

**SERVICE AGREEMENT:
ALIGNED TO THE
WHOLE OF VICTORIAN
GOVERNMENT COMMON
FUNDING AGREEMENT**

01/07/2012 to 30/06/2015

Service Agreement between

The State of Victoria as represented by the Department of Health
(ABN 74410330756)

and

Sample Organisation
(ABN 58 372 272 089)

Agreement No. 30247

Agreement Version # 1

Date: 22-Mar-13



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AGREED for and on behalf of Sample Organisation (ABN: 58 372 272 089)

SIGNED by **Mrs Charlee Browne** as
authorised representative for **Sample**
Organisation in the presence of:)
)
)

.....
Signature of authorised representative

.....
Signature of witness

By executing this Agreement the signatory warrants
that the signatory is duly authorised to execute this
Agreement on behalf of the Organisation

.....
Name of witness (block letters)

.....
Name of authorised representative (block
letters)

.....
Address of witness (block letters)

.....
Position of authorised representative (block
letters)

.....
Date

.....
Date

AGREED for and on behalf of the State of Victoria as represented by the Department of Health (ABN
74410330756)

SIGNED by **Authorised Signatory** as
authorised representative for **the Department**
of Health (ABN 74410330756) for and on
behalf of the State of Victoria in the presence
of:)
)
)

.....
Signature of authorised representative

.....
Signature of witness

By executing this Agreement the signatory warrants
that the signatory is duly authorised to execute this
Agreement on behalf of the Organisation

.....
Name of witness (block letters)

.....
Name of authorised representative (block
letters)

.....
Address of witness (block letters)

.....
Position of authorised representative (block
letters)

.....
Date

.....
Date

SERVICE AGREEMENT

BACKGROUND

- A. The Organisation and the Department acknowledge their partnering approach to working together in good faith to achieve objectives in a way which is consistent with the current Partnership in Practice Memorandum of Understanding between the Department of Human Services, the Department of Health and the Victorian Council of Social Service.
- B. This Agreement expresses a shared vision to improve the outcomes for people in Victoria and acknowledges the collaboration, consultation and engagement between the Organisation and the Department to continue to develop the Victorian health system so it performs to a high standard, is sustainable, responsive to people's needs, and accountable for performance in terms of health outcomes and taxpayer value.
- C. The Department will provide the Funding to the Organisation to deliver the Services.
- D. The Organisation will accept the Funding and use it for the delivery of the Services in accordance with the terms of this Agreement.

DETAILS

1. Department (clause 1.1)	The State of Victoria as represented by the Department of Health (ABN 74 410 330 756)
2. Organisation (clause 1.1)	Sample Organisation
3. Start Date (clause 1.1)	1 July 2012
4. End Date (clause 1.1)	30 June 2015
5. Dispute Resolution Officer (clause 1.1)	Executive Director or Director
6. Organisation's Primary Contact (clause 1.1)	Charlee Browne
7. Organisation's address	L10 2 LONSDALE STREET MELBOURNE 3000
8. Organisation's facsimile number	03 9999 9998
9. Organisation's e-mail address	axe1964@gmail.com
10. Department's Primary Contact (clause 1.1)	Departmental Officer
11. Department's address	Level 6, 50 Lonsdale Street, Melbourne, Victoria, 3000
12. Department's facsimile number	
13. Department's e-mail address	DUMMY

TERMS AND CONDITIONS

1 DEFINITIONS AND INTERPRETATION

Definitions

1.1 In this Agreement:

Agreement	means these Terms and Conditions, the Details and any Schedules.
Applicable Departmental Policies	means any applicable Departmental policies and guidelines, as amended or replaced from time to time, including those set out in Schedule 1.
Asset	means a non-consumable item of tangible property (including an Asset that becomes a fixture) that has a service life greater than one (1) year purchased, created or otherwise brought into existence whether wholly or in part with the use of the Funding.
Asset Register	means the register the Organisation will maintain under clause 7.1 [Assets].
Auditor-General	has the meaning set out in section 3 of the <i>Audit Act 1994 (Vic)</i> .
Australian Accounting Standards	means the accounting standards made by the Australian Accounting Standards Board in accordance with section 227 of the <i>Australian Securities and Investments Commission Act 2001 (Cth)</i> .
Australian Auditing Standards	means the auditing standards made by the Auditing and Assurance Standards Board in accordance with section 227B of the <i>Australian Securities and Investment Commission Act 2001 (Cth)</i> .
Background Intellectual Property	means the Intellectual Property of a party which was either created: (a) before the Start Date; or (b) independently of this Agreement, and all improvements to such Intellectual Property by the party.
Business Day	means a day other than a Saturday, Sunday or public holiday appointed under the <i>Public Holidays Act 1993 (Vic)</i> .

Change in Control	means any change during the Term in any person(s) who directly or indirectly exercises effective control over the Organisation (including the ability to determine the outcome of decisions about the financial and operating and other policies of the Organisation) by holding the majority of voting shares, units or other interests in the Organisation or by any other means.
Confidential Information	means information or data (including Personal Information and Health Information), whether or not in a material form, that is confidential to a party or should reasonably be considered confidential. Confidential Information does not include information that is already in the public domain, unless the reason it is in the public domain is as a result of a breach of this Agreement.
Conflict of Interest	means a situation, or a risk of a situation, where an officer, board member, employee, member, volunteer, subcontractor, representative or agent of the Organisation has duties or interests arising as a result of holding a position, possessing property, engaging in a business or occupation or from contractual obligations and those duties or interests are in conflict with or might appear to be in conflict with their duties and interest under this Agreement.
Day	(as opposed to "Business Day" as defined above) includes public holidays appointed under the <i>Public Holidays Act 1993</i> (Vic), and weekends.
Department	means the entity described in item 1 of the Details.
Department's Primary Contact	means the person listed in item 10 of the Details or as notified in writing from time to time by the Department.
Details	means the part of this Agreement entitled 'Details'.
Dispute	means any dispute: <ul style="list-style-type: none"> (a) arising out of this Agreement; or (b) concerning the performance or non-performance by either party of its obligations under the Agreement; or (c) concerning any decision of a party or interpretation of any clause of this Agreement.
Dispute Resolution Officer	means the person assigned to the position listed in item 5 of the Details or as notified in writing from time to time by the Department.
End Date	means the date set out in item 4 of the Details.
Funding	means money the Department provides to the Organisation under this Agreement.
Health Information	has the meaning set out in the <i>Health Records Act 2001</i> (Vic).

Insolvency Event

means where:

- (a) the Organisation is unable to pay its debts as and when they fall due; or
 - (b) in the case of an individual, the individual enters into a scheme of arrangement with creditors or becomes bankrupt; or
 - (c) in the case of a legal entity that is not an individual:
 - (i) a receiver, receiver and manager, administrator, controller, provisional liquidator or liquidator is appointed to the Organisation; or
 - (ii) the Organisation enters into a scheme of arrangement with its creditors; or
 - (iii) the Organisation is wound up;
- or
- (d) the Organisation assigns any of its property for the benefit of creditors or any class of creditors; or
 - (e) a person with a legal right over any assets of the Organisation takes any step towards taking possession or takes possession of those assets or exercises any power of sale; or
 - (f) a distress, attachment or other execution is levied or enforced against the Organisation in excess of \$10,000.

Intellectual Property

includes:

- (a) all copyright (including rights in relation to all documents, reports, charts, drawings, data bases, software, source codes, models, systems, slides, tapes and specifications); and
- (b) all copyright and all rights in relation to inventions (including registered and registrable patents), registered and unregistered trade marks, registered and unregistered designs, circuit layouts, and know-how; and
- (c) all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

Laws

includes:

- (a) Acts of the Commonwealth and the State(s) and Territory (ies) in which the Services will be delivered, and any other relevant State or Territory; and
- (b) ordinances, regulations, by-laws, orders and proclamations or other instruments made under those Acts referred to in paragraph (a); and
- (c) lawful directions by any person exercising statutory powers regarding the Services.

Licence

means a non-exclusive, world-wide, everlasting, irrevocable, royalty free licence to the Department to exercise all rights in relation to the Intellectual Property it applies to as if the licensee were the owner, including the right to sub-license. A Licence does not include the right to transfer or assign the Intellectual Property, or to seek or enforce remedies for infringements of the Intellectual Property against a third party.

