

Department of Planning and Community Development

Terms and Conditions

If you have any questions about these Terms and Conditions, or suggestions on how this document can be further improved, please contact the Grants Information Line on 1300 366 356 (for the cost of a local call) on any weekday (except Public Holidays).

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In consideration of the mutual promises contained in this Agreement, the Parties to this Funding Agreement agree as follows:

1. Interpretation

1.1. Definition of Terms

1.1.1. In this Agreement, unless contrary intention appears:

ABN has the same meaning as it has in section 41 of the A New Tax System (Australian Business Number) Act 1999 (Cth);

Activity means the activity described in the Schedule, which aims to fulfil one or more of the goals of the Program, and includes the provision of Activity Material;

Activity Generated Income means any income earned or generated by You from Your use of the Funding or Other Contributions including:

- a. interest earned from the investment of the Funds or Other Contributions;
- b. where the proceeds of insurance paid to You to replace an Asset exceed the amount actually paid to You to replace the Asset; and
- c. the proportion of any income received by You as a result of Your use of an Asset that reflects the proportion of the total cost of acquiring the Asset that was met by the Funding;

Activity Material means any Material:

- a. created for the purposes of this Agreement;
- b. provided or required to be provided to Us under this Agreement; or
- c. derived at any time from the Material referred to in paragraphs a or b.

Activity Period means the period specified in the Schedule during which the Activity must be completed;

Adjustment Note has the same meaning given in section 195-1 of the GST Act;

Agreement means this document of terms and conditions and includes any attached schedules and annexures;

Annexure means any annexure to the Schedule;

Approved Auditor means a person who is:

- a. registered as a company auditor under the Corporations Act 2001 (Cth) or a member of the Institute of Chartered Accountants in Australia, or of CPA Australia or the National Institute of Accountants; and

- b. not a principal, member, shareholder, officer, agent, subcontractor or employee of Yours or of a related body corporate as defined in section 9 of the Corporations Act 2001 (Cth) or Your Qualified Accountant;

Asset means any item of tangible property, purchased, leased, created or otherwise brought into existence either wholly or in part with use of the Funds, which has a value of over \$5,000 inclusive of GST, but does not include Activity Material;

Auditor-General means the office established under the Audit Act 1994 (Vic) and includes any other entity that may, from time to time, perform the functions of that office;

Australian Accounting Standards refers to the standards of that name maintained by the Australian Accounting Standards Board created by section 226 of the Australian Securities and Investments Commission Act 2001 (Cth);

Australian Auditing Standards refers to the standards made by the Auditing and Assurance Standards Board created by section 227A of the Australian Securities and Investment Commission Act 2001 (Cth);

Budget refers to a budget for expenditure of the Funding, Your Contributions and Other Contributions for the purposes of conducting the Activity or performing obligations under this Agreement, as stipulated in the Schedule;

Business Day means in relation to the doing of any action in a place, any day other than a Saturday, Sunday, or public holiday in that place;

Completion Date means, unless a date is specified in the Schedule, the day after You have done all that You are required to do under this Agreement to Our satisfaction;

Conflict refers to a conflict of interest, or risk of a conflict of interest, or an apparent conflict of interest arising through You engaging in any activity or obtaining any interest that is likely to conflict with or restrict You in providing the Activity fairly and independently;

Constitution means (depending on the context):

- a. a company's constitution, which (where relevant) includes rules and any amendments that are part of the company's constitution; or
- b. in relation to any other kind of body:
 - i. the body's charter, rules of memorandum; or

- ii. any instrument or law constituting or defining the constitution of the body or governing the activities of the body or its members;

Date of this Agreement means the date written on the execution page of this Agreement, and if no date or more than one date is written there, then the date on which this Agreement is signed by the last Party to do so;

Depreciated means the amount representing the reduction in value of an Asset calculated in accordance with Australian Accounting Standards;

Director means any of the following:

- a. a person appointed to the position of a director or alternate director and is acting in that capacity of a body corporate within the meaning of the Corporations Act 2001 (Cth) regardless of the name given to their position;
- b. a member of the governing committee of an Incorporated Aboriginal Association under the Aboriginal Councils and Associations Act 1976 (Cth);
- c. a member of the committee of an organisation incorporated pursuant to the Associations Incorporation Act 1981 (Vic);
- d. a person who would be a director of the body corporate under paragraph a. if the body corporate were a body corporate within the meaning of the Corporations Act 2001 (Cth);
- e. a person who acts in the position of a director of a body corporate;
- f. a person whose instructions or wishes the directors of a body corporate are accustomed to act upon, and not simply because of the person's professional capacity or business relationship with the directors or the body corporate; and
- g. a member of a board, committee or group of persons (however described) that is responsible for managing or overseeing the affairs of the body corporate;

Dispose means to sell, licence, lease or sublease, or otherwise transfer or give up ownership or the right to occupy or use, or to enter into an agreement to do any of the preceding acts and 'Disposal' means the method of so disposing;

Existing Material means all Material in existence prior to the Date of this Agreement:

- a. incorporated in;

- b. supplied with, or as part of; or

- c. required to be supplied with, or as part of, the Activity Material;

Financial Year means each period from 1 July to the following 30 June (or other period You use for regular formal financial reporting) occurring during the Activity Period, or any part of such a period occurring at the beginning or end of the Activity Period;

Funding or Funds means the amount or amounts (in cash or kind) payable by Us under this Agreement as specified in the Schedule, and includes Activity Generated Income;

GST has the meaning as given in section 195-1 of the GST Act;

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

Guidelines refers to the guidelines for the Program, if any, as described in the Schedule;

Input Tax Credit has the meaning given in section 195-1 of the GST Act;

Intellectual Property Rights 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);
- b. all rights in relation to inventions (including patent rights), plant varieties, registered and unregistered trademarks (including service marks), designs, circuit layouts; and
- c. all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields, but does not include:
- d. Moral Rights;
- e. the rights of performers; or
- f. rights in relation to confidential information;

Interest means interest calculated at an interest rate equal to the general interest charge rate for a day pursuant to section 8AAD of the Tax Administration Act 1953 (Cth), on a daily compounding basis;

Laws includes:

- a. Acts of the Commonwealth and the State(s) and Territory(s) in which the Activity will be undertaken, and any other relevant State or Territory;
- b. ordinances, regulations, by-laws, orders and proclamations or other instruments of legal

effect made under those Acts referred to in paragraph a.;

- c. directions by any person exercising statutory powers regarding the Activity; and
- d. all the requirements and standards of a government department, authority, agency or regulatory body that commonly applies in respect of the building or construction industry in any State or Territory where the Activity is carried out;

Material means the subject matter of any category of Intellectual Property Rights;

Milestone means a stage of completion of the Activity as set out in the Schedule;

Moral Rights includes the following rights of an author of copyright Material:

- a. the right of attribution of authorship;
- b. the right of integrity of authorship; and
- c. the right not to have authorship falsely attributed;

Other Contributions means financial or in-kind resources (with in-kind resources valued at cost) other than the Funding or Your Contributions, which are specified in the Schedule and are used by You for the Activity;

Outputs means the Program's objectives described in the Schedule, which are the agreed results You must achieve;

Party means a party to this Agreement;

Personal Information has the same meaning as under the Information Privacy Act 2000 (Vic), which currently is information or an opinion (including information or an opinion forming part of a data base), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion;

Principles refers to the principles of the Program, if any, as described in the Schedule;

Privacy Act means the Information Privacy Act 2000 (Vic);

Program means the part of Our operations specified in the Schedule under which We are able to give the Funding to You;

Qualified Accountant means a person who is a member of the Institute of Chartered Accountants in Australia or of CPA Australia or the National Institute of Accountants;

RCTI means a recipient created tax invoice as defined in section 195-1 of the GST Act;

Records includes documents, information and data stored by any means and all copies and extracts of the same;

Report means Activity Material that is provided to Us for reporting purposes as stipulated in the Schedule;

Schedule refers to the Schedule to this Agreement and may include Annexures and incorporate other documents by reference;

Specified Personnel means the personnel (whether Your officers, employees or subcontractors), or people with specific skills, specified in the Schedule as personnel required to undertake the Activity or any part of the work constituting the Activity;

