

# Higher Education and Skills Grant Program Funding Agreement 2020

## Schedule

### Parties

The State of Victoria through the Department of  
Education and Training

and

[Name of Recipient]

[ABN of Recipient]

Date: [DD/MM/YYYY]

HES Grant Program Funding Agreement - Schedule

Parts of this Agreement

This Agreement is made up of the following parts:

- Terms and Conditions,
• The Details
• The Activity Schedule
• Attachments (if any)

Background

- A The Department through the Skills First reforms provides substantial support to the TAFE and training sector through targeted program funding in relation to vocational education and training. Financial assistance is provided in compliance with the Departments Grants Policy and facilitated by the Higher Education and Skills group through the allocation of grants aimed at achieving outcomes for specific cohorts, training providers or industries.
B This Agreement implements a funding arrangement and sets out the conditions applying to a targeted program financial assistance grant to be provided to the Recipient. The Department has invested in systems and related resources to provide efficient and transparent contract management articulated through program guidelines and engagement management to ensure grant outcomes are clearly identified and performance is substantiated by grant recipients.
C The Department will provide the Funding to the Recipient to deliver the Activity.
D The Recipient will accept the Funding and use it for the delivery of the Activity in accordance with the terms of this Agreement.

Executed as an Agreement

EXECUTED for and on behalf of the Department of Education and Training, ABN 52 705 101 522, by its authorised signatory who warrants that he or she is a duly authorised to execute on behalf of the Department:

Name and position of authorised signatory [Name] [Position]

Signed: ..... Date: [ / /2020]

SIGNED for and on behalf of [Name of Recipient] [ACN or ABN] [number], by the following authorised delegate of the Recipient who warrants that he or she is a duly authorised signatory able to execute on behalf of the Recipient:

Name and position of authorised representative [Name] [Position]

Signed: ..... Date: [ / /2020]

# HES Grant Program Funding Agreement - Schedule

# HES Grant Program Funding Agreement - Schedule

## Details:

- 1. Department **The State of Victoria as represented by the Department of Education and Training, ABN 52 705 101 522**
- 2. Recipient [**<Organisation Name>**] [**<ABN or ACN>**] [**<number>**]
- 3. Start Date [**<DD/MM/YYYY>**]
- 4. End Date [**<DD/MM/YYYY>**]
- 5. Dispute Resolution Officer [**<Name/Not Nominated>**]
- 6. Recipient's Primary Contact [**<Name>**]
- 7. Recipient's address [**<Address>**]
- 8. Recipient's phone number [**<Number>**]
- 9. Organisation's email address [**<Address>**]
- 10. Department's Primary Contact [**<Name>**]
- 11. Department's address [**<Address>**]
- 12. Department's phone number [**<Number>**]
- 13. Department's email address [**<Address>**]

# HES Grant Program Funding Agreement - Schedule

## Activity Schedule

Re: [<Activity Name>]

Opportunity Code : [<Optional: Insert number OR n/a> ]

### Item 1: Activity details

(read with 'Terms and Conditions' clause on *Funding* (clause 4))

#### What the Funding is for

[<Insert Service/Project description being funded, OR the description the applicant submitted on their application form if applicable, OR briefly describe the Activity> ]

#### Activity start date and end date

The Activity described in this Activity Schedule starts on [<DD/MM/YYYY> ] and ends on [<DD/MM/YYYY>].

# HES Grant Program Funding Agreement - Schedule

## Item 2: Funding

(read with 'Terms and Conditions' clause on *Funding* (clause 4))

- The funding for the Activity comes from [<Program Name/Funding Source>]. Use Product
- The total funding for the Activity is \$<Amount>. This amount is excluding GST. [ ]

## Item 3: Activity deliverables and payments

(read with 'Terms and Conditions' clause on Funding (clause 4))

### Recipient’s Application for Funding

The Recipient’s application for Funding (including any additional information provided to the Department as part of the application) (the **Application**), forms part of the Agreement and is attached in Item 8. The Activity delivered must be consistent with those documents. If there is a conflict or inconsistency between the Application and this Agreement, the Agreement has precedence to the extent of the conflict or inconsistency.

### Completion of Activity

The Recipient must complete the Activity as described in the Activity Deliverables and Payments Table in this Item 3.

### Project Plan

A project plan, project management plan or other similar plan (**Project Plan**) must be provided to the Department as soon as possible after executing the Agreement, and not later than 30 Business Days after the Start Date of the Activity. The Project Plan must:

- detail how the Activity will be delivered;
- include timeframes for key actions; and
- be approved by the Department.

Reports must report on progress against the Project Plan.

### Variation to Activity

The Organisation from time to time may give written notice to the Department proposing a variation to the Activity, the Start Date, the End Date, or any Activity deliverable or budget specified in the Activity Schedule, but not to the amount of Funding. If the Department, in its sole discretion, gives written notice agreeing to the proposed variation, the Activity Schedule will be deemed to be varied accordingly from the date of the Department's notice.

Activity Deliverables and Payments Table [<insert GEMS contract number and Contract/Project Name>]					
Ref	Milestone name	Deliverable or milestone	Demonstrating the deliverable is complete	Evidence due date	Payment amount (excluding GST)
[ ]		<Deliverable – free text>	<Indicator – free text>	<DD/MM/YYYY>	\$<Amount>
[ ]		<Add rows as needed>	<Add rows as needed>	<DD/MM/YYYY>	\$<Amount>

# HES Grant Program Funding Agreement - Schedule

## Item 4: Budget

(read with 'Terms and Conditions' clause on Funding (clause 4))

The budget forecast for the Activity is outlined in the Budget Forecast Table in this Item 4.

The budget for this Activity as set out in the Recipient's Application forms part of the Agreement. This budget details Activity income from the Department, the Recipient and other contributors, and forecast expenditure.

[<OPTIONAL CLAUSE where Funding is allocated for the recipient to use flexibly rather than for a specific Activity OR deletion>] There is no budget forecast for this Activity as the Funding is not allocated for specific expenditure.

[<OPTIONAL CLAUSE where lower value Activities to allow higher level of budget flexibility OR deletion>] Up to ten (10) per cent of the total budget as set out in this Item 4 can be transferred between expenditure items without the Department's approval.

[<BUDGET TABLE IS OPTIONAL. SAMPLE TABLE PROVIDED OR deletion> ]

<b>Budget Forecast Table</b>	
<b>Activity Income</b>	<b>\$ (excluding GST)</b>
Funds from the Department	\$<Amount>
Funds from your Organisation	\$<Amount>
Funds from other contributors or partners	\$<Amount>
<ul style="list-style-type: none"> <li>• Grants (Commonwealth)</li> </ul>	\$<Amount>
<ul style="list-style-type: none"> <li>• Grants (State)</li> </ul>	\$<Amount>
<ul style="list-style-type: none"> <li>• Grants (Other)</li> </ul>	\$<Amount>
<ul style="list-style-type: none"> <li>• &lt;Insert item&gt;</li> </ul>	\$<Amount>
Total Activity Income	\$<Amount>
<b>Activity Expenditure (Aligned to National Standard Chart of Accounts Headings)</b>	<b>\$ (excluding GST)</b>
Expenditure against total Activity income	\$<Amount>
<ul style="list-style-type: none"> <li>• &lt;Insert item&gt;</li> </ul>	\$<Amount>
<ul style="list-style-type: none"> <li>• &lt;Insert item&gt;</li> </ul>	\$<Amount>
<ul style="list-style-type: none"> <li>• &lt;Insert item&gt;</li> </ul>	\$<Amount>
Total Activity Expenditure	\$<Amount>
<b>Activity costs met through in-kind contributions (approximate value)</b>	<b>\$ (excluding GST)</b>
Total in-kind support	\$<Amount>

# HES Grant Program Funding Agreement - Schedule

## Item 5: Reporting requirements

(read with 'Terms and Conditions' clauses on *Reporting* (clause 8) and *Assets* (clause 7))

### Report format

The Recipient can provide the report in any format that clearly identifies agreed actions and progress. The Department, however, may not accept reports that are not clear, concise and in line with the Activity Deliverables and Payments Table in Item 3 or the attached Activity Plan if there is one.

