

Service Agreement

01/07/2019 to 30/06/2024

Between the

State of Victoria as represented by the Adult, Community and Further Education (ACFE) Board

(ABN 18 149 951 421)

and

Sample Ngo Incorporated

An entity established under the Associations Incorporation Reform Act 2012 (Vic).
Registration # A12345678X

Agreement no. 88888-19

Agreement version # 5

Date: 02/01/2020

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This Agreement is made on

Parties

- 1 **The State of Victoria** as represented by the **Adult, Community and Further Education (ACFE) Board** (ABN 18 149 951 421) (the **Authority**).
- 2 **Sample Ngo Incorporated**. An entity established under the Associations Incorporation Reform Act 2012 (Vic). Registration # A12345678X (the **Organisation**).

Recitals

- A The Organisation and the Authority acknowledge their partnering approach to working together in good faith to achieve objectives in a way which is consistent with:
- the current Partnership in Practice Memorandum of Understanding between the Authority and the Victorian Council of Social Service; and
 - the Victorian State Local Government Agreement if the Organisation is a Council.
- B Partnerships with other organisations are critical to realising the Authority's vision to give every Victorian the best learning and development experience, making Victoria a smarter, fairer and more prosperous place. Through this Agreement, the Organisation and the Authority will act reasonably, collaborate and engage to achieve this vision.
- C The Authority will provide the Funding to the Organisation to deliver the Services.
- D The Organisation will accept the Funding and use it for the delivery of the Services in accordance with the terms of this Agreement.
- E The Authority acknowledges that the Organisation is independent and has its own governance frameworks and legal requirements.
- F The Victorian Government is committed to the transition to the full scheme of the National Disability Insurance Scheme (NDIS) to ensure people with a developmental delay or disability, their families and carers have the lifetime support they need. The Department/Authority will continue to fund services for eligible clients of the NDIS until they transition into the NDIS.

The transition to the full scheme of the NDIS requires changes to the way in which services are accessed and to the funding arrangements for some service providers, including specialist disability services, early childhood intervention services, mental health community support services and some Home and Community Care services. The Department/Authority will continue to work collaboratively with affected organisations and the National Disability Insurance Agency to facilitate a smooth transition of clients to the NDIS.

It is agreed as follows.

1 Definitions and Interpretation

Definitions

- 1.1 In this Agreement:

Activity Description means the descriptions of the activities the Organisation is required to carry out under this Agreement as advised by the Authority from time to time.

Agreement means these Terms and Conditions and any Schedules.

Applicable Authority Policies means the Authority's policies and guidelines set out in section 1 of Schedule 3 (or referred to in documents which are set out in section 1 of Schedule 3), as amended or replaced in accordance with clause 3.1(g).

Approved Application means the Organisation's application to the Authority for funding through an Adult, Community and Further Education Board Grant.

Asset means a non-consumable item of tangible property (including an Asset that becomes a fixture) that has a service life greater than one (1) year purchased, created or otherwise brought into existence whether wholly or in part with the use of the Funding.

Asset Register means the register the Organisation will maintain under clause 7.3 [Assets].

Auditor-General has the meaning set out in section 3 of the *Audit Act 1994* (Vic).

Australian Accounting Standards means the accounting standards made by the Australian Accounting Standards Board in accordance with section 227 of the *Australian Securities and Investments Commission Act 2001* (Cth).

Australian Auditing Standards means the auditing standards made by the Auditing and Assurance Standards Board in accordance with section 227B of the *Australian Securities and Investment Commission Act 2001* (Cth).

Australian Information Commissioner means the Information Commissioner within the meaning of the *Australian Information Commissioner Act 2010* (Cth).

Australian Standard has the meaning given in clause 20.2.

Authority means the Adult, Community and Further Education Board

Background Intellectual Property means the Intellectual Property of a party which was either created:

- (a) before the Start Date; or
- (b) independently of this Agreement,

and all improvements to such Intellectual Property by the party.

Business Day means a day other than a Saturday, Sunday or public holiday appointed or gazetted under the *Public Holidays Act 1993* (Vic).