Ombudsman	means the person appointed under section 3 of the <i>Ombudsman Act 1973</i> (Vic).
Organisation	means the entity described in item 2 of the Details.
Organisation's Primary Contact	means the person listed in item 6 of the Details or as notified in writing from time to time by the Organisation.
Personal Information	has the meaning set out in the <i>Information Privacy Act 2000</i> (Vic).
Project Intellectual Property	means all Intellectual Property (excluding Background Intellectual Property) developed, created, discovered, brought into existence or otherwise acquired (other than from the Department) by the Organisation under this Agreement.
Record	<p>means any document within the meaning of the <i>Evidence Act 2008</i> (Vic), including:</p> <ul style="list-style-type: none"> (a) anything on which there is writing; or (b) anything on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them; or (c) anything from which sounds, images or writings can be reproduced with or without the aid of anything else; or (d) a map, plan, drawing or photograph <p>created, managed, maintained, brought into existence or otherwise acquired or used by the Organisation (or subcontractor) in relation to the Funding, the Services, and performance of the Organisation's obligations under this Agreement.</p>
Schedule	means a schedule to this Agreement.
Service Agreement Information Kit	means the document entitled 'Service Agreement Information Kit for Funded Organisations', which is available on the internet at http://www.dhs.vic.gov.au/facs/bdb/fmu/service-agreement
Services	means the Services described in Schedules 2 and 3.
Standards	means any standards developed or endorsed by the Department in respect of the Services or this Agreement.
Start Date	means the date set out in item 3 of the Details.
Subcontracting	is when the Organisation engages another organisation or person (excluding employees of the Organisation), to deliver all or part of the Services in accordance with clause 10 [Assignment and Subcontracting].

Term

means the period of this Agreement as detailed in clause 2 [Term of Agreement].

Terms and Conditions

means the part of this Agreement entitled 'Terms and Conditions'.

Interpretation

- 1.2 In this Agreement, unless it specifically states differently:
- (a) words implying one gender include the other gender; and
 - (b) the plural includes any singular and vice versa; and
 - (c) a reference to a statute, ordinance, code or other Law includes subordinate legislation, consolidations, amendments, re-enactments, and replacements of it; and
 - (d) references to this Agreement include the Details, the Terms and Conditions, and its Schedules, annexures and attachments; and
 - (e) "including" and "includes" when introducing an example, does not limit the meaning to that example or examples of that kind; and
 - (f) where a term is defined, the definition includes all grammatical forms of that term; and
 - (g) headings and references to headings contained in square brackets ("[]") are inserted for readability and do not affect the interpretation of this Agreement; and
 - (h) a reference to a person includes an entity recognised by Law including a body politic, and incorporated and unincorporated bodies.

Priority of Documents

- 1.3 Inconsistencies between the terms of this Agreement will be resolved in the following order of priority:
- (a) these Terms and Conditions; and
 - (b) the Details; and
 - (c) Schedule 1; and
 - (d) Schedule 2; and
 - (e) Schedule 3; and
 - (f) The Service Agreement Information Kit.

Governing Law

- 1.4 The laws of the State of Victoria apply to this Agreement. The Organisation and the Department agree to the jurisdiction of the courts of the State of Victoria and courts entitled to hear appeals from those courts.

2 TERM OF AGREEMENT

- 2.1 The Agreement will start on the Start Date and will end on the End Date, unless the Agreement is terminated earlier under clause 14 [Termination of Agreement].
- 2.2 The Organisation and the Department agree that the Department is not obligated to continue to provide funding to the Organisation beyond the Funding set out in Schedule 2 nor to renew the Agreement at the end of the Term.

3 SERVICE DELIVERY

Quality of Service Delivery

- 3.1 The Organisation will deliver the Services in accordance with this Agreement to the reasonable satisfaction of the Department and will at all times:
- (a) deliver the Services in a proper, timely and efficient manner using the standard of care, skill, diligence and foresight that would reasonably be expected from an expert and experienced provider of the Services; and
 - (b) act in accordance with the highest applicable professional ethics, principles and standards; and
 - (c) demonstrate a commitment to ethical practices and behaviours, and make sure that ethical practices are implemented and ethical behaviours are promoted through appropriate staff training and monitoring; and
 - (d) inform the Department about all matters the Department should reasonably be made aware of, and provide information about the delivery of the Services that may reasonably be required by the Department; and
 - (e) obtain and maintain any accreditation or registration required for the delivery of all or part of the Services or requested in writing by the Department; and
 - (f) comply with:
 - (i) the Standards and performance targets listed in any Schedule in respect of the Services; and
 - (ii) all Applicable Departmental Policies; and
 - (iii) all applicable Laws including Laws relating to fire protection, industrial relations and employment, and health, and general safety and taxation.
- 3.2 The Department will provide the Organisation with access to all Applicable Departmental Policies and Standards.

Continuity of Service Delivery

- 3.3 The Organisation agrees that it will not suspend or cease delivery of all or part of the Services except in accordance with clauses 12 [Suspension], 13 [Cessation] or 14 [Termination of Agreement].
- 3.4 Without limiting clause 3.3, if the Organisation proposes to suspend or cease delivery of all or part of the Services (other than in accordance with clauses 12 [Suspension], 13 [Cessation] or 14 [Termination of Agreement]), the Organisation will give written notice to the Department at least three (3) months before it suspends or ceases delivery of all or part of the Services and state:
- (a) the reason(s) the Organisation will suspend or cease delivery of those Services; and
 - (b) how long delivery of those Services will be suspended or ceased.

- 3.5 If for any reason beyond the Organisation's control it is unable to comply with the time period for advance notice set out in clause 3.4 and the Organisation will suspend or cease, or has suspended or ceased delivery of all or part of the Services (other than in accordance with clauses 12 [Suspension], 13 [Cessation] or 14 [Termination of Agreement]), the Organisation will immediately give written notice to the Department and state:
- (a) the reason(s) the Organisation will suspend or cease, or has suspended or ceased, delivery of those Services; and
 - (b) how long delivery of those Services will be suspended or ceased.

4 FUNDING

- 4.1 If the Organisation meets its obligations under this Agreement to the reasonable satisfaction of the Department, the Department will pay the Funding to the Organisation as set out in Schedule 2.
- 4.2 The Organisation and the Department agree that payment of all or part of the Funding is not an admission by the Department that the Organisation has met its obligations under this Agreement to the reasonable satisfaction of the Department.
- 4.3 The Department will increase the Funding payable each year of the Term by the rate of indexation approved by the Victorian Government and advised by the Department.

Use of Funding

- 4.4 The Organisation agrees to use the Funding only for the Services and in accordance with this Agreement or as agreed by the Department in writing.
- 4.5 The Organisation will do all things necessary to make sure that all payments made by the Organisation from the Funding (including payments to subcontractors) are correctly made and properly authorised and that the Organisation maintains proper and diligent control over the incurring of all liabilities.
- 4.6 The Organisation will not use any of the following as security for the purpose of obtaining or complying with any form of loan, credit, payment or other interest unless the Department consents in writing:
- (a) the Funding; or
 - (b) this Agreement including any right, title or interest created under it; or
 - (c) any Asset or Project Intellectual Property.
- 4.7 The Organisation will not spend the Funding on donations to members of State or Commonwealth Parliament or political parties.
- 4.8 If the Organisation complies with this Agreement and delivers the Services to the Department's reasonable satisfaction, the Organisation can retain all unspent and uncommitted Funding at the expiry of the Agreement unless otherwise notified by the Department in accordance with the terms of any Applicable Departmental Policy or stated in any Schedule.

- 4.9 If, in the reasonable opinion of the Department, the Organisation:
- (a) does not comply with this Agreement; or
 - (b) does not deliver all or part of the Services to the Department's reasonable satisfaction; or
 - (c) has used, spent or committed all or part of the Funding other than in accordance with this Agreement;

the Department may in its absolute discretion:

- (i) give written notice to the Organisation requiring the Organisation to repay that part of the Funding and any GST paid to the Organisation in respect of that Funding and the Organisation will repay that amount to the Department within thirty (30) Days, or such other time period as agreed, of receiving the written notice from the Department; or
- (ii) re-negotiate the delivery of Services by the Organisation.