State means the State of Victoria;

State Material means any Material:

- a. provided by Us to You for the purposes of this Agreement; or
- b. which is derived at any time from the Material referred to in paragraph a. except for Activity Material;

Tax Invoice has the meaning given in section 195-1 of the GST Act;

Taxable Supply has the meaning given in section 195-1 of the GST Act;

Term of this Agreement refers to the period described in subclause 2.1;

Undepreciated in relation to the value of an Asset, means the value of the Asset which has not been Depreciated;

Us, We and Our includes Our officers, delegates, employees and agents, and Our successors;

You and Your includes Your officers, employees, agents, volunteers and subcontractors, and Your successors;

Your Contributions means the financial or in-kind resources (with in-kind resources valued at cost), other than the Funding or Other Contributions, which are specified in the Schedule and are used by You for the Activity;

1.2. Rules of Interpretation

1.2.1. In this Agreement, unless the contrary intention appears:

- a. words in the singular number include the plural and words in the plural number include the singular;

- b. words importing a gender include any other gender;
- c. words importing persons include a partnership and a body whether corporate or otherwise;
- d. all references to clauses are to clauses in this Agreement;
- e. all references to dollars are to Australian dollars;
- f. a reference to any legislation or legislative provision includes any statutory modification, substitution or re-enactment of that legislation or legislative provision;
- g. a reference to an item is to an Item in the Schedule;
- h. an uncertainty or ambiguity in the meaning of a provision of this Agreement will not be interpreted against a Party just because that Party prepared the provision;
- i. reference to Australian Taxation Office rulings or internet sites includes those rulings or sites as amended, modified or repealed;
- j. in respect to any obligation You may have under this Agreement to pay Us any Interest, You agree that the Interest represents a reasonable pre-estimate of the loss incurred by Us;
- k. where any word or phrase is given a defined meaning, any other part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning; and
- l. a reference to writing is a reference to any representation of words, figures or symbols, whether or not in a visible form.

1.3. Precedence

1.3.1. The Schedule (and Annexures and documents incorporated by reference, if any) form part of this Agreement. In the event of any conflict or inconsistency between any part of:

- a. the terms and conditions contained in the clauses of this Agreement;
- b. the Schedule;
- c. the Annexures, if any;
- d. documents incorporated by reference, if any;

then the material mentioned in any one of paragraphs a. to d. of this subclause 1.3 has precedence over material mentioned in a subsequent paragraph, to the extent of any conflict or inconsistency.

2. Term of this Agreement

2.1. Duration of term

2.1.1. The Term of this Agreement commences on the Date of this Agreement and, unless terminated earlier, it expires on the Completion Date.

3. Payment

3.1. Making of Payment

3.1.1. Subject to compliance by You with this Agreement, We will provide You with the Funding at the times and in the manner specified in the Schedule.

3.1.2. Without limiting Our rights, We may withhold or suspend any payment in whole or in part until You have performed Your obligations under this Agreement.

3.1.3. Any payments under this Agreement may be deferred or suspended by Us:

- a. if You have outstanding or unacquitted moneys under any arrangement (whether contractual or statutory) with the State, including between You and Us; or
- b. if a Report provided by You is not accurate or complete or indicates that You currently have unspent Funds.

3.1.4. Notwithstanding such suspension or deferral of any payments, You must continue to perform any obligations under this Agreement, unless We agree otherwise in writing.

4. Taxes, Duties and Government Charges

4.1 General Taxes, etc

4.1.1. Subject to this clause, all taxes, duties and government charges imposed in Australia and overseas in connection with this Agreement must be borne by You.

4.2 Applicant is registered or required to be registered for GST

4.2.1. The provisions of clauses 4.3 to 4.12 inclusive, in respect of GST apply if You are registered or are required to be registered for GST.

4.3 Funds are GST inclusive

4.3.1. Funds payable under this Agreement will include GST for supplies provided by You to Us in accordance with this Agreement and which are Taxable Supplies within the meaning of the GST Act.

4.4 GST Registration

4.4.1. Each party must be registered, have quoted its ABN to the other, and must tell the other immediately about any changes to either.

4.4.2. If You are required to be registered for GST and You have not done so, You must do so prior to receiving payment from Us.

4.5 Tax Invoice

4.5.1. You must give us a tax invoice in accordance with the GST Act in relation to any Taxable Supply by You to Us in connection with this Agreement prior to payment of Funds by Us unless you have signed an RCTI Agreement with Us under clause 4.6.

4.6 Sign RCTI Agreement

4.6.1. If You do not provide Us with a Tax Invoice under clause 4.5, You must sign an RCTI Agreement to authorise Us to issue a RCTI on Your behalf in respect of Taxable Supplies to Us under this Agreement.

4.7 Issue of RCTIs

4.7.1. We will issue RCTIs and any Adjustment Notes for Taxable Supplies by You to Us under this Agreement within 20 Business Days of determining the value of the Taxable Supplies in question.

4.8 Do not issue a Tax Invoice (for RCTI Agreements only)

4.8.1. You must not issue Tax Invoices or Adjustment Notes for Taxable Supplies by You to Us if You have signed an RCTI Agreement with Us.

4.9 GSTR 2000/10

4.9.1. Both Parties must comply with the determination scheduled to Goods and Services Tax Ruling 2000/10 dated 10 May 2000 that came into effect on 1 July 2000 (GSTR 2000/10).

4.10 Failure to Comply with GSTR 2000/10

4.10.1. We will not issue RCTIs or Adjustment Notes for Taxable Supplies by You to Us under this Agreement at any time either Party fails to comply with the determination scheduled to GSTR 2000/10.

4.11 Input Tax Credits

4.11.1. The Funding payable by Us to You under this Agreement must not include any amount which represents GST paid by You on Your own inputs and for which an input tax credit is available to You.

4.12 GST on Refunds

4.12.1. Any refund under subclause 5.6 must be inclusive of GST and must be accompanied by an Adjustment Note under the GST Act relating to Taxable Supplies for which you previously issued to Us a tax invoice or We provided You with a RCTI.

4.13 Applicant is not registered or not required to be registered for GST

4.13.1. The provisions of clauses 4.14 to 4.17 inclusive, in respect of GST apply if You are not registered or are not required to be registered for GST.

4.14 Funds are GST exclusive

4.14.1. Funds payable under this Agreement do not include GST for supplies provided by You to Us in accordance with this Agreement and which are Non Taxable Supplies within the meaning of the GST Act.

4.15 Withholding Tax

4.15.1. We are required to withhold 48.5% of the total amount payable to You unless you elect to sign a Statement by a Supplier, prior to or at the time of invoicing Us, stating that withholding tax is not required to be deducted from the payment.

4.15.2. Any tax withheld by Us will be remitted to the Australian Taxation Office on your behalf.

4.15.3 You can apply to the Australian Taxation Office at the end of the Financial Year for a refund of any withholding tax remitted by Us.

4.16 Invoice

4.16.1. You must provide Us an Invoice, which is not a Tax Invoice, for supplies made by You to Us in connection with this Agreement prior to payment of Funds by Us.

4.17 Input Tax Credits

4.17.1. You cannot claim an input tax credit for the GST on Your supplies under this Agreement.

5. Management of Funding

5.1. Conducting of Activity

5.1.1. You must carry out the Activity within the Activity Period and in accordance with this Agreement (including any applicable Principles and Guidelines), diligently, effectively and to a high professional standard.

5.1.2. Where We are satisfied that You do not have the capacity to manage the Funding, We may immediately suspend, reduce or cease the release of Funding to You on providing You with notice of this decision.

5.1.3. Where We are satisfied that the Activity (or a part of the Activity) is unable to be performed by You in accordance with this Agreement, the Funding relating to the Activity (or that part of the Activity) must be repaid to Us upon demand.

5.1.4. The Funding must be spent by You only for the Activity in accordance with this Agreement, as outlined in the Schedule.