### Final or Yearly Report

The final or yearly report must be submitted by the date written in the Activity Deliverables and Payments Table in Item 3.

### Outcomes Report

Twelve months after the completion of this Activity, the Recipient must provide a report and/or data on outcomes, using the Department’s template. Could be link

### Additional Reporting

The Recipient must provide additional information that the Department requests in relation to the evaluation of the program(s) through which this Funding is provided. The Department will make only reasonable requests and will give at least 20 Business Days’ notice.

The Recipient might be asked to provide the following additional financial reports:

- (a) An additional financial statement for activities (income and expenditure report);
- (b) A brief explanation on any issues relating to that financial statement; or
- (c) Recipient certification of additional financial reports

## Item 6: Activity specific requirements

Acknowledgement and Publicity (read with ‘Terms and Conditions’ clause 4.18)

1. The Recipient will acknowledge any financial and other support from the Victorian Government according to the *Acknowledgement and Publicity Guidelines* as amended from time to time, which can be found at:

|  
 |The Department reserves the right to publicise and report on awarding the Funding to the Recipient

2. Terms and Conditions are by reference to “VCFA Standard Form Terms and Conditions.” [TBA Link to HES Grant Program Funding Agreement Terms and Conditions](#)
3. The final or yearly report must be completed using the Department’s template. It includes a financial acquittal report. This report must be signed by an authorised delegate from the Organisation.
4. Twelve (12) months after the completion of this Activity, the Organisation must provide a report and/or data on outcomes, using the Department’s template.
5. <Insert optional Department/program specific acknowledgment clause from the Clause Bank>.links

<Insert optional Clause Bank items – bulleted> Anything else – specific to this grant |

## Item 7: Applicable Department Policies

In carrying out the Activity, the Recipient must comply with the policies, guidelines and standards referred to in the following documents, as amended or replaced from time to time during the Term (as subsequently notified by the Department to the Recipient):



# HES Grant Program Funding Agreement - Schedule

- Local Jobs First Policy available at <https://localjobsfirst.vic.gov.au/agency-guidance/issue-grants>
- Betrayal of Trust Policy available at <https://www.justice.vic.gov.au/safer-communities/protecting-children-and-families/organisations-providing-services-to-children-new>

## Item 8: Attachments

[Insert list Attachment number and name/s, eg. Attachment 1 – Report Template

Attachment 1 Financial Acquittal Report

Attachment 2 Outcomes Report

# HES Grant Program Funding Agreement - Schedule

# HIGHER EDUCATION AND SKILLS GRANT PROGRAM FUNDING AGREEMENT 2020

Terms and Conditions



## CONTENTS

CONTENTS	1
1 DEFINITIONS AND INTERPRETATION	3
2 TERM OF AGREEMENT	8
3 ACTIVITY DELIVERY	8
4 FUNDING	9
5 CONFLICT OF INTEREST	11
6 RECORDKEEPING	11
7 ASSETS	12
8 REPORTING	13
9 AUDIT AND PERFORMANCE REVIEW	13
10 ASSIGNMENT AND SUBCONTRACTING	13
11 DISPUTE RESOLUTION	14
12 SUSPENSION	15
13 CESSATION	16
14 TERMINATION OF AGREEMENT	16
15 TRANSITION OF ACTIVITY	17
16 INTELLECTUAL PROPERTY	18
17 PRIVACY, DATA PROTECTION AND PROTECTED DISCLOSURES	19
18 CONFIDENTIAL INFORMATION	20

19	INDEMNITY	21
20	INSURANCE AND RISK MANAGEMENT	21
21	VARIATION	22
22	THE DEPARTMENT'S CONSENT	22
23	STATUS OF RECIPIENT	23
24	NOTICES	24
25	WAIVER	24
26	GENERAL	24

# TERMS AND CONDITIONS

## 1 DEFINITIONS AND INTERPRETATION

### Definitions

1.1 In the Agreement:

Term	Definition and interpretation
<b>Aboriginal Community Controlled Organisation</b>	means an organisation which: <ol style="list-style-type: none"> <li>(a) is an independent, not-for-profit organisation, that is incorporated as an Aboriginal organisation;</li> <li>(b) has been initiated by, and is controlled and operated by Aboriginal people; thereby acknowledging the right of Aboriginal peoples to self-determination;</li> <li>(c) is based in a local Aboriginal community, or communities;</li> <li>(d) is governed by an Aboriginal board which is elected by members of the local Aboriginal community or communities where it is based; and decision making of the board is determined by Aboriginal board members; and</li> <li>(e) delivers services that build strength and empowerment in Aboriginal communities and people.</li> </ol>
<b>Activity</b>	means the services or project described in item 1 of the Activity Schedule.
<b>Activity Schedule</b>	means the schedule contained in the Schedule containing details of the Activity, Funding and Reporting.
<b>Agreement</b>	means these Terms and Conditions, the Details and the Schedule.
<b>Applicable Department Policies</b>	means any applicable Department policies, guidelines or standards, as amended or replaced from time to time, including those set out in the Activity Schedule.
<b>Asset</b>	means a non-consumable item of tangible property (including an Asset that becomes a fixture) that has a service life greater than one year purchased, created or otherwise brought into existence whether wholly or in part with the use of the Funding.
<b>Asset Register</b>	means the register the Recipient will maintain under clause 7.1 [Assets].
<b>Auditor-General</b>	has the meaning set out in section 3 of the <i>Audit Act 1994</i> (Vic).
<b>Australian Accounting Standards</b>	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</i> (Cth).
<b>Australian Auditing Standards</b>	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</i> (Cth).
<b>Background Intellectual Property</b>	means the Intellectual Property of a party which was either created: <ol style="list-style-type: none"> <li>(a) before the Start Date; or</li> <li>(b) independently of the Agreement,</li> </ol> and all improvements to such Intellectual Property by the party.

Term	Definition and interpretation
<b>Business Day</b>	means a day other than a Saturday, Sunday or public holiday appointed under the <i>Public Holidays Act 1993</i> (Vic).
<b>Change in Control</b>	means any change during the Term in any person(s) who directly or indirectly exercises effective control over the Recipient (including the ability to determine the outcome of decisions about the financial and operating and other policies of the Recipient) by holding the majority of voting shares, units or other interests in the Recipient or by any other means, but does not include a change in respect of a council if that change is due to an election.
<b>Child Abuse</b>	means an occurrence, act or omission in relation to a person when the person is a minor that is physical abuse or sexual abuse, and psychological abuse (if any) that arises out of that occurrence, act or omission.
<b>Confidential Information</b>	means information or data (including Personal Information and Health Information), whether or not in a material form, that is confidential to a party, should reasonably be considered confidential or that is marked 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 the Agreement.
<b>Conflict of Interest</b>	means a situation, or a risk of a situation, where an officer, board member, employee, member, volunteer, subcontractor, representative or agent of the Recipient 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 the Agreement.
<b>Data Security Breach</b>	means any actual or suspected unauthorised or erroneous disclosure of, or access to, Personal Information, Health Information or Public Sector data held or controlled by the Recipient under the Agreement
<b>Day</b>	(as opposed to "Business Day" as defined above) includes public holidays appointed under the <i>Public Holidays Act 1993</i> (Vic), and weekends.
<b>Department</b>	means the Department of Education and Training.
<b>Department's Primary Contact</b>	means the person listed in item 11 of the Details or as notified to the Recipient in writing from time to time by the Department.
<b>Details</b>	means the part of the Agreement titled 'Details'.
<b>Dispute</b>	means any dispute: (a) arising out of the Agreement; (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 the Agreement.
<b>Dispute Resolution Officer</b>	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.
<b>End Date</b>	means the date set out in item 4 of the Details.
<b>Funding</b>	means money as detailed in item 2 of the Activity Schedule to be paid by the Department to the Recipient in accordance with the Agreement.