Goods and Services Tax (GST)

- 4.10 In this clause, italicised words or expressions have the same meaning as set out in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (GST Act).
- 4.11 The Funding set out in Schedule 2 is exclusive of *GST*. If *GST* is payable on all or part of the Services under clause 4.12, it will be paid to the Organisation at the same time as the Funding set out in Schedule 2.
- 4.12 The Organisation and the Department agree that if *GST* is payable on the *supply* of the Services by the Organisation under this Agreement, the Department will pay the Organisation an additional amount equal to the *GST* payable on or for the *taxable supply*.
- 4.13 If *GST* is payable on the *supply* of the Services by the Organisation under this Agreement, unless otherwise specified in any Schedule, the Organisation and the Department agree to a recipient created tax invoice (RCTI) arrangement under this Agreement authorised under section 29-70(3) of the GST Act and that:
- (a) the Department at the Start Date is registered for *GST* and agrees that it will notify the Organisation if it ceases to be registered for *GST* or ceases to satisfy any of the requirements of GST Ruling GSTR 2000/10; and
 - (b) the Department will reasonably comply with its obligations under the taxation laws; and
 - (c) the Department can issue an RCTI in respect of a *taxable supply* made to the Department of goods or services provided by the Organisation under this Agreement; and
 - (d) the Department will issue a copy of each RCTI to the Organisation and retain the original; and
 - (e) the Department will issue a copy of each *adjustment note* to the Organisation and retain the original; and
 - (f) the Department will not issue a document that would otherwise be an RCTI, on or after the date when it or the Organisation has ceased to satisfy the requirements of GST Ruling GSTR 2000/10; and
 - (g) the Organisation will not issue *tax invoices* in respect of *taxable supplies* of goods or services to the Department; and
 - (h) the Organisation acknowledges that as at the Start Date it is registered for *GST* and has an active Australian Business Number and agrees that it will notify the Department within seven (7) Days if it ceases to be registered.

- 4.14 If, as at the Start Date the Organisation is not required by Law to be registered for GST and during the Term of this Agreement the Organisation becomes registered for GST, the Organisation will give written notice to the Department within seven (7) Days of becoming registered for GST.
- 4.15 If for any reason the RCTI arrangement specified in clause 4.13 is unable to be implemented or ceases, the Organisation must give the Department a tax invoice in respect of any taxable supply made to the Department by the Organisation in connection with the Agreement prior to any payment of Funding to the Organisation.
- 4.16 Any repayment under clause 4.9 that includes an amount for GST must be accompanied by an *adjustment note* relating to *taxable supplies* for which the Department previously issued an RCTI to the Organisation or the Organisation previously issued a *tax invoice* to the Department.

Funding Acknowledgement

- 4.17 The Organisation will acknowledge any Funding support provided by the Victorian Government as specified in any Applicable Departmental Policy and any Schedule.

5 CONFLICT OF INTEREST

- 5.1 The Organisation:
- (a) warrants that, to the best of its knowledge after making diligent inquiry, it has no actual or potential Conflict of Interest and no actual or potential Conflict of Interest is likely to arise during the Term; and
 - (b) will take all reasonable steps to ensure that no actual or potential Conflict of Interest arises during the Term; and
 - (c) will establish and maintain during the Term a written Conflict of Interest policy requiring timely disclosure of any actual or potential Conflict of Interest by all of the Organisation's officers, board members and employees, agents, volunteers and subcontractors.
- 5.2 If during the Term the Organisation becomes aware of any matter that gives rise to an actual or potential Conflict of Interest, the Organisation will:
- (a) immediately give written notice to the Department of the actual or potential Conflict of Interest and of the steps the Organisation proposes to take to resolve or manage the actual or potential Conflict of Interest; and
 - (b) make full disclosure to the Department of all relevant information relating to the actual or potential Conflict of Interest; and
 - (c) take such steps as the Department may, if the Department chooses to, reasonably require to resolve or manage the actual or potential Conflict of Interest.
- 5.3 If the Organisation fails to notify the Department, or is unable or unwilling to resolve or deal with the Conflict of Interest as required by the Department, the Department may terminate this Agreement under clause 14 [Termination of Agreement].

6 RECORDKEEPING

Financial Records

- 6.1 The Organisation will keep full and accurate Records so that:
- (a) all financial transactions, including receipts and payments, from the Funding are clearly and separately identifiable; and
 - (b) if required by Law or the Department, financial statements under the Australian Accounting Standards can be prepared; and
 - (c) if required by Law or the Department, the Organisation's accounts and Records can be audited in accordance with Australian Auditing Standards; and
 - (d) all of the Organisation's taxation liabilities and payments can be clearly identified.

Recordkeeping

- 6.2 The Organisation will deal with all Records in accordance with the standards issued under the *Public Records Act 1973 (Vic)* (PR Act), including but not limited to:
- (a) storing the Records; and
 - (b) implementing and maintaining a recordkeeping system that creates and maintains full and accurate hard copy and / or electronic Records for all Services delivered under this Agreement; and
 - (c) ensuring the security of the Records.
- 6.3 The Organisation will maintain and manage the Records:
- (a) as specified by the Department and in accordance with any Applicable Departmental Policy; and
 - (b) in such a way that will allow the Records to be quickly and easily accessed, retrieved, reviewed, used and kept by the Department and Victorian Government;
 - (c) without limitation to subclause (a) or (b), in such a way that will allow the Organisation to:
 - (i) respond to any request from the Department for access to Records under clause 6.5; and
 - (ii) advise the Department about Records that may fall within the scope of a request or direction received by the Department under the *Freedom of Information Act 1982 (Vic)* or any other Law where the details of such request or direction are provided to the Organisation by the Department in writing.
- 6.4 In addition to any other obligation under clause 6 or clause 15 [Transition of Services], the Organisation will immediately provide access to Records at the Department's written request and in any of the following circumstances:
- (a) in accordance with the requirements of the PR Act and all relevant Laws; or
 - (b) if requested by the Auditor-General or Ombudsman in writing; or
 - (c) to the Department or any third party nominated by the Department in accordance with any written request by the Department; or
 - (d) for the purposes of audit and performance monitoring under clause 9 [Audit and Performance Review].

Freedom of Information

- 6.5 The Organisation will provide access to the Department and any other person authorised by the Department exercising rights under the *Freedom of Information Act* 1982 (Vic), or any other Laws that apply to the Records as long as they remain in the Organisation's possession or control.

Disposal of Records

- 6.6 The Organisation will only dispose of a Record in accordance with the standards issued under the PR Act and any specific instructions provided by the Department and Victorian Government.

Ownership of Records

- 6.7 The Organisation agrees that the Department has full legal rights to and owns all Records, materials and other resources the Department provides to the Organisation.
- 6.8 The Department, on behalf of the Victorian Government, retains legal ownership of all Records.
- 6.9 Subject to clause 15 [Transition of Services], the Organisation will maintain all Records after the Agreement ends in accordance with time periods required by the PR Act.

7 ASSETS

- 7.1 The Organisation will maintain an Asset Register listing and containing the details of each Asset in accordance with any Applicable Departmental Policies. The Organisation will provide the Department with a copy of the current Asset Register at the Department's request.
- 7.2 The Organisation will not dispose of any Asset worth over \$5000 (exclusive of GST) at the time of purchase which is listed or that should be listed on the Asset Register without the Department's prior consent.
- 7.3 If the Organisation disposes of any Asset listed or that should be listed on the Asset Register, the Organisation will record the details of the disposal in the Asset Register and the Department may:
- (a) reduce the amount of Funding payable under this Agreement by the depreciated value of that Asset on giving written notice to the Organisation; or
 - (b) request the Organisation to reimburse the Department with an amount equal to the depreciated value of the Asset and the Organisation will reimburse the Department.
- 7.4 If the Organisation loses, damages, destroys or sells any Asset listed or that should be listed on the Asset Register the Organisation will repair or replace it at its own expense and record details of the repair or replacement in the Asset Register unless otherwise agreed by the Department in writing.
- 7.5 All Assets purchased with the Funding will be used to support the delivery of the Services.
- 7.6 The Organisation is responsible for and will bear all risks, expenses and running costs for all Assets, including insurance and registration costs.