5.2. Keeping of Funds

5.2.1. You must:

- a. ensure that the Funds are held in an account in Your name, and which You solely control, with an authorised deposit-taking institution authorised under the Banking Act 1959 (Cth) to carry on banking business in Australia;
- b. if specified in the Schedule, the account referred to in paragraph a. must be:
 - i. established solely for the purposes of accounting for, and administering, any Funding provided by Us to You under this Agreement;
 - ii. an account that bears a rate of interest reasonably required by Us;

- iii. separate from Your other operational accounts;
- c. provide written notification to the authorised deposit-taking institution at which the account is established that the Funds are held for the purposes of the Activity, and provide a copy of that notification to Us; and
- d. provide Us and the authorised deposit-taking institution with an authority for Us to obtain details relating to any use of the account;
- e. notify Us, in writing, prior to the receipt of any Funds, of details sufficient to identify the account;
- f. if the account changes, notify Us in writing within 10 Business Days of the change occurring providing Us with details of the new account and comply with paragraphs 5.2.1.b.i and 5.2.1.b.ii above in respect to the new account (if applicable); and
- g. unless You are a sole director company or an individual, ensure that as a minimum two signatories, who have Your authority to do so, are required to operate the account.

5.3. Financial Records

5.3.1. You must keep financial accounts and Records so as to enable:

- a. all receipts and payments in relation to the Activity to be identified separately within Your accounts and Records so that at all times the Funds are identifiable and ascertainable and able to be reported in accordance with this Agreement;
- b. the preparation of financial statements in accordance with Australian Accounting Standards including:
 - i. an income and expenditure statement for the Financial Year to date [compared with the Budget]; and
 - ii. a register of the Assets created, acquired, written-off or Disposed of during the Financial Year to date [compared with the Budget];
- c. the audit of those accounts and Records in accordance with Australian Auditing Standards; and
- d. the identification of all Your taxation liabilities and payments.

5.4. Use as Security

5.4.1. You must do all things necessary to ensure that all payments from the Funds that You make to third parties (including subcontractors) are correctly made and properly authorised and that You maintain proper and diligent control over the incurring of all liabilities.

5.4.2 Without Our prior written approval, You must not use any of the following as any form of security for the purpose of obtaining or complying with any form of loan, credit, payment or other interest:

- a. the Funds;
- b. this Agreement or any of Our obligations under this Agreement; or
- c. any Assets or Intellectual Property Rights in Activity Material.

5.5. Refunds

5.5.1. If, at any time during the Term of this Agreement We determine that:

- a. there remains an amount of Funding in the account referred to in paragraph 5.2.1.a. that has not been spent or legally committed for expenditure in accordance with this Agreement; or
- b. Funds have not been spent in accordance with this Agreement;

then at Our discretion this amount must be refunded by You to Us within 20 Business Days of a notice from Us, or dealt with as notified by Us, or We may reduce further payments of Funding to You by up to this amount.

5.5.2. If We notify You that the amount is to be refunded to Us and the amount is not refunded to Us within 20 Business Days, Interest will accrue and be payable, unless We notify You otherwise, on the amount outstanding after the expiry of the 20 Business Days, until the amount is paid in full.

5.5.3. If at the completion of the Activity Period You have remaining Funds (which does not include those Funds legally committed for expenditure in accordance with this Agreement and which fall for payment thereafter), You must seek Our written consent to retain the Funds and use them for purposes agreed by Us.

5.5.4. If We do not agree to You retaining the Funds under subclause 5.5.3, You must return the Funds to Us within 20 Business Days of Our notice that You are to return the Funds, and if the Funds are not returned to Us within 20 Business Days, Interest will accrue and be payable, unless We notify You otherwise, on the amount outstanding after the expiry of the 20 Business Days, until the amount is paid in full.

5.6. Recovery

5.6.1. Any amount owed to Us under subclauses 5.5.2 or 5.5.4, and any Interest owed under these subclauses will, without prejudice to any other rights available to Us under this Agreement or at law or in equity, be recoverable by Us as a debt due to Us by You without further proof of the debt by Us being necessary.

5.7. Budget

5.7.1. You must only spend the Funds in accordance with the Budget set out in the Schedule.

5.8. Budget Flexibility

5.8.1. You may spend the Funds on any separate category of expenditure item within the Budget, but You are to obtain prior written approval from Us for any transfer of Funds between categories of expenditure items within the Budget which exceed a percentage of the total Budget as specified in the Schedule. The total amount of transfers in any Financial Year must not exceed the percentage of the Budget specified in the Schedule.

5.9. No Additional Funds

5.9.1. We are not responsible for the provision of additional money to meet any expenditure in excess of the Funds or to meet ongoing or recurrent costs arising from the Activity.

5.10. Survival

5.10.1. The operation of this clause 5 applies beyond the Completion Date or earlier termination of the Term of this Agreement.

6. Your Contributions and Other Contributions

6.1. Evidence of Your Contributions

6.1.1. If specified in the Schedule, You must provide Your Contributions for the Activity. Your Contributions must not include any amount that has been provided to You by a Commonwealth, State or Territory department or agency.

6.2. Evidence of Other Contributions

6.2.1. Unless otherwise specified in the Schedule, it is a condition precedent to the payment of Funds under this Agreement that:

- a. You must ensure that the persons (if any) identified in the Schedule provide Us with satisfactory written evidence that they will provide the Other Contributions, including the amounts to be provided, the due dates for each of these amounts and the terms and conditions of the provision of the Other Contributions; and
- b. the basis on which these Other Contributions are to be provided must be satisfactory to Us.

6.2.2. The written evidence required by paragraph 6.2.1.a must be provided to Us within 10 Business Days of the Date of this Agreement, failing which this Agreement may, at Our discretion, be treated as void and as never having been entered into.

6.2.3. If You are not able to obtain Other Contributions or obtain them in time to enable completion of the Activity, then We may:

- a. suspend payment of the Funds or an instalment of the Funds (as the case may be) until the Other Contributions are received; or
- b. terminate this Agreement in accordance with clause 20 [Termination for Default].

6.3 Notification of Receipt of Additional Other Contributions

6.3.1. You must notify Us within 10 Business Days of entering into any arrangement (whether contractual or statutory) under which You are entitled to receive any additional monetary or in-kind contributions in respect of the Activity that are not identified as Other Contributions in the Schedule. Any such additional contribution that You become

entitled to receive after the Date of this Agreement constitutes Other Contributions for the purposes of this Agreement (and the Schedule is deemed to be varied accordingly) on the date on which You notify Us of that contribution under this subclause 6.3.1.

6.4 Impact of a Breach of an Agreement for Other Contributions

6.4.1. If You receive Other Contributions (other than the Funding) in relation to the Activity, a breach by You of the arrangement (whether contractual or statutory) under which You receive that funding may be regarded by Us as a breach of this Agreement.

6.5 Notification of termination of Other Contributions

6.5.1. You must notify Us within 5 Business Days of the termination of any arrangement (whether contractual or statutory) under which You were entitled to receive Other Contributions in relation to the Activity.

6.6 Action on Termination of Other Contributions

6.6.1. On receipt of notice of the termination of an Agreement for Other Contributions, We may at Our Option:

- a. notify You in writing of a reduction in scope of the Activity and any adjustment to the Funds for You to complete the reduced Activity and vary this Agreement accordingly; or
- b. terminate this Agreement in accordance with clause 20 [Termination for Default].

6.7 Compliance with timeframe

6.7.1. Unless We take action under subclause 6.6, You are required to comply with the time frame for progressing and completing the Activity as set out in this Agreement.

6.8 Failure to notify of Termination of Other Contributions

6.8.1. If You do not notify Us of the termination of an Agreement for Other Contributions in accordance with subclause 6.5 We may, at Our sole discretion, terminate this Agreement under clause 20 [Termination for Default].

7. Assets

7.1 Acquisition of Assets

7.1.1. You must not use the Funding to acquire or create any Asset, apart from those detailed in the Schedule, without getting Our prior written approval. Approval may be given subject to any conditions We may impose

7.2 Ownership of Assets

7.2.1. Unless it is specified in the Schedule that We or a third party own the Asset then, subject to this clause 7 and the terms of any relevant lease, You own any Asset acquired by You with the Funding, subject to:

- a. its continued use for the purposes of this Agreement; and
- b. any requirement to transfer all or any of the Assets if You are required by Us to do so pursuant to this Agreement.