Term	Definition and interpretation
<b>Governmental Agency</b>	means a government or a governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity (wherever created or located).
<b>Health Information</b>	has the meaning set out in the <i>Health Records Act 2001</i> (Vic) but for the purpose of the Agreement is limited to information created by or obtained by the Recipient conducting the Activity or fulfilling its obligations pursuant to the Agreement.
<b>Indigenous Cultural and Intellectual Property</b>	<p>or <b>ICIP</b>, means specialised knowledge that Traditional Owners have acquired and passed down through generations, which includes but is not limited to:</p> <ul style="list-style-type: none"> <li>(a) traditional cultural expression such as artwork, music, dances, ceremony, stories and languages;</li> <li>(b) traditional knowledge including ecological knowledge of biodiversity, medicinal knowledge, environmental management knowledge and cultural and spiritual knowledge and practices;</li> <li>(c) tangible cultural property including sacred sites and burial grounds;</li> <li>(d) intangible cultural property such as stories passed on orally; and</li> <li>(e) documentation of Traditional Owner heritage in all forms of media including reports, films and sound recordings.</li> </ul>
<b>Insolvency Event</b>	<p>means where:</p> <ul style="list-style-type: none"> <li>(a) the Recipient ceases, or threatens to cease, to carry on its business;</li> <li>(b) the Recipient is unable to pay its debts as and when they fall due;</li> <li>(c) in the case of an individual, the individual enters into a scheme of arrangement with creditors or becomes bankrupt;</li> <li>(d) in the case of a legal entity that is not an individual: <ul style="list-style-type: none"> <li>(i) a receiver, receiver and manager, administrator, controller, provisional liquidator or liquidator is appointed to the Recipient other than the appointment of an administrator to a council under s 219(2) of the <i>Local Government Act 1989</i> (Vic);</li> <li>(ii) the Recipient enters into a scheme of arrangement with its creditors; or</li> <li>(iii) the Recipient is wound up;</li> </ul> </li> <li>(e) the Recipient assigns any of its property for the benefit of creditors or any class of creditors; or</li> <li>(f) a person with a legal right over any assets of the Recipient takes any step towards taking possession or takes possession of those assets or exercises any power of sale.</li> </ul>

Term	Definition and interpretation
<b>Intellectual Property</b>	includes: <ul style="list-style-type: none"><li>(a) all copyright (including rights in relation to all documents, reports, charts, drawings, data bases, software, source codes, models, systems, slides, tapes and specifications);</li><li>(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</li><li>(c) all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.</li></ul>
<b>Laws</b>	means any law operating in Victoria under common law, equity, statute or applicable exchange listing rules and includes: <ul style="list-style-type: none"><li>(a) acts of the Commonwealth and the State(s) and Territory(ies) in which the Activity will be delivered;</li><li>(b) any other relevant State or Territory ordinances, regulations, by-laws, orders and proclamations or other instruments made under those Acts referred to in paragraph (a); and</li><li>(c) lawful directions by any person exercising statutory powers regarding the Activity.</li></ul>
<b>Licence</b>	means a non-exclusive, world-wide, perpetual, 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-licence. 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.
<b>Material Breach</b>	means: <ul style="list-style-type: none"><li>(a) a breach which constitutes a substantial failure by the Recipient in the performance of the Activity and/or the Agreement; or</li><li>(b) a series of minor breaches which together constitute a substantial failure in the performance of the Activity and the Agreement of the Recipient.</li></ul>
<b>Ombudsman</b>	means the person appointed under section 3 of the <i>Ombudsman Act 1973</i> (Vic).
<b>Recipient</b>	means the entity described in item 2 of the Details.
<b>Recipient's Primary Contact</b>	means the person listed in item 6 of the Details or as notified to the Department in writing from time to time by the Recipient.
<b>Personal Information</b>	has the meaning set out in the <i>Privacy and Data Protection Act 2014</i> (Vic).
<b>Project Intellectual Property</b>	means all Intellectual Property (excluding Background Intellectual Property) developed, created, discovered, brought into existence or otherwise acquired (other than from the Department) by the Recipient under the Agreement.
<b>Public Sector Data</b>	has the meaning set out in the <i>Privacy and Data Protection Act 2014</i> (Vic).

Term	Definition and interpretation
<b>Record</b>	<p>means any document within the meaning of the <i>Evidence Act 2008</i> (Vic), including:</p> <ul style="list-style-type: none"> <li>(a) anything on which there is writing;</li> <li>(b) anything on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them;</li> <li>(c) anything from which sounds, images or writings can be reproduced with or without the aid of anything else; or</li> <li>(d) a map, plan, drawing or photograph;</li> </ul> <p>created, managed, maintained, brought into existence or otherwise acquired or used by the Recipient (or subcontractor) in relation to the Funding, the Activity, or the performance of the Recipient's obligations under the Agreement.</p>
<b>Schedule</b>	means the Schedule which contains the Details and the Activity Schedule.
<b>Services to Children</b>	means services provided by a non-government organisation that is responsible for the supervision of, or authority over, a child. This includes the provision of care, education, services or activities for children. It does not include one-off activities, nor activities involving only incidental or ad hoc contact with children.
<b>Start Date</b>	means the date set out in item 3 of the Details.
<b>Subcontracting</b>	means when the Recipient engages another organisation or person (excluding employees of the Recipient), to deliver all or a material part of the Activity in accordance with clause 10 [Assignment and Subcontracting].
<b>Term</b>	means the period of the Agreement as detailed in clause 2 [Term of Agreement].
<b>Terms and Conditions</b>	means this part of the Agreement entitled 'Terms and Conditions'.
<b>Traditional Owners</b>	refers to those Aboriginal and Torres Strait people who have, in accordance with their tradition, a social, ancestral, economic and/or spiritual affiliation with, and responsibilities for, all or any part of the lands or waters.

## Interpretation

1.2 In the Agreement, unless it specifically states differently:

- (a) words implying one gender include all genders;
- (b) the plural includes any singular and vice versa;
- (c) a reference to a statute, ordinance, code or other Law includes subordinate legislation, consolidations, amendments, re-enactments, and replacements of it;
- (d) references to the Agreement include the Details, the Terms and Conditions, the Schedule, and any annexures and attachments;
- (e) "including" and "includes" when introducing an example, does not limit the meaning to that example or examples of that kind;
- (f) where a term is defined, the definition includes all grammatical forms of that term;

- (g) headings and references to headings contained in square brackets (“[]”) are inserted for readability and do not affect the interpretation of the Agreement; and
- (h) a reference to a person includes an entity recognised by Law including a body politic, and incorporated and unincorporated bodies.