Assets Purchased Entirely with Funding

- 7.7 If the Organisation ceases to deliver all or part of the Services (for whatever reason), the Organisation agrees to comply with any request of the Department for the Organisation to:
- (a) transfer ownership of and deliver each Asset to the Department or to a third party as the Department directs; or
 - (b) reimburse the Department with an amount equal to the depreciated value of that Asset.

Assets Purchased Partially with Funding

- 7.8 If the Organisation:
- (a) purchases an Asset using the Funding and monies from another source; and
 - (b) ceases delivery of all or part of the Services (for whatever reason); and
 - (c) provides the Department with satisfactory written evidence proving that the Asset was partially purchased with monies from another source;
- the Organisation agrees to comply with any request of the Department for the Organisation to:
- (i) obtain the consent of any interested third party and sell the Asset and use the proceeds to reimburse the Department with an amount equal to the amount of Funding that was used to purchase the Asset, less any amount of depreciation; or
 - (ii) reimburse the Department with an amount equal to the amount of Funding that was used to purchase the Asset, less any amount of depreciation; or
 - (iii) obtain the consent of any interested third party and transfer ownership of and deliver the Asset to the Department or to a third party as the Department directs.
- 7.9 For the purpose of clause 7, depreciation will be calculated in accordance with the Australian Accounting Standard (AASB116), Property Plant and Equipment (as amended from time to time) and any Applicable Departmental Policies.

8 REPORTING

- 8.1 The Organisation will provide the Department with information about and report on the Services in accordance with the Schedules and as and when requested by the Department.
- 8.2 The Organisation will provide the Department any information or Record that relates to the delivery of the Services or shows how the Funding has been spent by the Organisation as and when requested by the Department.
- 8.3 The Organisation will prepare its financial Records in accordance with:
- (a) if required by the Department, any Applicable Departmental Policies; and
 - (b) if required by Law or the Department, the Australian Accounting Standards.

- 8.4 The Organisation will comply with the Department's financial accountability requirements (FAR) and provide the Department with the information and documentation set out in any Applicable Departmental Policies including but not limited to:
- (a) a certification signed either in writing or electronically, in accordance with any Applicable Departmental Policy, by an authorised officer from the Organisation; and
 - (b) the Organisation's annual report containing financial statements, if applicable, or completed Departmental financial reporting forms.
- 8.5 The Organisation will submit its annual FAR information and documentation to the Department within:
- (a) three (3) months of the end of the Organisation's financial operating period; or
 - (b) seven (7) Days of the Organisation's annual general meeting; or
 - (c) such other time as agreed by the Department in writing.

9 AUDIT AND PERFORMANCE REVIEW

- 9.1 The Department may conduct, or the Department may engage a third party to conduct, a performance review or an audit of the Organisation at any reasonable time, at the Department's own expense:
- (a) for the purpose of monitoring and assessing the Organisation's performance of its obligations under this Agreement or delivery of the Services; or
 - (b) if the Department has reasonable concerns that the Organisation may not be delivering, or may be unable to deliver, all or part of the Services in accordance with this Agreement; or
 - (c) if the Organisation's Records give the Department reasonable concern about the Organisation's compliance, or ability to comply, with this Agreement; or
 - (d) if the Department has reasonable concerns that the Organisation is not financially stable; or
 - (e) if the Department has reasonable concerns that the Organisation has misused all or part of the Funding; or
 - (f) to confirm whether the Funding has been used for the correct purposes.
- 9.2 The Organisation will:
- (a) cooperate with and provide assistance to the Department or any third party engaged by the Department to conduct an audit or performance review; and
 - (b) make available to the Department or any third party engaged by the Department all information and Records needed for the audit or performance review in accordance with any written request from the Department or third party engaged by the Department; and
 - (c) allow the Department or any third party engaged by the Department access to the Organisation's premises or place of business to carry out the audit or performance review.

10 ASSIGNMENT AND SUBCONTRACTING

- 10.1 The Organisation may not assign its rights or obligations under this Agreement without the Department's prior written consent.
- 10.2 The Organisation may only Subcontract all or part of the Services with the Department's prior written consent.

- 10.3 Without limiting clause 22 [The Department's Consent], the Department will only provide consent if:
- (a) the Organisation satisfies the Department that the subcontractor can deliver the Services to be Subcontracted on the same terms and conditions as this Agreement; and
 - (b) the contract between the Organisation and the subcontractor is made on the same terms and conditions as this Agreement, including a term that expressly allows the Department to access the subcontractor's premises or place of business to conduct a performance review or audit of the subcontractor on the same terms and conditions as clause 9 [Audit and Performance Review]; and
 - (c) the Organisation agrees to comply with any conditions imposed by the Department as a condition of granting its consent.
- 10.4 The Organisation agrees that it is:
- (a) responsible for the delivery of the Services including any part of the Services that is Subcontracted; and
 - (b) accountable for any acts, omissions and mistakes of any subcontractor in performing all or part of the Services as though they were the Organisation's own acts, omissions and mistakes.

11 DISPUTE RESOLUTION

- 11.1 The Organisation and the Department will enter into good faith discussions to resolve any Dispute.
- 11.2 If a Dispute cannot be resolved under clause 11.1, it will be resolved as follows:
- (a) the party claiming that the Dispute has arisen will give written notice to the other party describing in full the details of the Dispute (the "First Notice"); and
 - (b) within fourteen (14) Days of receipt of the First Notice, the parties will meet to discuss and try to resolve the Dispute; and
 - (c) if the Dispute remains unresolved twenty one (21) Days after receipt of the First Notice, then either party may give written notice (the "Second Notice") to the other party requesting that the Dispute be referred to the Dispute Resolution Officer for resolution; and
 - (d) within fourteen (14) Days of receipt of the Second Notice, the parties will either meet with the Dispute Resolution Officer to discuss the Dispute or provide written submissions regarding the Dispute; and
 - (e) within twenty-eight (28) Days of receipt of the Second Notice, the Dispute Resolution Officer will provide their decision to the parties in writing. The parties agree that any decision of the Dispute Resolution Officer will be final and binding on the parties.
- 11.3 The parties will continue to perform their obligations under this Agreement despite the existence of any Dispute. Nothing in clause 11 affects the parties' abilities to exercise their rights under clauses 12 [Suspension], 13 [Cessation] and 14 [Termination of Agreement].

12 SUSPENSION

Service Suspension

- 12.1 At any time during the Term, the Department may, in the Department's absolute discretion, request the Organisation to immediately suspend delivery of the Services, or part of the Services, by giving written notice, if:
- (a) the Organisation has failed, or in the Department's reasonable opinion, is likely to fail, to meet the Standards and performance targets listed in any Schedule in respect of the Services; or
 - (b) the Organisation or its subcontractor is undergoing or is about to undergo a performance review or audit under clause 9.1(b)-(e) [Audit and Performance Review]; or
 - (c) the Organisation has failed, or in the Department's reasonable opinion, is likely to fail, to follow any Applicable Departmental Policy or the Organisation's own policies; or
 - (d) the Organisation has misused or is reasonably suspected to have misused Funding, or has shown an inability to properly manage its assets; or
 - (e) the Organisation has breached this Agreement and notice has been given to the Organisation by the Department under clause 14.1 [Termination of Agreement]; or
 - (f) the Organisation or its officer, board member, employee, member, volunteer, subcontractor, representative or agent has breached, or is suspected to have breached, any Law applicable to the Services or the operation of the Organisation.
- 12.2 The Organisation will suspend delivery of all or part of the Services at the request of the Department under clause 12.1.
- 12.3 The Department may, by giving written notice to the Organisation reduce the Services to be delivered under this Agreement to reflect any suspension of all or part of the Services under clause 12. Without limiting clause 12.3, the Organisation agrees to the Department varying any Schedule to reflect the reduction of the Services to be delivered by the Organisation under this Agreement.
- 12.4 The Organisation agrees that the Department may fund a third party to deliver all or part of the Services that have been suspended under clause 12.
- 12.5 The Organisation and the Department may exercise any of their rights under clauses 11 [Dispute Resolution], 12 [Suspension], 13 [Cessation] and 14 [Termination of Agreement] at any time during the suspension of the Services under clause 12.