7.3 Terms applicable to Assets

7.3.1. If We or a third party own the Asset, or the Asset is leased by You from a third party, then:

- a. if We or a third party own the Asset, subclauses 7.6, 7.8.2 and 7.9 do not apply;
- b. if the Asset is leased, You must ensure that the terms of the lease are consistent with this clause 7 except for subclauses 7.6, 7.7, 7.8 and 7.9.

7.4 Use of Assets

7.4.1. During the Activity Period You must use any Asset in accordance with this Agreement and for the purposes of the Activity.

7.5 Your responsibilities for Assets

7.5.1. Throughout the Term of this Agreement, You must:

- a. not encumber or dispose of any Asset, or deal with or use any Asset other than in accordance with this clause 7, without Our prior written approval;
- b. hold all Assets securely and safeguard them against theft, loss, damage, or unauthorised use;
- c. maintain all Assets in good working order;

- d. maintain all appropriate insurances for all Assets to their full replacement cost noting Our interest, if any, in the Asset under this Agreement and provide satisfactory evidence of this on request from Us;
- e. if required by law, maintain registration and licensing of all Assets;
- f. be fully responsible for, and bear all risks relating to, the use or Disposal of all Assets;
- g. maintain an Assets register in the form and containing the details as described in the Schedule; and
- h. as and when requested by Us, provide copies of the Assets register to Us.

7.6 Sale or Disposal of Assets during Term of this Agreement

7.6.1. If You Dispose of an Asset during the Term of this Agreement (which must be with Our prior written consent and subject to any conditions We may impose) the greater of the following proportions must be accounted for and used as Activity Generated Income:

- a. the proportion of the sale proceeds from the Asset; or
 - b. the proportion of the Undepreciated value of the Asset,
- that is equivalent to the proportion of the cost of the Asset that was funded from the Funding.

7.7 Loss, Damage etc of an Asset

7.7.1. If any of the Assets are lost, damaged or destroyed, You must promptly reinstate the Assets including from the proceeds of the insurance and this clause 7 continues to apply to the reinstated Assets. The proportion of any surplus from the proceeds of the insurance, which reflects the proportion of the cost of the Asset that was funded by the Funding, must be notified to Us and accounted for and used as Activity Generated Income under this Agreement.

7.8 Dealing with Assets

7.8.1. During the Term of this Agreement We may require You to deal with an Asset as We may, at our sole discretion, direct in writing.

7.8.2. Subject to subclause 7.8.1 if, on completion of the Activity Period, or the earlier termination of the Term of this Agreement, an Asset has not been fully Depreciated You must, as We may direct in writing:

- a. pay to Us within 20 Business Days after completion of the Activity or earlier termination of the Term of this Agreement, an amount equal to the proportion of the Undepreciated value of the Asset that is equivalent to the proportion of the cost of the Asset that was funded from the Funding;
- b. sell the Asset for the best price reasonably obtainable and pay to Us within 20 Business Days of the sale the proportion of the proceeds of the sale that is equivalent to the proportion of the cost of the Asset (less an amount equal to the reasonable Disposal costs incurred by You) that was funded from the Funding; or
- c. continue to use the Asset for the purposes, and in accordance with any conditions, notified by Us.

7.9 Failure to make Payment

7.9.1. Amounts payable to Us under subclause 7.8.2 form part of the Funds and are recoverable as such. If You fail to make payment as required by subclause 7.8.2:

- a. You must pay Us the Interest on the relevant amount from the date it was due, for the period it remains unpaid; and
- b. the relevant amount, and Interest owed under this clause, will, without prejudice to any other rights available to Us under this Agreement or at law or in equity, be recoverable by Us as a debt due to Us by You without further proof of the debt by Us being necessary.

7.10 Our Approvals

7.10.1. Our approvals under subclause 7.1 and paragraph 7.5.1.a will not be unreasonably withheld. A decision as to whether an approval will be provided will be made within a reasonable time of the request.

7.11 Survival

7.11.1. The operation of this clause 7 applies beyond the Completion Date or earlier termination of the Term of this Agreement.

8. Records

8.1 Keeping Records

8.1.1. You must create and maintain full and accurate accounts and Records of the conduct of the Activity including, without limitation, progress against the Milestones, the receipt and use of Funding, Other Contributions (if any), Your Contributions (if any), the creation, acquisition and Disposal of Assets and the creation of Intellectual Property Rights in Activity Material.

8.2 Retention of Records

8.2.1. Records and accounts created and maintained under subclause 8.1.1 must be retained by You for a period of no less than 7 years after the end of the Activity Period.

8.3 Survival

8.3.1. The operation of this clause 8 applies beyond the Completion Date or earlier termination of the Term of this Agreement.

9. Reporting

9.1 Progress Reports and Final Report

9.1.1. You must provide Us periodic written Reports of Your progress in undertaking and completing the Activity in the manner specified in the Schedule.

9.2 Audit and Certification

9.2.1. Within 20 Business Days after Your Annual General Meeting in each financial year to which this Agreement applies, You must provide Us in writing with:

- a. annual report (including audited financial statements in line with Your organisation's incorporated or registered status and related legislation) prepared in accordance with Australian Accounting Standards, which must include a definitive statement as to whether the

financial information represents the financial transactions fairly, is materially accurate and is based on proper accounts and Records;

- b. a statement of financial position (assets and liabilities by class), which must include, under assets, the balance of Your account referred to in paragraph 5.2.1.a, if applicable;
- c. a statement of how much You need to meet current liabilities under legal commitments entered into by You pursuant to this Agreement; and
- d. any other requirements specified in the Schedule.

9.2.2. Information required to be provided under subclauses 9.1 and 9.2 must be accompanied by a certificate that:

- a. all Funding received was spent for the purposes of the Activity and in accordance with this Agreement, and that You have complied with this Agreement;
- b. salaries and allowances paid to persons involved in the Activity are in accordance with any applicable award or agreement in force under any relevant law on industrial or workplace relations;
- c. unless the Activity Period has expired or the Agreement has been terminated, the unspent portion of the Funds (if any) are available for use within the next Reporting period;
- d. the financial information is presented in accordance with any other financial Reporting requirements We may notify to You;
- e. where an Asset has been created or acquired with the Funds, that paragraphs 7.5.1.d and 7.5.1.g have been complied with in respect to the Asset; and
- f. at the time the Report or financial statement is provided to Us, You are able to pay all Your debts as and when they fall due and You have sufficient resources to discharge all Your debts at the end of the current Financial Year.

9.2.3. The audited statement referred to in paragraphs 9.2.1.a and the certificate referred to in subclause 9.2.2, must also contain the requirements, if any, described in the Schedule.

9.3 Use of Approved Auditor

9.3.1. The audited statement referred to in paragraph 9.2.1.a must be prepared by an Approved Auditor and must comply with the Australian Auditing Standards, and the statements referred to in paragraphs 9.2.1.a, 9.2.1.b and 9.2.1.c must be prepared by a Qualified Accountant who, if notified by Us, must also be a person acceptable to Us.

9.4 Who provides certification

9.4.1. The certificate referred to in subclause 9.2.2 must be provided:

- a. if You are an incorporated body, by Your Chairperson, Chief Executive Officer, Chief Financial Officer or a person authorised by You to execute documents and legally bind You by their execution. Satisfactory evidence of the authorisation is to be provided to Us before certification;
- b. if You are an unincorporated association or partnership, by:
 - i. a majority of the members; or
 - ii. by a person or persons authorised by a majority of the members to act on behalf of the members in accordance with Your Constitution. Satisfactory evidence of the authorisation is to be provided to Us before certification;
- c. if You are a joint venture, the Chief Executive Officer or Chief Financial Officer of each joint venturer must certify the one statement; or
- d. if You are an individual, by that individual.

9.5 Survival

9.5.1. The operation of this clause 9 applies beyond the Completion Date or earlier termination of the Term of this Agreement.

10. State Material

10.1 Ownership

10.1.1. Ownership of all State Material, including Intellectual Property Rights in that Material, remains vested at all times in Us but We may grant You a licence to use, copy, reproduce, communicate,

adapt and exploit that Material in accordance with any conditions or restrictions We may notify to You.