## 2 TERM OF AGREEMENT

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

## 3 ACTIVITY DELIVERY

- 3.1 The Recipient will deliver the Activity in accordance with the Agreement to the reasonable satisfaction of the Department and will at all times:
  - (a) deliver the Activity 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 Activity;
  - (b) act in accordance with the ethical standards that are generally accepted to apply in the area of professional practice relevant to the Activity;
  - (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;
  - (d) inform the Department about all matters the Department should reasonably be made aware of and provide information about the delivery of the Activity that may reasonably be required by the Department;
  - (e) obtain and maintain any approval, consent, authorisation, accreditation, registration or similar required for the delivery of all or part of the Activity or requested in writing by the Department; and
  - (f) comply with:
    - (i) the standards and performance targets listed in the Activity Schedule in respect of the Activity;
    - (ii) all Applicable Department Policies; and
    - (iii) all applicable Laws including Laws relating to fire protection, industrial relations and employment, health, general safety and taxation.
- 3.2 The Department's involvement in the Activity is limited to the provision of the Funding only and the Department is not in any way responsible for the actions of the Recipient in carrying out the Activity.

### Compliance with policies and regulations

- 3.3 Under the *Working with Children Act 2005* (Vic) people engaging in ‘child-related work’ must apply for and pass the Working with Children Check (**WWC Check**). The Recipient acknowledges and agrees that WWC Checks help to keep children safe by preventing those who pose a risk to the safety of children from working with them, in either paid or volunteer work. The Recipient must meet all requirements of the WWC Check that are relevant to this Activity, including ensuring that the Recipient’s relevant staff or volunteers hold a valid WWC Check.

- 3.4 In addition to the Recipient's general obligation in clause 3.1(f)(iii), where the Recipient is a relevant entity for the purposes of Child Safe Standards under the *Child Wellbeing and Safety Act 2005* (Vic), it must implement the Child Safe Standards in accordance with that Act so that:
- (a) the safety of all relevant children is promoted;
  - (b) child abuse (as defined in the *Child Wellbeing and Safety Act 2005* (Vic)) is prevented; and
  - (c) allegations of child abuse are properly responded to.
- 3.5 The Recipient acknowledges the Department's commitment to Aboriginal self-determination and agrees to comply with any and all Applicable Department Policies to support and embed Aboriginal self-determination.
- 3.6 The Department will provide the Recipient with access to all Applicable Department Policies and all standards requested by the Recipient.
- 3.7 If the Department issues a new, amended or replacement Applicable Department Policy, the Recipient will only be required to comply with the new, amended or replacement, Applicable Departmental Policy if the Department gives the Recipient 20 Business Days' written notice specifying the date, determined by the Department (acting reasonably), by which the Recipient must comply with the new, amended or replacement, Applicable Departmental Policy.
- 3.8 The Recipient must not (and must use reasonable endeavours to ensure that its employees, agents and contractors do not), in performing the Activity do any act, or omit to do any act, which is offensive, corrupt, or damaging to, or likely to damage, the Department's reputation.

## 4 FUNDING

- 4.1 Provided that the Recipient meets its obligations under the Agreement to the reasonable satisfaction of the Department, the Department will pay the Funding to the Recipient in accordance with the Activity Deliverables and Payments Table contained in item 3 of the Activity Schedule.
- 4.2 The Recipient and the Department agree that payment of all or part of the Funding does not constitute acceptance by the Department that the Recipient has met its obligations under the Agreement to the reasonable satisfaction of the Department.

### Use of Funding

- 4.3 The Recipient agrees to use the Funding only for the Activity and in accordance with the Agreement or as agreed by the Department in writing.
- 4.4 The Recipient will do all things necessary to make sure that all payments made by the Recipient from the Funding (including payments to subcontractors) are correctly made and properly authorised and that the Recipient maintains proper and diligent control over the incurring of all liabilities.
- 4.5 The Recipient 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;
  - (b) the Agreement including any right, title or interest created under it; or
  - (c) any Asset or Project Intellectual Property.
- 4.6 The Recipient will not spend the Funding on donations to members of a State or Commonwealth Parliament or political parties.
- 4.7 The Recipient will notify the Department if the Activity is completed for less than any forecast budget. In such an event Funding will be reduced on a pro rata basis with such reduction in the Funding being, at the Department's discretion, deducted from the final Funding payment or otherwise recovered by the Department from the Recipient.
- 4.8 If the Recipient complies with the Agreement and delivers the Activity to the Department's reasonable satisfaction and there remains unspent and uncommitted Funding at the expiry of this Agreement, then the Recipient may be given a notice by the Department within 30 days of the End Date in which case the Recipient must repay the amount of unspent or uncommitted Funding

detailed in the notice to the Department within 30 Days of receiving the written notice from the Department, or such other time period as agreed between the parties.

- 4.9 If, in the reasonable opinion of the Department, the Recipient:
- (a) has not complied with this Agreement;
  - (b) has not delivered all or part of the Activity 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, give written notice to the Recipient requiring the Recipient to repay all or any part of the Funding (including any GST paid to the Recipient or interest earned on the Funding) which, in the Department's reasonable opinion, has not been applied in accordance with this Agreement.

- 4.10 If the Recipient is served a notice under clause 4.9, the Recipient must repay the amount detailed in the notice to the Department within 30 Days of receiving the written notice from the Department, or such other time period as agreed between the parties.

## Goods and Services Tax (GST)

- 4.11 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)*.
- 4.12 The Funding set out in item 2 of the Activity Schedule is exclusive of GST. If GST is payable on all or part of the Activity under this clause 4.12, it will be paid to the Recipient at the same time as the Funding set out in the Schedule.
- 4.13 The Recipient and the Department agree that if GST is payable on a *supply* of the Activity by the Recipient under the Agreement, the Department will pay the Recipient an additional amount equal to the GST payable on or for the *taxable supply*.
- 4.14 If GST is payable on the *supply* of the Activity by the Recipient under the Agreement, unless otherwise specified in the Schedule, the Recipient and the Department agree to a recipient created tax invoice (**RCTI**) arrangement under the Agreement authorised under sections 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 Recipient if it ceases to be registered for GST or ceases to satisfy any of the requirements of GST Ruling GSTR 2000/10;
  - (b) the Department will reasonably comply with its obligations under the taxation Laws;
  - (c) the Department can issue a RCTI in respect of a *taxable supply* made to the Department of goods or services provided by the Recipient under the Agreement;
  - (d) the Department will issue a copy of each RCTI to the Recipient and retain the original;
  - (e) the Department will issue a copy of each *adjustment note* to the Recipient and retain the original;
  - (f) the Department will not issue a document that would otherwise be an RCTI, on or after the date when it or the Recipient has ceased to satisfy the requirements of GST Ruling GSTR 2000/10;
  - (g) the Recipient will not issue *tax invoices* in respect of taxable supplies of goods or services to the Department;
  - (h) the Recipient 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 Days if it ceases to be registered.
- 4.15 If, as at the Start Date the Recipient is not required by Law to be registered for GST and during the Term of this Agreement the Recipient becomes registered for GST, the Recipient will give written notice to the Department within seven Days of becoming registered for GST.
- 4.16 If for any reason the RCTI arrangement specified in clause 4.13 is unable to be implemented or ceases, the Recipient must give the Department a tax invoice in respect of any *taxable supply* made to the Department by the Recipient in connection with this Agreement prior to any payment of Funding to the Recipient.

- 4.17 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 Recipient or the Recipient previously issued a *tax invoice* to the Department.

## Funding Acknowledgement

- 4.18 The Recipient must, if required by the Department, acknowledge the Funding in all publications and promotional materials relating to the Activity as directed by the Department.

## 5 CONFLICT OF INTEREST

- 5.1 The Recipient:
- (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.
- 5.2 If during the Term the Recipient becomes aware of any matter that gives rise to an actual or potential Conflict of Interest, the Recipient will:
- (a) immediately give written notice to the Department of the actual or potential Conflict of Interest and of the steps the Recipient proposes to take to resolve or manage the actual or potential Conflict of Interest;
  - (b) make full disclosure to the Department of all relevant information relating to the actual or potential Conflict of Interest; and 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 Recipient 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 the Agreement under clause 14 [Termination of Agreement].