Certificate of Expenditure means a signed document issued by the Organisation certifying that all of the funding was expended for the purpose of and in accordance with this Agreement.

Change in Control means any change during the Term in any person(s) who directly or indirectly exercises effective control over the Organisation (including the ability to determine the outcome of decisions about the financial and operating and other policies of the Organisation) by holding the majority of voting shares, units or other interests in the Organisation or by any other means, but does not include a change in respect of a Council if that change is due to an election.

Child Abuse 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 that arises out of that occurrence, act or omission.

Commonwealth Privacy Act means the *Privacy Act 1988* (Cth).

Confidential Information means information or data (including Personal Information and Health Information), whether or not in a material form, that is confidential to a party or should

reasonably be considered confidential. Confidential Information does not include information that is already in the public domain, unless the reason it is in the public domain is as a result of a breach of this Agreement.

Conflict of Interest means a situation, or a risk of a situation, where an officer, board member, employee, member, volunteer, subcontractor, representative or agent of the Organisation has duties or interests arising as a result of holding a position, possessing property, engaging in a business or occupation or from contractual obligations and those duties or interests are in conflict with or might appear to be in conflict with their duties and interest under this Agreement.

Contracted Service Provider has the meaning set out in the PDP Act.

Corporations Act means the *Corporations Act 2001* (Cth).

Council has the meaning set out in the *Local Government Act 1989* (Vic).

Data has the meaning given in clause 17.5.

Data Breach has the meaning given in clause 17.5.

Day (as opposed to "Business Day" as defined above) includes public holidays appointed under the *Public Holidays Act 1993* (Vic), and weekends.

Authority means the entity described in item 1 of Schedule 1.

Authority's Primary Contact means the person listed in item 10 of Schedule 1 or as notified in writing from time to time by the Authority.

Dispute means any dispute:

- (a) arising out of this 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 this Agreement.

Dispute Resolution Officer means the person assigned to the position listed in item 5 of Schedule 1 or as notified in writing from time to time by the Authority.

Early Childhood Facilities Grant means a capital grant payment from the Authority to the Organisation of three hundred and fifty thousand dollars (\$350,000) or less to be used by the Organisation in accordance with any guidelines issued or directions given by the Authority.

Eligible Data Breach has the meaning given in the Commonwealth Privacy Act.

End Date means the date set out in item 4 of Schedule 1.

FAR has the meaning given in clause 8.4.

FOI Act means the *Freedom of Information Act 1982* (Vic).

Funding means money the Authority provides to the Organisation under this Agreement, as outlined in Schedule 4.

Governmental Agency means a government or a governmental, semi-governmental, administrative, fiscal or judicial body, Authority, commission, authority, tribunal, agency or entity (wherever created or located).

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

Health Complaints Commissioner has the meaning set out in the *Health Complaints Act 2016* (Vic).

Health Information has the meaning set out in the *Health Records Act 2001* (Vic) but for the purpose of this Agreement is limited to information created by or obtained by the Organisation while delivering the Services or fulfilling its obligations pursuant to this Agreement.

HR Act means the *Health Records Act 2001* (Vic).

Independent Review Body means a body endorsed by the Authority to assess service providers' compliance with the Standards.

Information Commissioner has the meaning set out in the PDP Act.

Insolvency Event means where:

- (a) the Organisation is unable to pay its debts as and when they fall due;
- (b) the Organisation ceases, or threaten to cease, to carry on business;
- (c) the Organisation fails to comply with a Statutory Demand;
- (d) the Organisation announces that it intends to make an application under section 411 of the Corporation Act for the purpose of avoiding being wound up in insolvency, or makes or is subject to such an application;
- (e) the Organisation or its board start developing one or more courses of action aimed at leading to a better outcome for the Organisation than immediate appointment of an administrator or liquidator (including as contemplated under section 588GA of the Corporations Act);
- (f) in the case of an individual, the individual enters into a scheme of arrangement with creditors or becomes bankrupt;
- (g) in the case of a legal entity that is not an individual:
 - (i) a receiver, receiver and manager, administrator, controller, mortgagee in possession, provisional liquidator or liquidator is appointed to the Organisation other than the appointment of an administrator to a Council under section 219 (2) of the *Local Government Act 1989* (Vic);
 - (ii) the Organisation enters into a scheme of arrangement with its creditors; or
 - (iii) the Organisation is wound up;
- (h) the Organisation assigns any of its property for the benefit of creditors or any class of creditors;
- (i) a person with a legal right over any assets of the Organisation takes any step towards taking possession or takes possession of those assets or exercises any power of sale;
- (j) a distress, attachment or other execution is levied or enforced against the Organisation in excess of \$10,000; or
- (k) where the Organisation is, directly or indirectly, a subsidiary of a parent or holding company, and the parent or holding company becomes subject to any paragraphs (a) to (j).