10.2 Possession of State Material

10.2.1. Upon the expiration of the Activity Period or earlier termination of the Term of the Agreement, You may retain all State Material remaining in Your possession, unless otherwise notified by Us.

10.3 Maintaining State Material

10.3.1. You must keep safely and maintain State Material You have been given for the purposes of this Agreement.

10.4 Survival

10.4.1. The operation of this clause 10 applies beyond the Completion Date or earlier termination of the Term of this Agreement.

11. Intellectual Property

11.1 Ownership

11.1.1. Subject to subclause 11.3, all Intellectual Property Rights in Activity Material produced under this Agreement (including but not limited to copyright in all documents, reports, charts, drawings, data bases, software, source codes, models, systems, slides, tapes and specifications) vests in the State of Victoria in accordance with Part VII of the Copyright Act 1968 (Cth).

11.2 Licence of Activity Material

11.2.1. You may apply in writing for a licence from the State through the appropriate Minister to use the Intellectual Property which vests in the State of Victoria under this Agreement, and You acknowledge that the granting of such a licence is solely at the discretion of the Minister.

11.3 Creation of a concept, product or process capable of being patented

11.3.1 If during the course of performing the Activity, You develop, discover or first reduce to practice a concept, product or process which is capable of being patented, We acknowledge that such concept, product or process is Your property and We agree not to use, infringe or otherwise

appropriate the same without first obtaining Your written consent.

11.4 Licence of Existing Material

11.4.1. This clause 11 does not affect the ownership of any Intellectual Property Rights in any Existing Material which is specified in the Schedule. You, however, grant to Us or must arrange for the grant to Us of a permanent, irrevocable, free, worldwide, non-exclusive licence (including a right of sublicense) to use, reproduce, adapt and exploit the Intellectual Property Rights in Existing Material for any State purpose.

11.5 Dealing with Intellectual Property Rights

11.5.1. You:

- a must, if requested by Us to do so, bring into existence, sign, execute or otherwise deal with any document which may be necessary or desirable to give effect to this clause 11;
- b warrant that You are entitled, or will be entitled at the relevant time, to deal with the Intellectual Property Rights in the Activity Material and the Existing Material in accordance with this clause 11; and
- c except as expressly provided for in this Agreement, must not deal with the Intellectual Property Rights in the Activity Material during the Term of this Agreement

11.6 Specified Acts relating to Moral Rights

11.6.1. For this clause 11, the 'Specified Acts' means the following classes or types of acts or omissions by or on behalf of Us:

- a. using, reproducing, adapting or exploiting all or any part of the Activity Material, with or without attribution of authorship;
 - b. supplementing the Activity Material with any other Material;
 - c. using the Activity Material in a different context to that originally envisaged;
- but does not include false attribution of authorship.

11.7 Consent to Specified Acts

11.7.1. Where You are a natural person and the author of the Activity Material, You consent to the performance of the Specified Acts by Us or any

person claiming under or through Us and agree to comply with paragraphs 11.7.2.b and 11.7.2.c.

11.7.2. In any other case, You agree:

- a. to obtain from each author of any Activity Material a written consent to the Specified Acts (whether occurring before or after the consent is given) which extends directly or indirectly to the performance of the Specified Acts by Us or any person claiming under or through Us;
- b. to obtain from each author of Existing Material a written consent to the Specified Acts (whether occurring before or after the consent is given) which extends directly or indirectly for Our benefit in relation to such Material used, reproduced, adapted, communicated and exploited in conjunction with the Activity Material; and
- c. upon request, to provide the executed original of each such consent to Us.

11.8 Survival

11.8.1. The operation of this clause 11 applies beyond the Completion Date or earlier termination of the Term of this Agreement.

12. Disclosure of Information

12.1 No confidentiality

12.1.1. You acknowledge that We may be required to provide information in relation to the Funding or this Agreement, as required by the operation of any law, judicial or parliamentary body or governmental agency and accordingly We can give no undertakings to treat any of Your information or this Agreement as confidential information.

12.2 Disclosure of State Material

12.2.1. You are permitted to disclose State Material, except to the extent, if any, notified by Us. If We require You to keep any State Material confidential We may permit You to disclose it subject to compliance with any conditions on that disclosure that We may notify to You.

13. Protection of Personal Information

13.1 Application of clause

13.1.1. This clause applies only where You deal with Personal Information when, and for the purpose of, conducting the Activity under this Agreement.

13.2 Privacy obligation

13.2.1. You acknowledge that You will be treated as an 'organisation' within the meaning of the Privacy Act and agree in respect of the conduct of the Activity under this Agreement:

- a. to use and disclose Personal Information obtained during the course of conducting the Activity under this Agreement, only for the purposes of this Agreement and in accordance with the Privacy Act;
- b. not to do any act or engage in any practice which if done or engaged in by an agency, would be a breach of an Information Privacy Principle, contained in part 1 of the Privacy Act;
- c. to carry out and discharge the obligations contained in the Information Privacy Principles as if You were an agency;
- d. to ensure that any of Your employees, agents, officers or volunteers who are required to deal with Personal Information for the purposes of this Agreement are made aware of Your obligations set out in this clause 13; and
- e. to immediately notify Us if you become aware of a breach or possible breach of any of the obligations contained in, or referred to in, this clause 13, whether by You or any subcontractor;

13.3 Subcontractor obligations

13.3.1. You agree to ensure that any subcontract entered into for the purposes of fulfilling Your obligations under this Agreement contains provisions to ensure that the subcontractor has the same awareness and obligations as You have under this clause, including the requirement in relation to subcontracts.

13.4 Privacy definitions

13.4.1. In this clause 13, the terms 'agency', 'organisation', and 'Information Privacy Principles'

(IPPs) have the same meaning as they have in section 6 of the Privacy Act, and 'subcontract' and other grammatical forms of that word has the meaning given in section 95B(4) of the Privacy Act.

13.5 Survival

13.5.1. The operation of this clause 13 applies beyond the Completion Date or earlier termination of the Term of this Agreement.

14. Indemnity

14.1 General Indemnity

14.1.1. You indemnify (and keep indemnified) Us, Our officers, employees, and agents against any:

- a. cost or liability incurred by Us;
- b. loss of or damage to Our property; or
- c. loss or expense incurred by Us in dealing with any claim against Us, including legal costs and expenses on a solicitor/own client basis and a cost of time spent, resources used, or disbursements paid by Us;

arising from:

- d. any act or omission by You, or any of Your employees, agents, volunteers, or subcontractors in connection with this Agreement, where there was fault on the part of the person whose conduct gave rise to that liability, loss, damage, or expense;
- e. any breach by You of this Agreement;
- f. use or Disposal of the Assets; or
- g. the use by Us of the Activity Material or Existing Material, including any claims by third parties about the ownership or right to use Intellectual Property Rights in Activity Material or Existing Material.

14.2 Reduction of scope

14.2.1. Your liability to indemnify Us under this clause 14 will be reduced proportionally to the extent that any fault on Our part contributed to the relevant cost, loss, damage, expense, or liability.

14.3 Preservation of other rights

14.3.1. Our right to be indemnified under this clause 14 is in addition to, and not exclusive of, any other right, power, or remedy provided by law, but We are

not entitled to be compensated in excess of the amount of the relevant liability, cost, damage, loss, or expense.

14.4 Meaning of 'fault'

14.4.1. In this clause 14, "fault" means any negligent or unlawful act or omission or wilful misconduct.

14.5 Survival

14.5.1. The operation of this clause 14 applies beyond the Completion Date or earlier termination of the Term of this Agreement.

15. Insurance

15.1 Obligation to insure

15.1.1. You must, for as long as any obligations remain in connection with this Agreement, have insurance as specified in the Schedule.

15.1.2. All insurance under this clause 15 and paragraph 7.5.1.d is to be taken out with an insurer recognised by the Australian Prudential Regulation Authority.

15.2 Evidence of insurance

15.2.1. Whenever requested, You must provide Us, within 10 Business Days of the request, with evidence satisfactory to Us that You have complied with Your obligation to insure.