## 6 RECORDKEEPING

### Financial Records

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

### Recordkeeping

- 6.2 Subject to 6.3, the Recipient will deal with all its Records in accordance with its usual recordkeeping practices, unless agreed otherwise in writing with the Department.
- 6.3 The Recipient will:
- (a) maintain and manage the Records:

- (i) as specified by the Department and in accordance with any Applicable Department Policy; and
    - (ii) 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; and
  - (b) retain the Records for a period of seven years after the termination or expiry of this Agreement or the completion of the Activity (whichever is the earlier).
- 6.4 In addition to any other obligation under this clause 6 [Recordkeeping] or clause 15 [Transition of Activity], the Recipient must provide access to the Records to the Department, or any third party nominated by the Department, within five Business Days of receiving written notice from the Department.
- 6.5 Where the Recipient, acting reasonably and in good faith is unable to comply with clause 6.4 within five Business Days, the Recipient may seek the Department's consent, in writing, to extend the time for providing access to the Records. The Department must not unreasonably refuse an extension request made under this clause.
- 6.6 The Recipient must also make the Records available to the Department (or to any third party nominated by the Department in writing), in the following circumstances:
- (a) in accordance with the requirements of all relevant Laws;
  - (b) if requested by the Auditor-General or Ombudsman in writing; or
  - (c) for the purposes of audit and performance monitoring under clause 9 [Audit and Performance Review].

## Freedom of Information

- 6.7 The Recipient will provide prompt access to the Records (during such time as they remain in the Recipient's possession or control) to the Department and any other person authorised by the Department, where required for the Department to respond to a request under the *Freedom of Information Act 1982 (Vic)*.

## 7 ASSETS

- 7.1 The Recipient will maintain an Asset Register listing and containing the details of each Asset in accordance with any Applicable Department Policies. The Recipient will provide the Department with a copy of the current Asset Register at the Department's request.
- 7.2 The Recipient will not dispose of any Asset worth over \$5,000 (exclusive of GST) at the time of disposal which is listed or that should be listed on the Asset Register without the Department's prior consent. For the purposes of this clause 7.2, the value of an Asset at the time of disposal will be the depreciated value from the time the Asset was purchased, unless as otherwise agreed by the Department and the Recipient.
- 7.3 If the Recipient disposes of any Asset listed or that should be listed on the Asset Register, the Recipient will record the details of the disposal in the Asset Register and the Department may:
- (a) reduce the amount of Funding payable under the Agreement by the depreciated value of that Asset on giving written notice to the Recipient; or
  - (b) request the Recipient to reimburse the Department with an amount equal to the depreciated value of the Asset and the Recipient will reimburse the Department.
- 7.4 If the Recipient loses, damages, destroys or sells any Asset listed or that should be listed on the Asset Register the Recipient 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 Activity.
- 7.6 The Recipient is responsible for and will bear all risks, expenses and running costs for all Assets, including insurance and registration costs.
- 7.7 If the Recipient ceases to deliver all or part of the Activity (for whatever reason), the Recipient agrees to comply with any request of the Department for the Recipient 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.

## 8 REPORTING

- 8.1 The Recipient will provide the Department with information about and report on the Activity in accordance with the Activity Schedule and as and when requested by the Department.
- 8.2 The Recipient will provide the Department with any information or Record that relates to the delivery of the Activity or shows how the Funding has been spent by the Recipient as and when requested by the Department.
- 8.3 The Recipient will comply with the Department's financial accountability requirements and provide the Department with the information and documentation set out in any Applicable Department Policies including but not limited to:
  - (a) a certification signed either in writing or electronically, in accordance with any Applicable Department Policy, by an authorised officer from the Recipient;
  - (b) the Recipient's annual report containing financial statements, if applicable, or completed Department financial reporting forms; and
  - (c) The Recipient's compliance in all respects with the Accounting Standard AASB 120 Accounting for Government Grants and Disclosure of Government Assistance.

## 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 Recipient at any reasonable time, at the Department's own expense for the purpose of monitoring and assessing the Recipient's performance of its obligations under the Agreement or delivery of the Activity.
- 9.2 The Recipient 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;
  - (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 Recipient's premises or place of business to carry out the audit or performance review.

## 10 ASSIGNMENT AND SUBCONTRACTING

- 10.1 The Recipient may not assign its rights or obligations under the Agreement without the Department's prior written consent, such consent may not be unreasonably withheld.
- 10.2 The Recipient must not engage in any Subcontracting without the Department's prior written consent, such consent may not be unreasonably withheld.
- 10.3 In addition to clause 22 [The Department's Consent], the Department will only provide consent to a proposed Subcontracting if:
  - (a) the Recipient satisfies the Department that the subcontractor can deliver the Activity to be subcontracted on the same terms and conditions as the Agreement;
  - (b) the contract between the Recipient and the subcontractor is made on the same terms and conditions as the 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 Recipient agrees to comply with any conditions imposed by the Department as a condition of granting its consent.
- 10.4 The Recipient agrees that:
- (a) it is responsible for the delivery of the Activity including any part of the Activity that is subcontracted;
  - (b) accountable for any acts, omissions and mistakes of any subcontractor in performing all or part of the Activity as though they were the Recipient's own acts, omissions and mistakes.
  - (c) the State of Victoria is committed to payment of minimum remuneration rates and allowances for interpreters providing language interpretation and translation services (**Minimum Rates**), who are certified by the National Accreditation Authority for Translators and Interpreters (**NAATI**), when providing services funded by the Victorian government.
  - (d) where the Recipient engages NAATI certified language interpreters or translators to carry out the Activity, or other of the Recipient's obligations under the Agreement, it will engage such subcontractors on terms no less favourable than the Minimum Rates, as set from time to time.
- 10.5 The Department may assign any of its rights under the Agreement, at its discretion.

## 11 DISPUTE RESOLUTION

- 11.1 The Recipient 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 in good faith 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**);
  - (b) within 14 Days of receipt of the First Notice, the parties will meet to discuss and try to resolve the Dispute;
  - (c) if the Dispute remains unresolved 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;
  - (d) within 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;
  - (e) within 28 Days of receipt of the Second Notice, the Dispute Resolution Officer will provide their decision to the parties in writing;
  - (f) either party may, within 14 Days from the date the Dispute Resolution Officer provides their decision in writing under clause 11.2(e)(d), provide written notice to the other party referring the Dispute to mediation (**Mediation Notice**); and
  - (g) the party served with a Mediation Notice under clause 11.2(f) will provide written notice to the other party within 14 Days of receiving the Mediation Notice, notifying the other party as to whether or not it agrees to mediate. For the avoidance of doubt, failure to provide notice under this clause shall not be deemed agreement to mediate.
- 11.3 If neither party provides a Mediation Notice to the other in accordance with clause 11.2(e), or if the party served with the Mediation Notice does not agree to mediate to resolve the Dispute under clause 11.2(g), the parties agree that any decision of the Dispute Resolution Officer under clause 11.2(e)(d) will be final and binding on the parties.
- 11.4 If the party served with the Mediation Notice in accordance with clause 11.2(f) agrees to mediate in accordance with clause 11.2(g), then the parties will mediate to resolve the Dispute on the following terms:
- (a) a mediator may be appointed either by agreement between the parties or, failing such agreement within seven Days of the date of the Mediation Notice, by the president for the time being of the Law Institute of Victoria;
  - (b) each party will bear their respective costs of the mediation save that the mediator's fee, fees for mediation rooms and costs of shared equipment facilities and services of the mediation will be shared equally;

