the statutory declaration and is now produced and shown to the witness identified above in their capacity as a qualified statutory declaration witness.**

Name of person making the statutory declaration: [insert name]

Signature of person making declaration: [insert signature]

Date: [insert date]

**Witness signature**

Name of witness [insert name]

Address [insert address]

Signature of statutory declaration witness: [insert signature]

Date (dd/mm/yyyy) [insert date]

Qualification as a statutory declaration [Insert capacity in which authorised person has authority to witness (writing, typing or stamp): witness]

**The Statutory Declaration Witness and the person making**

**this statutory declaration must sign or initial this page**

**Declarant: [insert signature/initials] Witness: [insert signature/initials]**