15.3 Survival

15.3.1. The operation of this clause 15 applies beyond the Completion Date or earlier termination of the Term of this Agreement.

16. Conflict of Interest

16.1 Warranty of no conflict

16.1.1. You warrant that, to the best of Your knowledge after making diligent inquiry, at the Date of this Agreement no Conflict exists or is likely to arise in the performance of Your obligations under this Agreement.

16.2 Conflict that may arise

16.2.1. Without limiting the operation of this clause 16, You must, during the Term of this Agreement, ensure that no Conflict arises through Your involvement with the parties or programs, if any, specified in the Schedule.

16.3 Dealing with Conflict

16.3.1. If during the Term of this Agreement, a Conflict arises, You must:

- a. immediately notify Us in writing of that Conflict and of the steps You propose to take to resolve or otherwise deal with the Conflict;
- b. make full disclosure to Us of all relevant information relating to the Conflict; and
- c. take such steps as We may, if we choose to, reasonably require to resolve or otherwise deal with that Conflict.

16.4 Failure to deal with Conflict

16.4.1. If You fail to notify Us under this clause 16, or are unable or unwilling to resolve or deal with the Conflict as required, We may terminate the Term of this Agreement in accordance with clause 20 [Termination for Default].

17. Access to Premises and Records

17.1 General access rights

17.1.1. You must give Us, the Auditor-General, the Privacy Commissioner and persons authorised by Us (referred to in this clause 17 collectively as 'those permitted') access to premises at which accounts, Records and Material associated with this Agreement are stored or work under the Activity is undertaken at all reasonable times and allow those permitted to inspect and copy accounts, Records and Material, in Your possession or control, for purposes associated with this Agreement or any review of performance under this Agreement. You must also give those permitted access to any Assets, wherever they may be located, and reasonable access to Your employees, officers, volunteers and agents, for the same purpose.

17.1.2. You must, if notified by Us, give the Auditor-General access, as outlined in clause 17.1.1, to undertake an audit under section 16C of the Audit

Act 1994 (Vic) to determine whether the Funds have been applied economically, efficiently and effectively for the purposes for which they were given.

17.2 Provision of assistance

17.2.1. You must provide all reasonable assistance requested by those permitted when they exercise the rights under subclause 17.1.

17.3 Limitation on access rights

17.3.1. The rights referred to in subclause 17.1 are subject to:

- a. the provision of reasonable prior notice by those permitted (except where they believe that there is an actual or apprehended breach of the law or breach of this Agreement); and
- b. Your reasonable security procedures.

17.4 No reduction in responsibilities

17.4.1. The requirement for access as specified in subclause 17.1 does not in any way reduce Your responsibility to perform Your obligations in accordance with this Agreement.

17.5 Rights in subcontracts

17.5.1. You must ensure that any subcontract entered into for the purpose of this Agreement contains an equivalent clause allowing those permitted to have access as specified in this clause 17.

17.6 Survival

17.6.1. The operation of this clause 17 applies for the Term of this Agreement and for a period of 7 years from the Completion Date or earlier termination of the Term of this Agreement.

18. Delay

18.1 Obligation to minimise

18.1.1. You must take all reasonable steps to minimise delay in completion of the Activity.

18.2 Notification of delay

18.2.1. If You become aware that You will be significantly delayed in progressing or completing the Activity in accordance with this Agreement, You

must immediately notify Us in writing of the cause and nature of the delay. You are to detail in the notice the steps You will take to contain the delay.

18.3 Action of delay

18.3.1. On receipt of a notice of delay, We may at Our option:

- a. notify You in writing of a period of extension to complete the Activity and vary this Agreement accordingly;
- b. notify You in writing of reduction in the scope of the Activity and any adjustment to the Funds for You to complete the reduced Activity and vary this Agreement accordingly; or
- c. terminate this Agreement under clause 20 [Termination for Default] or take such other steps as are available under this Agreement or at law or in equity.

18.4 Compliance with timeframe

18.4.1. Unless We take action under subclause 18.3, You are required to comply with the time frame for progressing and completing the Activity as set out in this Agreement.

18.5 Failure to notify of delay

18.5.1. If You do not notify Us of any significant delays in progressing or completing the Activity in accordance with subclause 18.2 We may, at Our sole discretion, terminate this Agreement under clause 20 [Termination for Default].

19. Termination with Costs

19.1 Termination or reduction of scope

19.1.1. We may, at any time by written notice to You, terminate the Term of this Agreement in whole or reduce the scope of this Agreement without prejudice to the rights, liabilities, or obligations of either Party accruing prior to the date of termination or reduction. If this Agreement is terminated or reduced in scope We will only be liable for:

- a. subject to subclause 19.3, payments under the payment provisions of this Agreement; and
- b. subject to subclauses 19.4, 19.5 and 19.6, any reasonable costs incurred by You and directly attributable to the termination of the Term of this

Agreement or reduction in scope of the Agreement.

19.2 Your obligations

19.2.1. Upon receipt of a notice of termination or reduction in scope You must:

- a. cease or reduce the performance of Your obligations under this Agreement in accordance with the notice;
- b. immediately do everything possible to mitigate all losses, costs, and expenses, arising from the termination or reduction in scope contained in the notice; and
- c. immediately return to Us any Funds in accordance with paragraph 19.3.1.b; or deal with any such Funds as We may notify to You.

19.3 Our rights on termination

19.3.1. Where We terminate the Term of this Agreement under subclause 19.1 We:

- a. will not be obliged to pay to You any outstanding amount of the Funds except to the extent that those monies have been legally committed for expenditure by You in accordance with this Agreement and payable by You as a current liability (written evidence of which will be required) by the date notice of termination given under subclause 19.1 is deemed to be received in accordance with subclause 33.2 [Notices]; and
- b. will be entitled to recover from You any part of the Funds which:
 - i. have not been legally committed for expenditure by You in accordance with this Agreement and payable by You as a current liability (written evidence of which will be required) by the date the notice of termination given under subclause 19.1 is deemed to be received in accordance with subclause 33.2 [Notices]; or
 - ii. have not, in Our opinion, been spent by You in accordance with this Agreement;

and all such Funds will, without prejudice to any other rights available to Us under this Agreement or at law or in equity, be recoverable as a debt due to Us by You without further proof of the debt by Us being necessary.

19.4 Abatement of Funding

19.4.1. If there is a reduction in scope of the obligations under this Agreement, Our liability to pay any part of the Funding will, in the absence of agreement to the contrary, abate proportionately to the reduction in the obligations under this Agreement.

19.5 Compensation

19.5.1. Our liability to pay any compensation under or in relation to this clause 19 is subject to:

- a. Your strict compliance with this clause 19; and
- b. Your substantiation of any amount claimed under paragraph 19.1.1.b

19.6 Limit on compensation

19.6.1. We will not be liable to pay compensation for loss of prospective profits for a termination or reduction in scope under this clause 19 or loss of any benefits that would have been conferred on You had the termination or reduction not occurred.

20. Termination for Default

20.1 Defaults

20.1.1. If:

- a. You fail to fulfil, or are in breach of any of Your obligations under this Agreement, and do not rectify the omission or breach within 10 Business Days of receiving a notice in writing from Us to do so;
- b. You are unable to pay all your debts as and when they become due and payable or You fail to comply with a statutory demand within the meaning of sections 459E and 459F of the Corporations Act 2001 (Cth);
- c. proceedings are initiated with a view to obtaining an order for Your winding up or any shareholder, member or Director convenes a meeting for the purpose of considering or passing of any resolution for Your winding up;
- d. You have applied to come under, received a notice requiring You to show cause why You should not come under, or have otherwise come under one of the forms of external administration referred to in Chapter 5 of the Corporations Act 2001 (Cth) or the Associations

Incorporation Act 1981 (Vic) or Parts IV and V of the Aboriginal Councils and Associations Act 1976 (Cth), or an order has been made for the purpose of placing You under external administration;

- e. being an individual, You become bankrupt or enter into a scheme of arrangement with creditors;
- f. in relation to this Agreement, You breach any law of the State of Victoria, Commonwealth, or of another State or Territory;
- g. You cease to carry on business;
- h. We are satisfied that any statement made in Your application for Funding is incorrect, incomplete, false or misleading in a way which would have affected the original decision to approve the Funding; or
- i. notice is served on You or proceedings are taken to cancel Your incorporation or registration or to dissolve You as a legal entity, then, in the case of any one or more of these events, We may immediately terminate the Term of this Agreement by giving written notice to You of the termination.