Suspension of Funding

- 12.6 Without limiting clause 12.2, the Department may, in the Department's absolute discretion, immediately stop paying all or part of the Funding on giving written notice to the Organisation if any of the following occurs:
- (a) the Organisation does not meet, or report on, a milestone that is linked to a payment, as referred to in any Schedule; or
 - (b) the Organisation has failed, or in the Department's reasonable opinion is likely to fail, to meet the Standards and performance targets listed in any Schedule in respect of the Services; or
 - (c) the Organisation has misused or is reasonably suspected to have misused Funding, or has shown an inability to properly manage its assets; or
 - (d) the Organisation has breached the Agreement and notice has been given to the Organisation by the Department under clause 14.1 [Termination of Agreement]; or
 - (e) the Department has reasonable concerns that the Organisation is not financially stable; or
 - (f) the Department has requested the Organisation to suspend all or part of the Services under clause 12.1.
- 12.7 The Department may, by giving written notice to the Organisation, reduce the Funding to be paid by the Department under this Agreement to reflect any suspension of all or part of the Funding under clause 12.6. Without limiting clause 12.7, the Organisation agrees to the Department varying any Schedule to reflect the reduction of the Funding to be paid by the Department under this Agreement.
- 12.8 The Organisation and the Department may exercise any of their rights under clauses 11 [Dispute Resolution], 12 [Suspension], 13 [Cessation] and 14 [Termination of Agreement] at any time during the suspension of the Funding under clause 12.

13 CESSATION

- 13.1 At any time during the Term, the Department may, in the Department's absolute discretion, request the Organisation to immediately and permanently cease delivery of part of the Services by giving written notice, if:
- (a) the Department does not receive sufficient funds from either the Victorian Parliament or Commonwealth Government to finance the program or part of the Services or there is a change in Victorian Government policy which affects the program or part of the Services; or
 - (b) notice has been given to the Organisation by the Department under clause 14.1 [Termination of Agreement] and the breach has not been satisfactorily remedied by the Organisation within thirty (30) Days of receiving the notice; or
 - (c) in the reasonable opinion of the Department, the Organisation commits a serious or material breach of this Agreement which is not capable of remedy. For the purpose of this clause:
 - (i) a material breach is a breach which constitutes a substantial failure in the performance of the Services and the Agreement; or
 - (ii) a series of minor breaches may constitute a 'material breach';or
 - (d) the Organisation behaves in a way that may:
 - (i) be contrary to prevailing community standards; or
 - (ii) be regarded by the public as unacceptable; or
 - (iii) bring the reputation of the Organisation into disrepute;and the Department reasonably believes that continued association with the Organisation may be detrimental to the reputation of the Department; or
 - (e) if the Organisation breaches an essential term of this Agreement as described in clause 14.4 [Termination of Agreement].
- 13.2 The Organisation will cease delivery of part of the Services at the request of the Department under clause 13.1.
- 13.3 The Department will give written notice to the Organisation as soon as possible if the Department requires the Organisation to cease delivery of part of the Services under clause 13.1.
- 13.4 If the Department requests the Organisation to cease part of the Services under clause 13.1, the Department may also stop payment of part of the Funding at the same time.
- 13.5 The Department may, by giving written notice to the Organisation, permanently reduce the Services to be delivered by the Organisation and the Funding to be paid by the Department under this Agreement to reflect any cessation of part of the Services under clause 13.1 and clause 13.4. Without limiting clause 13.5, the Organisation agrees to the Department varying any Schedule to reflect the reduction of the Services and the Funding under this Agreement.
- 13.6 The Organisation agrees that the Department may fund a third party to deliver all or part of the Services that have been ceased under clause 13.1.

14 TERMINATION OF AGREEMENT

Termination for Breach

- 14.1 If the Organisation or the Department is in breach of this Agreement, the party in breach will remedy the breach within thirty (30) Days of that party receiving written notice requiring it to fix the breach.
- 14.2 If notice has been given under clause 14.1 and the breach is not satisfactorily remedied within thirty (30) Days, the party who gave notice may immediately terminate this Agreement by giving written notice.

Termination by the Department

- 14.3 The Department may terminate this Agreement immediately by giving written notice to the Organisation:
- (a) if an Insolvency Event occurs in relation to the Organisation; or
 - (b) if the Organisation is a natural person and becomes:
 - (i) mentally incapacitated; or
 - (ii) dies; or
 - (iii) is incapacitated through illness for more than thirty (30) Days; or
 - (iv) is convicted of a crime punishable by a term of imprisonment; or
 - (c) if the Organisation has a Change in Control which the Department reasonably believes would negatively affect the Organisation's ability to comply with this Agreement; or
 - (d) if, in the reasonable opinion of the Department, the Organisation commits a serious or material breach of this Agreement which is not capable of remedy. For the purpose of this clause:
 - (i) a material breach is a breach which constitutes a substantial failure in the performance of the Services and the Agreement by the Organisation; or
 - (ii) a series of minor breaches may constitute a 'material breach';or
 - (e) if the Organisation behaves in a way that:
 - (i) is inconsistent with prevailing community standards; or
 - (ii) may be regarded by the public as unacceptable; or
 - (iii) may bring the reputation of the Organisation into disrepute;and the Department believes that its continued association with the Organisation may be detrimental to the reputation of the Department;
 - or
 - (f) if the Organisation breaches an essential term of this Agreement as described in clause 14.4. The breach of an essential term is a repudiation of this Agreement.
- 14.4 The essential terms of this Agreement are clauses 4.4, 4.5, 4.6 and 4.7 [Funding].

- 14.5 If the Department does not receive sufficient funds from either the Victorian Parliament or the Commonwealth Government to finance the program or the Services, the Department will give written notice to the Organisation as soon as possible and may terminate this Agreement by giving reasonable notice.
- 14.6 If there is a change in Victorian Government policy which affects the program or the Services, the Department may terminate this Agreement by giving the Organisation at least three (3) months' written notice.
- 14.7 The Organisation will immediately comply with any directions in a notice given under clauses 14.3, 14.5 or 14.6.

Termination without Fault

- 14.8 Either the Organisation or the Department may terminate this Agreement at any time by giving the non-terminating party at least three (3) months' written notice.
- 14.9 The party electing to terminate this Agreement under clause 14.8 will pay the reasonable costs (other than loss of profit or income) necessarily incurred and substantiated by the non-terminating party that arise directly from the termination. The non-terminating party will use its best efforts to minimise any such costs arising from termination.
- 14.10 The total amount payable by the Department to the Organisation, if any, on termination of this Agreement under clause 14.9 will not exceed the total amount of Funding that would have been payable under the Agreement had it not been terminated, less any amount already paid under the Agreement.

15 TRANSITION OF SERVICES

- 15.1 On expiry or termination of this Agreement for any reason or if the Organisation ceases to deliver the Services, the Organisation will comply with any written notice from the Department requesting the Organisation to:
- (a) immediately hand over to the Department or any third party nominated by the Department all Records provided to the Organisation by the Department relating to the delivery of the Services; and
 - (b) immediately transfer to the Department or any third party nominated by the Department all Records created, managed and maintained relating to the delivery of the Services in a format and in a way that allows the Records to be quickly and easily, accessed, retrieved, reviewed, kept and used by the Department or third party nominated by the Department; and
 - (c) within thirty (30) Days after the expiry or termination of this Agreement or the cessation of any Services under clause 13 [Cessation], provide the Department with:
 - (i) a financial acquittal detailing all the Funding paid to the Organisation by the Department and spent by the Organisation (including any unspent Funding); and
 - (ii) a copy of the current Asset Register; and
 - (iii) any other outstanding information, documentation or reports the Organisation is required to provide the Department under this Agreement; and
 - (d) provide (and require any subcontractor engaged by the Organisation to provide) all reasonable assistance to the Department to transfer all or part of the Services, functions and operations provided by the Organisation under this Agreement to the Department or any third party nominated by the Department, including:
 - (i) answering questions and providing other information as may be reasonably sought by the Department and/or any third party nominated by the Department; and
 - (ii) handing over client information and any material or Records held by the Organisation or any subcontractor engaged by the Organisation relating to the delivery of the Services, regardless of the manner of storage, to the Department and/or to any third party nominated by the Department.
- 15.2 If this Agreement has not expired or been terminated and the Organisation ceases to deliver any part of the Services, the Organisation will comply with clause 15.1 in respect of the part of the Services that have been suspended under clause 12 [Suspension] or ceased under clause 13 [Cessation].
- 15.3 The obligations in clause 15 will continue for a period of three (3) years after the expiry or termination of this Agreement.