- (c) the venue for the mediation will be agreed between the parties or, failing such agreement, will be nominated by the mediator;
  - (d) each party may be legally represented if they so wish;
  - (e) the mediation will be conducted without prejudice and complete confidentiality will be preserved in respect of the mediation and any documents and information used at or in relation to the mediation; and
  - (f) if the parties agree to mediate to resolve the Dispute under this clause 11.4 and the Dispute is unresolved 28 Days after the date of the Mediation Notice (or after such other period of time agreed by the parties), the parties agree that the Dispute Resolution Officer will provide a new decision in writing (which may be the same as the decision made under clause 11.2(e)) and that such decision will be final and binding on the parties.
- 11.5 The parties will continue to perform their obligations under the 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

### Suspension of Activity

- 12.1 At any time during the Term, the Department may by written notice, require the Recipient to immediately suspend delivery of the Activity, or part of the Activity if:
- (a) the Recipient has failed, or in the Department's reasonable opinion, is likely to fail, to deliver the Activity in accordance with the Agreement;
  - (b) the Recipient has misused or is reasonably suspected to have misused Funding, or has shown an inability to properly manage its Assets;
  - (c) the Recipient has breached the Agreement and notice has been given to the Recipient by the Department under clause 14.1 [Termination of Agreement]; or
  - (d) the Recipient or its officer, board member, employee, member, volunteer, subcontractor, representative or agent has breached, or is reasonably suspected to have breached, any Law material to the Activity or the operation of the Recipient.
- 12.2 The Department may, by giving 10 Business Days written notice to the Recipient, reduce the Activity to be delivered under the Agreement to reflect any suspension of all or part of the Activity under clause 12.1.
- 12.3 The Recipient agrees that the Department may fund a third party to deliver all or part of the Activity that has been suspended under clause 12.1.

### Suspension of Funding

- 12.4 The Department may immediately suspend payment of all or part of the Funding if any of the following occurs:
- (a) the Recipient has failed, or in the Department's reasonable opinion is likely to fail, to deliver the Activity in accordance with the Agreement;
  - (b) the Recipient has misused, or is reasonably suspected to have misused, the Funding or the Assets, or has shown an inability to properly manage its Assets;
  - (c) the Recipient has breached the Agreement and notice has been given to the Recipient by the Department under clause 14.1 [Termination of Agreement];
  - (d) the Department has concerns, on reasonable grounds, that the Recipient is not financially stable; or
  - (e) the Department has requested the Recipient to suspend all or part of the Activity under clause 12.1.
- 12.5 The Department may, by giving 10 Business Days written notice to the Recipient, reduce the Funding to be paid by the Department under the Agreement to reflect any suspension of all or part of the Funding under clause 12.4.

## Department may vary Schedule

- 12.6 The Recipient acknowledges that the Department may vary the Schedule to reflect any reduction of the Activity under clause 12.5 or reduction of Funding under clause 12.5.

## Parties may exercise rights

- 12.7 The Recipient and the Department may exercise any of their rights under clauses 12 [Suspension], 13 [Cessation] and 14 [Termination of Agreement] at any time during a suspension of the Activity or the Funding under this clause 12.

## 13 CESSATION

- 13.1 The Recipient and the Department agree that Activity will not be ceased other than in accordance with the Agreement.

## 14 TERMINATION OF AGREEMENT

### Termination for Breach

- 14.1 If the Recipient or the Department is in breach of the Agreement, the party in breach will remedy the breach within 30 Days of that party receiving written notice from the other party 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 30 Days, the party who gave notice may immediately terminate the Agreement by giving written notice.

### Remedy for Breach

- 14.3 The Recipient acknowledges and accepts that the Department may suffer damage if the Recipient fails to comply with its obligations under the Agreement and that monetary damages may not be an appropriate remedy.
- 14.4 The Recipient acknowledges and accepts that, in addition to any remedy that may be available at law or in equity, the Department is entitled to injunctive relief to prevent a breach of the Agreement and compel specific performance.

### Termination by the Department

- 14.5 The Department may terminate the Agreement immediately by giving written notice to the Recipient if:
- (a) an Insolvency Event occurs in relation to the Recipient;
  - (b) the Recipient is a natural person and becomes:
    - (i) mentally incapacitated;
    - (ii) dies;
    - (iii) is incapacitated through illness for more than 30 Days; or
    - (iv) is convicted of a crime punishable by a term of imprisonment;

- (c) the Recipient has a Change in Control which the Department reasonably believes would negatively affect the Recipient's ability to comply with the Agreement; or
  - (d) the Recipient commits a Material Breach of the Agreement which is not capable of remedy; or
  - (e) the Department reasonably considers that the Recipient has behaved in a way that:
    - (i) is a breach of clause 3.8;
    - (ii) is inconsistent with prevailing community standards;
    - (iii) may be regarded by the public as unacceptable; or
    - (iv) may bring the reputation of the Organisation into disrepute,
 and the Department reasonably believes that its continued association with the Recipient may be detrimental to the reputation of the Department; or
  - (f) the Department does not receive sufficient funds from either the Victorian Parliament or the Commonwealth government to finance the program or the Activity.
- 14.6 The Department may terminate the Agreement on three months written notice if there is a change in any Victorian government policy which affects the program or the Activity.
- 14.7 If a notice of termination is given under clause 14.5(a) due to an Insolvency Event and a stay period applies under Chapter 5 of the *Corporations Act 2001* (Cth), then the notice may be given:
- (a) at the expiry or lifting of that stay period; or
  - (b) otherwise may be given at any time,
- and takes effect on the date specified in the notice.
- 14.8 The Recipient will immediately comply with any directions in a notice given under clauses 14.3, 14.5 or 14.6.

## Termination by the Recipient

- 14.9 The Recipient may terminate the Agreement at any time by giving the Department at least three months' written notice.
- 14.10 If the Recipient elects to terminate the Agreement under clause 14.1 it:
- (a) must repay to the Department any unspent Funding as at the termination date within 30 Days of the termination date;
  - (b) will pay the reasonable costs (other than loss of profit or income) necessarily incurred and substantiated by the Department that arise directly from the termination. The Department will use its best efforts to minimise any such costs arising from termination; and
  - (c) acknowledges it may not be entitled to further Funding.

## 15 TRANSITION OF ACTIVITY

- 15.1 On expiry or termination of the Agreement for any reason or if the Recipient ceases to deliver the Activity, the Recipient will, unless otherwise stated in the Activity Schedule:
- (a) Within five Business Days hand over all material and Records held by the Recipient or any subcontractor engaged by the Recipient necessary for the delivery of the Activity, regardless of the manner of storage, to the Department and/or to any third party nominated by the Department;
  - (b) within five Business Days transfer to the Department or any third party nominated by the Department all Records created, managed and maintained relating to the delivery of the Activity 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;
  - (c) within thirty (30) Days after the expiry or termination of this Agreement or the cessation of any Activity under clause 13 [Cessation], provide the Department with:

- (i) a financial acquittal detailing all the Funding paid to the Recipient by the Department and spent by the Recipient (including any unspent Funding);
- (ii) a copy of the current Asset Register; and
- (iii) any other outstanding information, documentation or reports the Recipient is required to provide the Department under this Agreement; and
- (d) provide (and require any subcontractor engaged by the Recipient to provide) all reasonable assistance, advice and information to the Department to transfer all or part of the Activity, functions and operations provided by the Recipient under the Agreement to the Department or any third party nominated by the Department in a smooth and orderly way.