20.2 Our rights on termination

20.2.1. Where We terminate the Term of this Agreement under subclause 20.1 We:

- a. will not be obliged to pay to You any outstanding amount of the Funds except to the extent that those monies have been legally committed for expenditure by You in accordance with this Agreement and payable by You as a current liability (written evidence of which will be required) by the date notice of termination given under subclause 20.1 is deemed to be received in accordance with subclause 33.2 [Notices]; and
- b. will be entitled to recover from You any part of the Funds which:
 - i. have not been legally committed for expenditure by You in accordance with this Agreement and payable by You as a current liability (written evidence of which will be required) by the date the notice of termination given under subclause 20.1 is deemed to be received in accordance with subclause 33.2 [Notices]; or

- ii. have not, in Our opinion, been expended by You in accordance with the terms and conditions of this Agreement

20.3 Payment of interest

20.3.1. If you do not repay Us the amount referred to in paragraph 20.2.1.b within 10 Business Days of receipt of the notice of termination, You must also pay Us Interest on the outstanding amount. The amount set out in the notice, and Interest owed under this clause will, without prejudice to any other rights available to Us under this Agreement or at law or in equity, be recoverable by Us as a debt due to Us by You without further proof of the debt by Us being necessary.

20.4 Preservation of other rights

20.4.1. Subclause 20.2 does not limit or exclude any of Our other rights, including the right to recover any other amounts from You on termination of the Term of this Agreement.

21. Subcontracting

21.1 Approval of subcontracting

21.1.1. You must not, without Our prior written approval, subcontract the performance of any obligations under this Agreement. In giving written approval, We may impose such terms and conditions as We think fit. Any subcontractor who You propose to replace an approved subcontractor must also be approved by Us under this clause 21. The subcontractors We have approved at the Date of this Agreement, and any terms and conditions relating to their use, are identified in the Schedule.

21.2 Responsibility for obligations

21.2.1. You are fully responsible for the performance of Your obligations under this Agreement, even though You may have subcontracted any of them.

21.3 Suitability of subcontractor

21.3.1. Despite any approval given by Us under subclause 21.1, You are responsible for ensuring the suitability of a subcontractor for the work proposed to be carried out and for ensuring that

such work meets the requirements of this Agreement. An open, merit based approach should be taken to the selection of any subcontractors.

21.4 Revocation of approval

21.4.1. We may revoke Our approval of a subcontractor by notice on any reasonable ground.

21.5 Action on revocation

21.5.1. Upon receipt of a written notice from Us revoking Our approval of a subcontractor, You must, as soon as practicable (or as We may direct in the notice), cease using that subcontractor to perform any of Your obligations under this Agreement, unless We direct that the subcontractor be replaced immediately, in which case You must comply with the direction.

21.6 Liability under revoked approval

21.6.1. If We revoke our approval of a subcontractor, You remain liable under this Agreement for the past acts or omissions of Your subcontractors as if they were current subcontractors.

21.7 Terms of subcontracts

21.7.1. You must, in any subcontract placed with a subcontractor, reserve a right of termination to take account of Our right of termination under clauses 19 [Termination with Costs] or 20 [Termination for Default] and our right of revocation of approval under subclause 21.4, and You must, where appropriate, make use of that right in the event of a termination or revocation by Us.

21.8 Equal Opportunity

21.8.1. You must not enter into a subcontract under this Agreement with a subcontractor named by the Director of the Equal Opportunity for Women in the Workplace Agency as an employer currently not complying with the Equal Opportunity for Women in the Workplace Act 1999 (Cth).

22. Acknowledgment and Publicity

22.1 Acknowledgment of support

22.1.1. You must, in all publications, promotional and advertising materials, public announcements and activities by You or on Your behalf in relation to the Activity, or any products, processes or inventions developed as a result of it, acknowledge the financial and other support You have received from Us, in the manner, if not set out in the Schedule, then to be approved by Us prior to its use.

22.2 Right to publicise Funding

22.2.1. We reserve the right to publicise and report on the awarding of Funding to You. We may do this by, amongst other means, including in media releases, general announcements about the Funding and in annual reports Your name, the amount of the Funds given to you and the title and a brief description of the Activity.

22.3. Survival

22.3.1. The operation of this clause 22 applies for the Term of this Agreement and for a period of 7 years from the Completion Date or earlier termination of the Term of this Agreement.

23. Specified Personnel

23.1 Use of Specified Personnel

23.1.1. You must ensure that the Specified Personnel, if any, listed in the Schedule undertake work in respect of the Activity in accordance with the terms of this Agreement.

23.2 Replacement personnel

23.2.1. Where Specified Personnel are unable to undertake work in respect of the Activity, You must notify Us immediately. You must, if notified by Us, provide replacement personnel acceptable to Us without additional payment and at the earliest opportunity.

23.3 Removal of personnel

23.3.1. We may give notice on reasonable grounds related to performance of the Activity requiring You to remove personnel (including Specified Personnel) from work in respect of the Activity. You must, at

Your own cost, promptly arrange for the removal of such personnel from work in respect of the Activity and their replacement with personnel acceptable to Us.

23.4 Provision of replacement personnel

23.4.1. If You are unable to provide acceptable replacement personnel We may terminate this Agreement in accordance with the provisions of clause 20 [Termination for Default].

24. Compliance with Laws and Policies

24.1 Compliance with laws

24.1.1. You must, in carrying out Your obligations under this Agreement, comply with the provisions of all relevant statutes, regulations and by-laws and requirements of any Commonwealth, State, Territory or Local Authority, including those listed in the Schedule and those specified elsewhere in this Agreement, and summarised as follows:

- a. A New Tax System (Australian Business Number) Act 1999 (Cth);
- b. A New Tax System (Goods and Services Tax) Act 1999 (Cth);
- c. Aboriginal Councils and Associations Act 1976 (Cth);
- d. Associations Incorporations Act 1981 (Vic);
- e. Audit Act 1994 (Vic);
- f. Australian Securities and Investments Commission Act 2001 (Cth);
- g. Banking Act 1959 (Cth);
- h. Copyright Act 1968 (Cth);
- i. Corporations Act 2001 (Cth);
- j. Crimes Act 1914 (Cth);
- k. Criminal Code Act 1995 (Cth);
- l. Disability Discrimination Act 1992 (Cth);
- m. Equal Opportunity for Women in the Workplace Act 1999 (Cth);
- n. Information Privacy Act 2000 (Vic);
- o. Racial Discrimination Act 1984 (Cth);
- p. Sex Discrimination Act 1984 (Cth);
- q. Tax Administration Act 1953 (Cth); and
- r. Working with Children Act 2005 (Vic).

24.1.2. You should note that under the Criminal Code Act 1995 (Cth) section 137.1 giving false or misleading information is a serious offence.

24.2 Compliance with policies

24.2.1. You must, in carrying out Your obligations under this Agreement, comply with any of Our policies as notified, referred or made available by Us to You (including by reference to an internet site), including those listed in the Schedule.

24.3 Use of Our premises

24.3.1. You must, when using Our premises or facilities, comply with all reasonable directions and procedures relating to occupational health, safety and security in effect at those premises or in regard to those facilities, as notified by Us or as might reasonably be inferred from the use to which the premises or facilities are being put.

25. Negation of Legal Relationship of Employment, Partnership and Agency

25.1 Status

25.1.1. You, Your employees, partners, officers, volunteers or agents will not, by virtue of this Agreement, be or for any purpose be deemed to be Our legal employees, partners or agents.

25.2 Representatives

25.2.1. You must not, and must ensure that Your employees, partners, officers, volunteers or agents do not, represent Yourself or themselves as being Our employees, partners, officers, volunteers or agents, or as otherwise able to bind or represent Us.