Intellectual Property includes:

- (a) all copyright (including rights in relation to all documents, reports, charts, drawings, data bases, software, source codes, models, systems, slides, tapes and specifications);
- (b) all copyright and all rights in relation to inventions (including registered and registrable patents), registered and unregistered trademarks, registered and unregistered designs, circuit layouts, and know-how; and

- (c) all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

Laws includes:

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

Liability means debts, obligations, liabilities, losses, expenses, costs and damages of any kind arising naturally (that is, according to the usual course of things), including penalties, fines, and interest and including those which are prospective or contingent and those the amount of which for the time being is not ascertained or ascertainable and whether:

- (a) arising from or in connection with any claim, action, proceeding, demand or investigation of any nature or kind (including any allegation of a claim);
- (b) liquidated or not;
- (c) legal or equitable; or
- (d) owed, incurred or imposed by or to or on account of or for the account of any person alone or severally or jointly with another or others.

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

Material Breach means:

- (a) a breach which constitutes a substantial failure in the performance of the Services and the Agreement by the Organisation; or
- (b) a series of minor breaches which together constitute a substantial failure in the performance of the Services and the Agreement by the Organisation.

Minimum Insured Amounts means the amounts set out in item 14 of Schedule 1.

Ombudsman means the person appointed under section 3 of the *Ombudsman Act 1973 (Vic)*.

Organisation means the entity described in item 2 of Schedule 1.

Organisation's Primary Contact means the person listed in item 6 of Schedule 1 or as notified in writing from time to time by the Organisation.

PDP Act means the *Privacy and Data Protection Act 2014 (Vic)*.

Personal Information has the meaning set out in the PDP Act but for the purpose of this Agreement is limited to information created by or obtained by the Organisation while delivering the Services or fulfilling its obligations pursuant to this Agreement.

PR Act means the *Public Records Act 1973 (Vic)*.

Processes has the meaning given in clause 20.2.

Project means the project described in the Approved Application and any program guidelines issued by the Authority.

Project Intellectual Property means all Intellectual Property (excluding Background

Intellectual Property) developed, created, discovered, brought into existence or otherwise acquired (other than from the Authority) by the Organisation under this Agreement.

Protective Data Security Plan means a protective data security plan developed under section 89 of the PDP Act.

Public Sector Agency has the meaning set out in the PDP Act.

Public Sector Data has the meaning set out in the PDP Act but for the purpose of this Agreement is limited to information created by or obtained by the Organisation while delivering the Services or fulfilling its obligations pursuant to this Agreement.

RCTI means has the meaning given in clause 4.12.

Record means any document within the meaning of the *Evidence Act 2008* (Vic), including:

- (a) anything on which there is writing;
- (b) anything on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them;
- (c) anything from which sounds, images or writings can be reproduced with or without the aid of anything else; or
- (d) a map, plan, drawing or photograph

created, managed, maintained, brought into existence or otherwise acquired or used by the Organisation (or subcontractor) in relation to the Funding, the Services, and performance of the Organisation's obligations under this Agreement. To avoid doubt, it does not include records relating to services that the Authority does not fund or records that do not relate to this Agreement or the Services.

Schedule means a schedule to this Agreement.

Service Agreement Requirements means the document entitled 'Service Agreement Requirements 2019-2023', which is available from the Authority.

Services means the services described in Schedule 2.

Services to Children means services provided by the Organisation in which the Organisation is responsible for the supervision of, or has authority over, a child. This includes the provision of care, education, services or activities for children. To avoid doubt, it does not include one-off activities or incidental or ad hoc contact with children.