## 16 INTELLECTUAL PROPERTY

### Intellectual Property General

- 16.1 The Background Intellectual Property of each party remains the property of that party.
- 16.2 The Recipient will own all Project Intellectual Property unless stated otherwise in the Activity Schedule.
- 16.3 The Recipient grants to the Department, and the Department accepts a Licence of:
- (a) the Project Intellectual Property not owned by the Department;
  - (b) the Background Intellectual Property, if any; and
  - (c) any Intellectual Property of a third party,
- to the extent needed to allow the Department to enjoy the full benefit of the Activity and the Agreement.
- 16.4 To avoid doubt, the Licence to use the Project Intellectual Property specified in clause 16.3, includes the right to publish on the internet any of the materials under the Licence.
- 16.5 At the request of the Department, the Recipient will provide the Department with copies of all materials covered by the Licence and Intellectual Property and in a way that allows the Department to exercise the Department's rights under the Licence.
- 16.6 The Recipient warrants that it has the right to grant the Licences referred to in clause 16.2 and the Recipient indemnifies and will keep indemnified the Department (or any of its assignees) against any losses arising out of or in respect of any breach of this clause or any third party's rights.
- 16.7 The Recipient will obtain all consents needed for any Licence, including in relation to any Moral Right. For the purposes of clause 16.9, 'Moral Right' has the meaning set out in section 189 of the *Copyright Act 1968* (Cth).
- 16.8 The Recipient will properly manage the Project Intellectual Property to allow the Department to enjoy the full benefit of the Activity and the 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;
  - (b) maintain, improve, enhance and develop the Project Intellectual Property to the fullest extent reasonably necessary to maintain its usefulness and appropriateness to the Recipient and the Department for the delivery of the Activity;
  - (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 Department or other Victorian government policies in respect of the Project Intellectual Property.
- 16.9 The Recipient will not accept co-funding, or involve any person in the delivery of the Activity, 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.

### Indigenous Cultural and Intellectual Property (ICP)

- 16.10 The Recipient warrants to the Department that it is entitled to use and deal with any ICIP which may be used by it in connection with the Activity.
- 16.11 The parties acknowledge and agree that:
- (a) the Project Intellectual Property will only contain ICIP to the extent that the Recipient has secured, from any relevant Traditional Owners, necessary permissions and rights to enable the Recipient and the Department to use such ICIP;
  - (b) the Recipient will inform the Department of the terms (including any limitations and parameters) on which the Department may use the ICIP comprised in the Project Intellectual Property prior to use of the Project Intellectual Property by the Department; and
  - (c) to avoid of doubt, ownership of any ICIP will be retained by the appropriate Aboriginal Community Controlled Organisation with cultural connection to the ICIP.

## 17 PRIVACY, DATA PROTECTION AND PROTECTED DISCLOSURES

### Privacy

- 17.1 The Recipient is bound by the Information Privacy Principles contained in the *Privacy and Data Protection Act 2014 (Vic) (PDP Act)* and any applicable code of practice made under the PDP Act when performing its obligations under the Agreement in the same way and to the same extent that the Department would be bound if the Department were to perform the Recipient's obligations under the Agreement.
- 17.2 In addition to the obligation in clause 17.1, in performing the Agreement, the Recipient must:
- (a) collect, hold, use, manage, disclose and transfer Personal Information and Health Information obtained while delivering the Activity, only for the purposes of providing the Activity and in accordance with the Agreement, the PDP Act and the *Health Records Act 2001 (HR Act)* (as applicable);
  - (b) take reasonable steps to protect all Public Sector Data, Personal Information and Health Information against misuse, loss, or unauthorised access, interference, corruption, deletion, modification or disclosure;
  - (c) not to do anything that would breach, or cause the Department to breach, a Health Privacy Principle contained in the HR Act or an Information Privacy Principle contained in the PDP Act;
  - (d) promptly comply with any applicable request, direction, guideline, determination or recommendation made by the Victorian Information Commissioner, Victorian Deputy Commissioner for Privacy and Data Protection or the Victorian Health Complaints Commissioner;
  - (e) unless the Recipient is excluded from the operation of the PDP Act by section 84(2) of that Act:
    - (i) not act or engage in any practice that contravenes, or causes the Department to contravene, a protective data security standard issued by the Victorian Commissioner for Privacy and Data Protection under s 86 of the PDP Act in respect of Public Sector Data collected, held, used, managed, disclosed or transferred by the Recipient for the Department; and
    - (ii) comply with any provision of a protective data security plan developed by the Department under the PDP Act that applied to the Recipient.
  - (f) not transfer any Public Sector Data, Personal Information or Health Information obtained while delivering the Activity to a third party (including any subcontractor) located outside of Australia, or allow any third party (including any subcontractor) located outside Australia to have access to any Public Sector Data, Personal Information and Health Information in relation to the Agreement, unless agreed in writing by the Department.
- 17.3 The Recipient must also:

- (a) make sure that any person (including any subcontractor) who may deal with Personal Information, Health Information or Public Sector Data on behalf of the Recipient in relation to the Activity or the Agreement is made aware of the obligations in this clause 17;
- (b) immediately notify the Department if the Recipient becomes aware of a breach, or possible breach, of any of the obligations in clause 17.2, by the Recipient, or any person acting for or on behalf of the Recipient (including any subcontractor) in relation to all or part of the Activity or the Agreement; and
- (c) make sure that any Subcontracting agreement imposes the obligations in this clause 17 on the subcontractor.

## Protected Disclosures

17.4 If the *Public Interest Disclosures Act 2012* (Vic) applies to the Recipient, the Recipient agrees to comply with and be bound by the provisions of that Act.

## Data Security Breach

17.5 On becoming aware of a Data Security Breach, the Recipient will immediately:

- (a) notify the Department and provide all relevant information about the Data Security Breach; and
- (b) investigate and take immediate action to contain and mitigate the effect of the Data Security Breach.

17.6 The Recipient will:

- (a) notify the Department in advance, and as soon as reasonably practicable, if it is required by Law or otherwise intends to report the Data Security Breach to any of the Office of the Australian Information Commissioner, the Victorian Information Commissioner, Victorian Deputy Commissioner for Privacy and Data Protection or the Victorian Health Complaints Commissioner, or notify any affected individuals; and
- (b) comply with the Department's reasonable directions in relation to the Data Security Breach, including providing the Department with a reasonable opportunity to be involved with and approve any report or notification under 17.6(a).

## 18 CONFIDENTIAL INFORMATION

18.1 The Recipient and the Department may disclose information (including on the internet) about the content of the 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 the Agreement;
- (b) where the disclosure is reasonably required by any persons performing their obligations under the Agreement;
- (c) the disclosure is to that party's own professional advisers, or its insurer;
- (d) if requested by the Auditor-General, the Ombudsman, or the Minister responsible for the portfolio under which the Activity operates; or
- (e) if the Department is disclosing to any other Victorian Governmental Agency.

18.3 Each party will ensure that any third party to which it discloses Confidential Information is made aware of the confidential nature of the Confidential Information.

18.4 On termination or expiry of the Agreement the Recipient must immediately, following instructions by the Department, cease using all materials that contain any Confidential Information belonging



to the Department by either destroying the materials or returning the materials at no additional cost to the Department.

## 19 INDEMNITY

- 19.1 The Recipient indemnifies the Department (and any of its assignees) against all Liability the Department may incur in respect of any Claim arising from or in connection with the Activity.
- 19.2 The Recipient'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;
  - (b) 'Claim' includes any action, proceeding, demand or investigation of any kind; and
  - (c) 'Department' includes all its officers and employees and any Governmental Agency.