26. Entire Agreement, Variation and Severance

26.1 Entire Deed

26.1.1. This Agreement records the entire agreement between the Parties in relation to its subject matter.

26.2 Variation of Deed

26.2.1. Except for action We are expressly authorised to take elsewhere in this Agreement, no variation of this Agreement is binding unless it is agreed in writing and signed by both Parties.

26.3 Severance

26.3.1. If a court or tribunal says any provision of this Agreement has no effect or interprets a provision to reduce an obligation or right, this does not invalidate any other provision.

27. Waiver

27.1 Exercise of rights

27.1.1. If either Party does not exercise (or delays in exercising) any of its rights, that failure or delay does not operate as a waiver of those rights.

27.2 Partial exercise of rights

27.2.1. A single or partial exercise by either Party of any of its rights does not prevent the further exercise of any right.

27.3 Means of waiver

27.3.1. Waiver of any provision of, or right under, this Agreement:

- a. must be in writing, signed by the Party entitled to the benefit of that provision or right; and
- b. is effective only to the extent set out in the written waiver.

27.4 Meaning of 'rights'

27.4.1. In this clause 27, 'rights' means rights or remedies provided by this Agreement or at law or in equity.

28. Assignment and Novation

28.1 Assignment of rights

28.1.1. You must not assign Your rights under this Agreement without prior written approval from Us.

28.2 Novation

28.2.1. You agree not to enter into negotiations with any other person for the purposes of entering into an arrangement that will require novation of this Agreement without first consulting Us.

29. Corporate Governance

29.1 Constitution

29.1.1. You must provide a copy of Your Constitution to Us upon notification by Us.

29.1.2. You must inform Us in writing within 10 Business Days whenever there is a change in Your Constitution, structure, management or operations which could reasonably be expected to affect Your eligibility for the Funding or have an adverse effect on Your ability to comply with Your obligations under this Agreement.

29.1.3. You must not employ, engage or elect any person who would have a role in Your management, financial administration or, if stated in the Schedule, the performance of the Activity, if:

- a. the person is an undischarged bankrupt;
- b. there is in operation a composition, deed of arrangement or deed of assignment with the person's creditors under the law relating to bankruptcy;
- c. the person has suffered final judgment for a debt and the judgment has not been satisfied;
- d. subject to Part VIIC of the Crimes Act 1914 (Cth), the person:
 - i. has been convicted of an offence within the meaning of paragraph 85ZM(1) of that Act unless:
 - that conviction is regarded as spent under paragraph 85ZM (2) (taking into consideration the application of Division 4 of Part VIIC);
 - the person was granted a free and absolute pardon because the person was wrongly convicted of the offence; or
 - the person's conviction for the offence has been quashed; or
 - ii. is or was a Director or occupied an influential position in the management or financial administration of an organisation that had failed to comply with funding requirements of the State of Victoria; or
- e. the person is otherwise prohibited from being a member or Director or employee or responsible officer of Your organisation under the relevant Local Government Act.

29.1.4. Where a person fails or is discovered as falling within any of paragraphs 29.1.3.a to 29.1.3.e while employed or engaged by You, or after being elected as an officer of Yours, You will be in breach of subclause 29.1.3 if You do not:

- a. transfer the person to a position which does not have a role in Your management, financial administration or performance of the Activity; or
- b. terminate the employment or engagement of the person or remove the person from office, as the case may be and immediately notify Us of Your action.

29.1.5. If You advise Us that You consider such termination action would be a breach of a statutory provision binding on You, We will take Your view into account in deciding what action to take as a result of the breach.

29.1.6. If You are an Aboriginal association incorporated under the Aboriginal Councils and Associations Act 1976 (Cth), in the event that Your public officer receives a notice from the Registrar of Aboriginal Corporations under section 71 of the Aboriginal Councils and Associations Act 1976 (Cth) calling upon You to show cause why an administrator should not be appointed, You must notify Us within 5 Business Days of the date of receipt of such a notice.

29.1.7. If You are registered under the Corporations Act 2001 (Cth), in the event that You apply to come under, receive a notice requiring You to show cause why You should not come under, receive a notice or an application from any other person for You to come under or have otherwise come under one of the forms of external administration referred to in Chapter 5 of the Corporations Act 2001 (Cth) or an order has been made for the purpose of placing You under external administration, You must inform Us in writing within 5 Business Days of the date of the making or receipt of such a notice or application or the making of such an order.

30. Dispute Resolution

30.1 Informal resolution

30.1.1 Subject to subclause 30.3, both Parties agree not to commence any legal proceedings in

respect of any dispute arising under this Agreement, which cannot be resolved by informal discussion, until the procedure provided by this clause has been utilised.

30.1.2. The Parties agree that a dispute arising from this Agreement will be dealt with as follows:

- a. the Party claiming that there is a dispute will send the other Party a written notice setting out the nature of the dispute;
- b. within 5 Business Days each Party will nominate a representative not having any prior involvement in the dispute;
- c. the representatives will try to settle the dispute by direct negotiation between them;
- d. failing settlement within a further 10 Business Days, the Parties may agree to refer the dispute to an independent third person with power:
 - i. to intervene and direct some form of resolution, in which case the Parties will be bound by that resolution; or
 - ii. to mediate and recommend some form of non-binding resolution;
- e. the Parties will cooperate fully with any process instigated under paragraph 30.1.2.d in order to achieve a speedy resolution;
- f. if a resolution is not reached within a further 20 Business Days, either Party may commence legal proceedings.

30.2 Costs

30.2.1. Each Party will bear its own costs of complying with this clause 30, and the Parties must bear equally the cost of any third person engaged under paragraph 30.1.2.d.

30.3 Application of clause

30.3.1. This clause 30 does not apply to the following circumstances:

- a. either Party commences legal proceedings for urgent interlocutory relief;
- b. action by Us under or purportedly under clauses 3 [Payment], 6 [Other Contributions and Your Contributions], 17 [Access to Premises and Records], 18 [Delay], 19 [Termination with Costs] or 20 [Termination for Default];
- c. an authority of the State of Victoria, Commonwealth, another State or Territory is

investigating a breach or suspected breach of the law by You;

30.4 Performance of obligations

30.4.1. Despite the existence of a dispute, both parties must (unless requested in writing by Us not to do so) continue to perform Our obligations under this Agreement.

30.5 Survival

30.5.1. The operation of this clause 30 applies beyond the Completion Date or earlier termination of the Term of this Agreement.

31. Applicable Law and Jurisdiction

31.1 Applicable Law

31.1.1 This Agreement is to be construed in accordance with, and any matter related to it is to be governed by the law of the State of Victoria.

31.2 Jurisdiction

31.2.1 Both parties submit to the jurisdiction of the courts of the State of Victoria in respect to any dispute under this Agreement.

32. Liaison and Monitoring

32.1 Liaison

32.1.1. You must:

- a. liaise with and provide information to Us as reasonably notified by Us; and
- b. comply with all Our reasonable requests, directions, or monitoring requirements.

32.2 Nomination of authorised person

32.2.1. Each of the Parties may nominate, from time to time, a person who has authority to receive and sign notices and written communications for each of them under this Agreement and accept any request or direction in relation to the Activity.

33. Notice

33.1 Giving of notice

33.1.1 A Party giving notice or notifying under this Agreement must do so in writing or by electronic mail or facsimile transmission:

- a. directed to the recipient's address, as varied by any notice; and
- b. hand delivered or sent by pre-paid post or transmitted electronically to that address.

The Parties' address details are as specified in the Schedule.

33.2 Receipt of notice

33.2.1 A notice given in accordance with subclause 33.1 is taken to be received:

- a. if hand delivered, on delivery;
- b. if sent by pre-paid post, 5 Business Days after the date of posting unless it has been received earlier;
- c. if transmitted electronically, upon actual receipt by the addressee.

34. Review

34.1 Assistance with review

34.1.1. You agree to:

- a. provide all reasonable assistance required by Us;
- b. respond to all Our reasonable requests; and
- c. provide information We reasonable require, in relation to conducting a review and final evaluation of the Program.

34.2 Survival

34.2.1 The operation of this clause 34 applies beyond the Completion Date or earlier termination of the Term of this Agreement.