16 INTELLECTUAL PROPERTY

- 16.1 The Background Intellectual Property of each party remains the property of that party.
- 16.2 The Organisation will own all Project Intellectual Property unless clause 16.3 applies.
- 16.3 The Department will give written notice to the Organisation prior to the delivery of all or part of the Services if the Department considers that all or part of the Project Intellectual Property arising from the delivery of those Services should be owned by the Department.
- 16.4 If the Department gives written notice to the Organisation under clause 16.3, the Project Intellectual Property specified in the notice is owned by the Department.

- 16.5 The Organisation grants, and the Department accepts, a Licence over:
- (a) the Project Intellectual Property not owned by the Department; and
 - (b) the Background Intellectual Property; and
 - (c) any Intellectual Property of a third party, if any,
- to the extent the Licence is needed to allow the Department to enjoy the full benefit of the Services and this Agreement.
- 16.6 At the request of the Department, the Organisation will provide the Department with copies of all Licensed materials and Intellectual Property and in a way that allows the Department to exercise the Department's rights under the Licence.
- 16.7 The Organisation warrants that it has the right to grant the Licences referred to in clause 16.5.
- 16.8 The Organisation will obtain all consents needed for any Licence, including in relation to any Moral Right. For the purposes of clause 16.8, 'Moral Right' has the meaning set out in section 189 of the *Copyright Act 1968* (Cth).
- 16.9 The Organisation will properly manage the Project Intellectual Property to allow the Department to enjoy the full benefit of the Services and this Agreement, which may include taking any necessary action to:
- (a) register, maintain the registration of, protect, manage, exploit and (as appropriate) commercialise the Project Intellectual Property for the benefit of the Victorian public; and
 - (b) maintain, improve, enhance and develop the Project Intellectual Property to the fullest extent reasonably necessary to maintain its usefulness and appropriateness to the Organisation and the Department for the delivery of the Services; and
 - (c) use, reproduce, publish, adapt, disseminate, communicate to the public, broadcast, and perform the Project Intellectual Property for the benefit of the Victorian public; and
 - (d) comply with all applicable Departmental or other Victorian Government policies in respect of the Project Intellectual Property.
- 16.10 The Organisation will not accept co-funding, or involve any person in the delivery of the Services, on terms that would jeopardise or limit any Licence to be granted to the Department without obtaining the Department's prior agreement and consent in writing.

17 PRIVACY AND WHISTLEBLOWERS ACTS

Privacy

- 17.1 The Organisation acknowledges and agrees that it is bound by:
- (a) the Information Privacy Principles contained in the *Information Privacy Act 2000* (Vic) (IP Act);
 - (b) the Health Privacy Principles contained in the *Health Records Act 2001* (Vic) (HR Act); and
 - (c) any applicable code of practice made under the IP Act and the HR Act,

when performing its obligations under this Agreement in the same way and to the same extent that the Department would be bound if the Department were to perform the Organisation's obligations under this Agreement.

17.2 In delivering the Services under this Agreement, the Organisation will:

- (a) collect, use and disclose Personal Information and Health Information obtained while delivering the Services, only for this Agreement and in accordance with the IP Act and the HR Act; and
- (b) not do anything that would breach a Health Privacy Principle contained in the HR Act or an Information Privacy Principle contained in the IP Act; and
- (c) comply with the IP Act, the HR Act and any applicable code of practice made under the IP Act and HR Act as if it were an 'organisation' within the meaning of the IP Act and the HR Act; and
- (d) comply with any direction, guideline, determination or recommendation made by the Victorian Privacy Commissioner or the Victorian Health Services Commissioner; and
- (e) make sure that any person (including any subcontractor) who may deal with Personal Information or Health Information on behalf of the Organisation in relation to the Services or this Agreement is made aware of the obligations in this clause; and
- (f) immediately notify the Department if the Organisation becomes aware of a breach, or possible breach, of any of the obligations in subclauses (a) to (d), by the Organisation, or any person acting for or on behalf of the Organisation (including any subcontractor) in relation to all or part of the Services or this Agreement; and
- (g) make sure that any Subcontract it enters into imposes the obligations in clause 17 of this Agreement on the subcontractor; and
- (h) in complying with Information Privacy Principle 1.3 of the IP Act and Health Privacy Principle 1.4 of the HR Act, ensure that it makes individuals to whom the Organisation provides Services aware that the Department is an organisation to which the Organisation usually discloses Personal Information and Health Information.

Whistleblowers Act

17.3 If the *Whistleblowers Protection Act 2001* (Vic) applies to the Organisation, the Organisation agrees to comply with and be bound by the provisions of that Act.

18 CONFIDENTIAL INFORMATION

18.1 The Organisation and the Department may disclose information (including on the internet) about the content of this Agreement unless the information is Confidential Information.

18.2 Each party agrees to treat all Confidential Information as confidential and not to disclose it to any third party without the prior written consent of the other party, except in the following circumstances:

- (a) where the disclosure is required by Law or by this Agreement; or
- (b) where the disclosure is reasonably required by any persons performing their obligations under this Agreement; or
- (c) any disclosure to that party's own professional advisers, or its insurer; or
- (d) if requested by the Auditor-General, the Ombudsman, or the Minister responsible for the portfolio under which the Services operate.

19 INDEMNITY

- 19.1 The Organisation indemnifies the Department against all Liability the Department may incur in respect of any Claim including Claims relating to:
- (a) loss of or damage to property; and
 - (b) death or personal injury; and
 - (c) a breach of any third party's Intellectual Property rights; and
 - (d) a breach of privacy Law; and
 - (e) a breach of its obligations under clause 6 [Recordkeeping];
- arising in any way from:
- (i) the Organisation's breach of this Agreement or any Law; or
 - (ii) an illegal or negligent act or omission of the Organisation or its officers, board members, employees, agents, volunteers or subcontractors in connection with the Services or this Agreement.
- 19.2 The Organisation's Liability will be reduced to the extent that Liability is caused or contributed to by an unlawful or negligent act or omission of the Department or its officers or employees.
- 19.3 For the purposes of clause 19:
- (a) 'Liability' includes all costs, damages, expenses and losses of any kind; and
 - (b) 'Claim' includes all demand, rights, actions, suits or proceedings of any kind; and
 - (c) 'Department' includes all its officers and employees.

20 INSURANCE AND RISK MANAGEMENT

Insurance

- 20.1 The Organisation will:
- (a) on and from the Start Date have adequate insurance coverage for its operational and business risks with one or more of the following:
 - (i) the Victorian Managed Insurance Authority;
 - (ii) an insurer authorised under the *Insurance Act 1973* (Cth);
 - (iii) an insurer approved in writing by the Department;and
 - (b) provide the Department with proof of the Organisation's insurance cover on request; and
 - (c) maintain all insurance policies for the Term and further maintain those insurance policies that provide cover on a 'claims made' basis for no less than six (6) years after the completion of the Services; and

- (d) undertake periodic reviews to make sure the Organisation's operational and business risks are adequately insured, particularly in regard to public and products liability and professional indemnity risks.