## 20 INSURANCE AND RISK MANAGEMENT

### Insurance

- 20.1 The Recipient will:
- (a) on and from the Start Date obtain and maintain for the Term of the Agreement adequate insurance coverage for its operational and business risks with one or more of the following:
    - (i) the Victorian Managed Insurance Authority or Liability Mutual Insurance;
    - (ii) an insurer authorised under the *Insurance Act 1973* (Cth); or
    - (iii) an insurer approved in writing by the Department;
  - (b) provide the Department with proof of the Recipient's insurance cover on request;
  - (c) maintain appropriate insurance coverage for the Term, and, if those insurance policies are underwritten on a 'claims made' basis, for no less than six years after the completion of the Activity; and
  - (d) undertake periodic reviews to make sure the Recipient's operational and business risks are adequately insured, particularly in regard to public and products liability and professional indemnity risks.
- 20.2 In addition to the insurance obligations contained in clause 20.1, if, in carrying out the Activity, the Recipient will be providing Services to Children the Recipient must obtain and maintain for the Term of the Agreement appropriate insurance coverage that provides indemnity for liability for Child Abuse.
- 20.3 For the purposes of 20.2, appropriate insurance is insurance that:
- (a) either;
    - (i) provides explicit coverage statement in respect of Child Abuse; or
    - (ii) indemnifies the insured for, amongst other things, its legal liabilities to third parties for personal injury, including shock and mental injury, and the policy does not contain any exclusions or limitations of coverage for Child Abuse or molestation; and
  - (b) is for a minimum insured amount of \$5 million per claim or, in the case of coverage provided on the basis of a monetary aggregated claims amount, \$10 million per annum.
- 20.4 On request, the Recipient must, provide to the Department evidence of the currency of any insurance required under clause 20.2.

## Risk Management

20.5 The Recipient will:

- (a) manage risk in accordance with Australian/New Zealand Risk Management Standard: AS/NZS ISO 31000:2018 (**Australian Standard**) as amended or replaced from time to time or as otherwise specified in any Applicable Department Policies.
- (b) arrange for its chief executive officer or a board member of the Recipient to attest that:
  - (i) the Recipient's risk management processes (**Processes**) are consistent with the Australian Standard or any Applicable Department Policies;
  - (ii) during the Term, the Recipient has managed risk in accordance with the Australian Standard or any Applicable Department Policies;
  - (iii) within the 12 months prior to attestation, the Recipient has undertaken a review of the Processes to ensure compliance with the Standard or any Applicable Department Policies;
  - (iv) the Processes satisfactorily and effectively manage the Recipient's risks; and
  - (v) the Recipient's board, committee of management or audit or risk committee has verified that the Processes satisfactorily and effectively manage the Recipient's risks.

## 21 VARIATION

21.1 Unless otherwise provided for in the Agreement, the Recipient and the Department agree that the Agreement may only be varied if:

- (a) both parties agree in writing to the variation; or
- (b) the Department notifies the Recipient in writing of a proposed variation to the Agreement and the date the proposed variation will take effect from (the **Effective Date**), and the Recipient continues to deliver all or part of the Activity or delivers new activity 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 the Agreement:

- (a) the Recipient will:
  - (i) make its request in writing a reasonable time before the date on which the consent or approval is required by the Recipient; 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 the Agreement is not deemed to be consent in the context of any other agreement and will not operate to relieve the Recipient of any obligation under the Agreement or confer any liability on the Department.

22.3 The Recipient will comply with the terms and conditions of any consent.

22.4 Where the Department's consent or approval is requested by the Recipient under this clause, the Department will provide its response to the Recipient under clause 22.1(b) within a reasonable time.

## 23 STATUS OF RECIPIENT

- 23.1 The Recipient and the Department agree and acknowledge that:
- (a) nothing in the Agreement creates any joint venture, partnership, employment or agency relationship between the Recipient 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 Recipient 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 Recipient warrants that it is a legal entity capable of complying with the Agreement and, if incorporated, that it complies with all Laws under which it is incorporated.
- 23.4 If the Recipient is funded under this Agreement to carry out an activity to provide Services to Children the Recipient warrants that it is an incorporated legal entity capable of being sued in its own right in Child Abuse proceedings.
- 23.5 The Recipient will provide the Department with evidence of the Recipient's legal status if requested by the Department and will give written notice to the Department within five Business Days of any changes to the Recipient's legal status coming into effect.
- 23.6 Prior to any proposed Change in Control, the Recipient will:
- (a) give written notice to the Department with reasonable time for the Department to consider the impact of the proposed Change in Control; and
  - (b) provide any information or documentation required or requested by the Department about the proposed Change in Control.
- 23.7 In addition to clause 23.6, the Recipient must notify the Department in writing within 10 Business Days if it repeals or changes its constitution, structure, management or operations in a manner that could reasonably be expected to affect the Recipient's eligibility for the Funding or have an adverse effect on the Recipient's ability to comply with its obligations under the Agreement.
- 23.8 If the Recipient is a partnership, joint venture or consortium of two or more persons, all such persons are liable both individually and as a group to the Department for the full performance of the Agreement.
- 23.9 Where the Recipient or any part of it is a partnership, the Agreement will not terminate automatically on the death, retirement or resignation of one or more members of such partnership.

### **Recipient acting as trustee**

- 23.10 If the Recipient is entering in the Agreement in its capacity as trustee of a trust:
- (a) it warrants that:
    - (i) it is the sole and validly appointed trustee of the trust; and
    - (ii) it has full and valid power and authority to enter into the Agreement on behalf of the trust and to carry out the Activity; and
  - (b) on the Department's request, it will, within 10 Business Days, provide to the Department a copy of the trust deed of the trust.

### **Insolvency Event**

- 23.11 The Recipient must immediately notify the Department in writing if the Recipient becomes subject to, or anticipates becoming subject to, any Insolvency Event.

## 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 the 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 Recipient's Primary Contact and will be properly given or served by a party if that party:
- (a) delivers it by hand;
  - (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 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;
  - (b) if delivered by express post, to an address in the same country, two Business Days after the date of posting;
  - (c) 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 the 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 the Agreement does not prevent any other exercise of that right or the exercise of any other right.

## 26 GENERAL

### Survival

- 26.1 The following clauses will continue to apply after the end of the Agreement: 4.7 to 4.9 [Funding], 6 [Recordkeeping], 7.2, 7.3 and 7.7 [Assets], 8 [Reporting], 11 [Dispute Resolution], 15 [Transition of Activity], 16 [Intellectual Property], 17 [Privacy Data Protection and Protected Disclosures], 18 [Confidential Information], 19 [Indemnity] and 20 [Insurance and Risk Management].

### Costs

- 26.2 Each party must pay its own costs in relation to the preparation, negotiation and execution of the Agreement.

## Severability

- 26.3 Any provision of the Agreement which is invalid or unenforceable is to be read down, if possible, so as to be valid and enforceable. If the provision cannot be read down, it will be ineffective and all other provisions which are self-sustaining and capable of separate enforcement will, to the maximum extent permitted by law, be and continue to be valid and enforceable.

## Execution

- 26.4 This Agreement may be executed in any number of counterparts all of which taken together constitute one instrument.
- 26.5 The Agreement, including any variation under clause 21, may be electronically signed by each party:
- (a) Each party acknowledges and agrees to the signing of this Agreement by electronic means and agrees to be legally bound by this Agreement signed in this way;
  - (b) The Department may provide the Recipient with the ability to sign this Agreement by electronic means, including by giving access to software or to an online service for this purpose; and
  - (c) This Agreement constitutes an original document in an electronic format and will have the same legal effect, validity and enforceability as a signature affixed by hand.

## Entire Agreement

- 26.6 The Agreement contains the entire agreement between the parties in connection with the Funding and the Activity. It supersedes all previous agreements or understandings between the parties in connection with its subject matter.

## Priority of Documents

- 26.7 Inconsistencies between the terms of the Agreement will be resolved in the following order of priority:
- (a) these Terms and Conditions;
  - (b) the Details;
  - (c) the Activity Schedule; and
  - (d) Attachments if any.

## Governing Law

- 26.8 The laws of the State of Victoria apply to the Agreement. The Recipient and the Department submit to the jurisdiction of the courts of the State of Victoria and courts entitled to hear appeals from those courts.