Risk Management

20.2 The Organisation will:

- (a) manage risk in accordance with Australian/New Zealand Risk Management Standard: AS/NZS ISO 31000:2009 (Australian Standard) as amended from time to time or as otherwise specified in any Applicable Departmental Policies.
- (b) arrange for its chief executive officer or a board member of the Organisation to attest that:
 - (i) the Organisation's risk management processes (Processes) are consistent with the Australian Standard or any Applicable Departmental Policies; and
 - (ii) during the Term, the Organisation has managed risk in accordance with the Australian Standard or any Applicable Departmental Policies; and
 - (iii) within the twelve (12) months prior to attestation, the Organisation has undertaken a review of the Processes to ensure compliance with the Standard or any Applicable Departmental Policies; and
 - (iv) the Processes satisfactorily and effectively manage the Organisation's risks; and
 - (v) the Organisation's board, committee of management or audit or risk committee has verified that the Processes satisfactorily and effectively manage the Organisation's risks.
- (c) provide the Department with the attestation required under clause 20.2(b):
 - (i) within six (6) months of the Start Date of this Agreement; and
 - (ii) on every anniversary of the Start Date of this Agreement.

21 VARIATION

21.1 The Organisation and the Department agree that this Agreement may only be varied if:

- (a) both parties agree in writing to the variation; or
- (b) the Department notifies the Organisation in writing of a proposed variation to this Agreement and the date the proposed variation will take effect from ("the Effective Date"), and the Organisation continues to deliver all or part of the Services or delivers new services as described in the proposed variation after the Effective Date.

22 THE DEPARTMENT'S CONSENT

- 22.1 Where the Department's consent or approval is required under this Agreement:
- (a) the Organisation will:
 - (i) make its request in writing a reasonable time before the date on which the consent or approval is required by the Organisation; and
 - (ii) provide any information or documentation required or requested by the Department;
 - (b) the Department may:
 - (i) provide its consent or approval subject to any terms or conditions it considers appropriate; or
 - (ii) withhold its consent or approval;and
 - (c) the Department's consent will not be valid unless provided in writing.
- 22.2 Any consent provided under this Agreement is not deemed to be consent in the context of any other Agreement.
- 22.3 The Organisation will comply with the terms and conditions of any consent.

23 STATUS OF ORGANISATION

- 23.1 The Organisation and the Department agree and acknowledge that:
- (a) nothing in this Agreement creates any joint venture, partnership, employment or agency relationship between the Organisation and the Department; and
 - (b) neither party has authority to incur any liability or make any representation on behalf of the other.
- 23.2 The Organisation is solely responsible and liable for paying superannuation, payroll or any other tax, WorkCover levy or any similar payments or entitlements in relation to its employees.
- 23.3 The Organisation warrants that it is a legal entity capable of entering into this Agreement and that it complies with all Laws under which it is incorporated.
- 23.4 The Organisation will provide the Department with evidence of the Organisation's legal status if requested by the Department and will give written notice to the Department within five (5) Business Days of any changes to the Organisation's legal status coming into effect.
- 23.5 Prior to any proposed Change of Control, the Organisation will:
- (a) give written notice to the Department with reasonable time for the Department to consider the impact of the proposed Change of Control; and
 - (b) provide any information or documentation required or requested by the Department about the proposed Change of Control.
- 23.6 If the Organisation is a partnership, joint venture or consortium of two (2) or more persons, all such persons are liable both individually and as a group to the Department for the full performance of this Agreement.

- 23.7 Where the Organisation or any part of it is a partnership, this Agreement will not terminate automatically on the death, retirement or resignation of one or more members of such partnership.
- 23.8 The Organisation's Primary Contact has authority to bind the partnership, joint venture or consortium and each of its members.

24 NOTICES

- 24.1 Any notice, approval or consent from one party to another must be in writing and be signed by an officer who is authorised to sign and legally bind that party. This clause 24 does not apply to variations to this Agreement made in accordance with clause 21 [Variation].
- 24.2 Any notice, approval or consent must be addressed to the Department's Primary Contact or the Organisation's Primary Contact and will be properly given or served by a party if that party:
- (a) delivers it by hand; or
 - (b) posts it by mail to the address listed in the Details or to another address as notified in writing by the relevant party; or
 - (c) transmits it by facsimile to the facsimile number listed in the Details or to another facsimile number as notified in writing by the relevant party; or
 - (d) transmits it by electronic mail to the email address listed in the Details or to another email address as notified in writing by the relevant party.
- 24.3 A notice will be taken to be received:
- (a) if delivered by hand, on the day of delivery if the party giving the notice has a receipt for the delivery of the notice signed by a person employed by the party receiving the notice, unless delivery is made:
 - (i) on a non-Business Day; or
 - (ii) after 5:00 pm on a Business Day;in which case the notice will be taken to be received on the next Business Day; or
 - (b) in the case of a posted letter, on the third Business Day after the date of posting if posted in Australia; or
 - (c) in the case of a facsimile transmission, on the day of transmission if the party giving the notice has a transmission confirmation report showing an error free facsimile transmission, unless the transmission is made:
 - (i) on a non-Business Day; or
 - (ii) after 5:00 pm on a Business Day;in which case the notice will be taken to be received on the next Business Day; or
 - (d) in the case of an email, on the day the email is sent if the party giving the notice has a confirmation report or any other written evidence that the email has reached the recipient's mailbox, unless the email is sent:
 - (i) on a non-Business Day; or
 - (ii) after 5:00 pm on a Business Day;in which case the notice will be taken to be received on the next Business Day.

25 WAIVER

- 25.1 No waiver of any right of a party to this Agreement will be effective unless it is in writing and signed by that party.
- 25.2 A single or partial exercise or waiver of a right under this Agreement does not prevent any other exercise of that right or the exercise of any other right.

26 SURVIVAL

- 26.1 The following clauses will continue to apply after the end of this Agreement: 4.8 to 4.9 [Funding], 6 [Recordkeeping] 7.2, 7.3, 7.7 and 7.8 [Assets], 8 [Reporting], 11 [Dispute Resolution], 15 [Transition of Services], 16 [Intellectual Property], 17[Privacy and Whistleblowers], 18 [Confidential Information], 19 [Indemnity] and 20 [Insurance and Risk Management].

SCHEDULE 1

Applicable Departmental Policies

1. [Victorian Health Policy and Funding Guidelines](#)
2. [Service Agreement Information Kit which includes the following policies:](#)
 - a) [Fire risk management](#)
 - b) [Asbestos risk management guidelines](#)
 - c) [Incident reporting](#)
 - d) [Responding to allegations of physical or sexual assault](#)
 - e) [Complaints management](#)
 - f) [Police records check policy](#)
 - g) [Occupational Health and Safety](#)
 - h) [WorkCover](#)
 - i) [Victorian charter of human rights and responsibilities](#)
 - j) [Monitoring framework](#)
 - k) [Pandemic business continuity planning](#)
 - l) [Climate change adaptation and environmental sustainability](#)
 - m) [Language services policy](#)
 - n) [Cultural diversity guide](#)
 - o) [Working with Aboriginal community controlled organisations](#)
 - p) [Multiple and complex needs initiative](#)
 - q) [With respect to age 2009 - \(elder abuse prevention practice guidelines](#)
 - r) [Vulnerable people in emergencies](#)
 - s) [Emergency preparedness clients and services policy](#)
 - t) [Asset Management](#)
 - u) [Asset Maintenance](#)

Key documents

This table lists any applicable statewide program specific requirements applicable for Services funded in this Agreement. It also provides the web address where on-line versions can be located.

SSG #	Service Standards & Guidelines
261	The Victorian HACC Program Manual http://www.health.vic.gov.au/hacc/prog_manual/index.htm
318	Victoria s Alcohol and Drug Treatment Services - The Framework for Service Delivery, Department of Human Services 1997 http://www.health.vic.gov.au/drugservices/pubs/vicadts.htm
510	Incident Reporting Protocol for the Alcohol and Drug Sector (2005) http://www.health.vic.gov.au/drugservices/pubs/incident.htm
522	Child Wellbeing and Safety Act, 2005 http://www.austlii.edu.au/au/legis/vic/consol_act/cwasa2005218/
523	Children, Youth and Families Act, 2005 http://www.legislation.vic.gov.au/Domino/Web_Notes/LDMS/PubStatbook.nsf/f932b66241ecf1b7ca256e92000e23be/15a4cd9fb84c7196ca2570d00022769a!OpenDocument
557	Working with Children Act, 2005 (027 (Latest Version)) http://www.legislation.vic.gov.au/Domino/Web_Notes/LDMS/PubLawToday.nsf/95c43dd4eac71a68ca256dde00056e7b/68884f982d42a8bfca25778a001794af!OpenDocument
570	DHS Management Response to Inhalant Use, Feb 2003 http://www.cyf.vic.gov.au/placement-support/library/publications/placement-and-support/inhalant_use
694	Cultural Diversity Guide - June 2004 http://www.dhs.vic.gov.au/multicultural/downloads/cultural_diveristy_guide_2006.pdf
695	Shaping the Future - The Victorian Alcohol and Other Drug Quality Framework - April 2008 http://www.health.vic.gov.au/drugservices/downloads/shaping_the_future.pdf

SSG #	Service Standards & Guidelines
696	Alcoholics and Drug-dependent Persons Act 1968 (to be repealed and replaced from 1 March 2011 by Severe Substance Dependence Treatment Act 2010 if passed by Parliament) http://www.legislation.vic.gov.au/domino/Web_Notes/LDMS/LTObject_Store/LTObjSt1.nsf/DDE300B846EED9C7CA257616000A3571/FE2560F247DF08F9CA2577610017C52A\$FILE/68-7772a073.pdf
698	Clinical Treatment Guidelines for Alcohol and Drug Clinicians - Co-occurring acquired brain injury / cognitive impairment and alcohol and other drug use disorders http://www.health.vic.gov.au/drugservices/pubs/clin_treat.htm
699	Clinical Treatment guidelines for Methamphetamine dependence and treatment http://www.health.vic.gov.au/drugservices/pubs/clin_meth.htm
700	COATS, Community Correctional Services & Drug Treatment Services Protocol http://www.health.vic.gov.au/drugservices/pubs/coats.htm
702	Incident Reporting Protocol for the Alcohol and Drug Sector (2008) http://www.dhs.vic.gov.au/__data/assets/pdf_file/0016/412243/incident-reporting-alcohol-and-other-drug-protocol-may-2009.pdf
706	Protocol between Drug Treatment Services & Child Protection for working with parents with alcohol & other drug issues http://www.health.vic.gov.au/drugservices/pubs/protocol.htm
708	Shaping the Future - The Victorian Alcohol and Other Drug Quality Framework April 2008 http://www.health.vic.gov.au/drugservices/pubs/shaping_future.htm

SCHEDULE 2

Funding Summary, Payments, Data Collection Requirements And Service Plan(S)

Sample Organisation

Financial Year 2012/13

Service Provider	Service Plan	Service Plan Region/Division	Activity	Ongoing	Fixed Term	Minor Capital	Prior Year Adjustment	Total
Sample Organisation	Drug Treatment Services	Eastern Metropolitan - Health	34054 : Peer Support	\$0.00	\$545,139.84	\$0.00	\$0.00	\$545,139.84
Sample Organisation	HACC & Assessment	Southern Metropolitan - Health	13057 : HACC Planned Activity Group - High	\$36,067.20	\$0.00	\$0.00	\$0.00	\$36,067.20
Total:				\$36,067.20	\$545,139.84	\$0.00	\$0.00	\$581,207.04

Financial Year 2013/14

Service Provider	Service Plan	Service Plan Region/Division	Activity	Ongoing	Fixed Term	Minor Capital	Prior Year Adjustment	Total
Sample Organisation	HACC & Assessment	Southern Metropolitan - Health	13057 : HACC Planned Activity Group - High	\$36,067.20	\$0.00	\$0.00	\$0.00	\$36,067.20
Total:				\$36,067.20	\$0.00	\$0.00	\$0.00	\$36,067.20

Financial Year 2014/15

Service Provider	Service Plan	Service Plan Region/Division	Activity	Ongoing	Fixed Term	Minor Capital	Prior Year Adjustment	Total
Sample Organisation	HACC & Assessment	Southern Metropolitan - Health	13057 : HACC Planned Activity Group - High	\$36,067.20	\$0.00	\$0.00	\$0.00	\$36,067.20
Total:				\$36,067.20	\$0.00	\$0.00	\$0.00	\$36,067.20

All funding and payment amounts shown in this schedule are exclusive of GST. Where GST is payable, GST will be added at the time each payment is made.

Payment Schedule (GST Excluded)

Due Date	Amount
03/07/2012	\$49,362.79
07/08/2012	\$49,362.79
04/09/2012	\$47,770.44
02/10/2012	\$49,362.79
06/11/2012	\$47,770.44
04/12/2012	\$49,362.79
01/01/2013	\$49,362.79
05/02/2013	\$44,585.75
05/03/2013	\$49,362.79
02/04/2013	\$47,770.44
07/05/2013	\$49,362.79
04/06/2013	\$47,770.44
02/07/2013	\$3,063.24
06/08/2013	\$3,063.24
03/09/2013	\$2,964.43
01/10/2013	\$3,063.24
05/11/2013	\$2,964.43
03/12/2013	\$3,063.24
07/01/2014	\$3,063.24
04/02/2014	\$2,766.80
04/03/2014	\$3,063.24
01/04/2014	\$2,964.43
06/05/2014	\$3,063.24
03/06/2014	\$2,964.43
01/07/2014	\$3,063.24
05/08/2014	\$3,063.24
02/09/2014	\$2,964.43
07/10/2014	\$3,063.24
04/11/2014	\$2,964.43
02/12/2014	\$3,063.24
06/01/2015	\$3,063.24
03/02/2015	\$2,766.80
03/03/2015	\$3,063.24
07/04/2015	\$2,964.43
05/05/2015	\$3,063.24
02/06/2015	\$2,964.43

All funding and payment amounts shown in this schedule are exclusive of GST. Where GST is payable, GST will be added at the time each payment is made.

Data Collection Requirements

This table lists any applicable data collection requirements for the Services funded in this Agreement.

DCR #	Name
233	HACC Fees Data Collection
80	HACC National Minimum Data Set
23	State Alcohol & Drug Treatment Service Utilisation Data Collection

Further information including the Activities/Services that the data collection requirements apply to are located in the Service Agreement Module on the Funded Agency Channel (<http://www.dhs.vic.gov.au/funded-agency-channel>)

Organisation Name: Sample Organisation
Agreement Number: 30247
Agreement Version: 1
Lead Region/Division: Eastern Metropolitan - Health

Service Plan

Service Plan: Drug Treatment Services - 1-113297052
Primary Service Provider: Sample Organisation
Service Plan Region/Division: Eastern Metropolitan - Health

Activity: 34054 – Peer Support
Financial Year: 2012/13

Performance Measure

Performance Measure	Target	Unit
Number of episodes of care	987.00	episodes of care

Funding

Funding - Baseline	Funding - Variation	Funding - Total
\$0.00	\$545,139.84	\$545,139.84

Service Plan

Service Plan: HACC & Assessment - 1-113296820
Primary Service Provider: Sample Organisation
Service Plan Region/Division: Southern Metropolitan - Health

Detail
Any other specific requirements relating to funding in this Service Plan will be recorded in this part of the agreement document.

Activity: 13057 – HACC Planned Activity Group - High
Financial Year: 2012/13

Performance Measure

Performance Measure	Target	Unit
Number of hours of service (provided to clients)	2,040.00	hours

Funding

Funding - Baseline	Funding - Variation	Funding - Total
\$0.00	\$36,067.20	\$36,067.20

Service Delivery Catchments

The table below sets out the catchment targets for the key measure in the current financial year only.

Catchment	Target
Greater Dandenong (C)	2040

Activity: 13057 – HACC Planned Activity Group - High

Financial Year: 2013/14

Performance Measure

Performance Measure	Target	Unit
Number of hours of service (provided to clients)	2,040.00	hours

Funding

Funding - Baseline	Funding - Variation	Funding - Total
\$0.00	\$36,067.20	\$36,067.20

Activity: 13057 – HACC Planned Activity Group - High

Financial Year: 2014/15

Performance Measure

Performance Measure	Target	Unit
Number of hours of service (provided to clients)	2,040.00	hours

Funding

Funding - Baseline	Funding - Variation	Funding - Total
\$0.00	\$36,067.20	\$36,067.20

SCHEDULE 3

Agreement Level Information (where applicable)

The Organisation agrees to implement measures agreed with the Department, to improve productivity and efficiency gains through service innovation and service integration.