Standards include:

- (a) if the Organisation is registered under the *Children Youth and Families Act 2005* (Vic), any performance standards made under that Act;
- (b) if the Organisation is registered under the *Disability Act 2006* (Vic), any performance standards made under that Act; and
- (c) any standards developed or endorsed by the Authority, as amended or replaced in accordance with clause 3.1(g), including any standards, guidelines and the like referred to in section 2 of Schedule 3.

Start Date means the date set out in item 3 of Schedule 1.

Statutory Demand means a demand made under section 459E of the Corporations Act.

Subcontracting is when the Organisation engages another organisation or person (excluding employees of the Organisation), to deliver all or part of the Services in accordance with clause 10 [Assignment and Subcontracting].

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

Terms and Conditions means clauses 1 to 30 of this Agreement.

Victorian Protective Data Security Framework has the meaning set out in the PDP Act.

Victorian Protective Data Security Standards means any standards issued by the Information Commissioner under Part 4 of the PDP Act.

Interpretation

- 1.2 In this Agreement, unless it specifically states differently:
- (a) words implying one gender includes 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 this Agreement include the Terms and Conditions, and its Schedules, 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 this Agreement; and
 - (h) a reference to a person includes an entity recognised by Law including a body politic, and incorporated and unincorporated bodies.

Priority of Documents

- 1.3 Inconsistencies between the terms of this Agreement will be resolved in the following order of priority:
- (a) these Terms and Conditions;
 - (b) Schedule 1;
 - (c) Schedule 2;
 - (d) Schedule 3;
 - (e) Schedule 4; and
 - (f) Schedule 5.

Governing Law

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

2 Term of Agreement

- 2.1 The Agreement will start on the Start Date and will end on the End Date, unless the Agreement is terminated earlier under clause 14 [Termination of Agreement].
- 2.2 The Organisation acknowledges and agrees that the Authority is not obligated to continue to provide funding to the Organisation beyond the Funding set out in Schedule 4 or to renew the

Agreement at the end of the Term.

3 Service Delivery

Quality of Service Delivery

- 3.1 The Organisation will deliver the Services in accordance with this Agreement to the reasonable satisfaction of the Authority and will at all times:
- (a) deliver the Services in a proper, timely and efficient manner using the standard of care, skill, diligence and foresight that would reasonably be expected from an expert and experienced provider of the Services;
 - (b) act in accordance with the highest applicable professional ethics, principles and standards;
 - (c) demonstrate a commitment to ethical practices and behaviours, and make sure that ethical practices are implemented and ethical behaviour promoted through appropriate staff training and monitoring;
 - (d) inform the Authority about all matters the Authority should reasonably be made aware of, and provide information about the delivery of the Services that may reasonably be required by the Authority;
 - (e) obtain and maintain any approval, consent, authorisation, accreditation, registration or similar required for the delivery of all or part of the Services or requested in writing by the Authority;
 - (f) subject to clause 3.1(g), comply with:
 - (i) the Standards;
 - (ii) the performance targets listed in Schedule 2 and Schedule 5 in respect of the Services;
 - (iii) all Applicable Authorities Policies;
 - (iv) all applicable Laws, including Laws relating to fire protection, industrial relations and employment, and health, and general safety and taxation; and
 - (v) the requirements of each Activity Description applicable to the Services; and
 - (g) if the Authority either:
 - (i) amends or replaces any Standard referred to in clause 3.1(f)(i), Applicable Authorities Policy referred to in clause 3.1(f)(iii) or Activity Description referred to in clause 3.1(f)(v); or
 - (ii) develops or endorses a new Standard, Applicable Authorities Policy or Activity Description,

the Organisation will only be required to comply with the new, amended or replacement Standard, Applicable Authorities Policy or Activity Description (as applicable) if the Authority gives the Organisation a minimum of 20 Business Days' written notice specifying the date, determined by the Authority (acting reasonably), by which the Organisation must comply with the new, amended or replacement Standard, Applicable Authorities Policy or Activity Description (as applicable).

3.1A For the purposes of clause 3.1 the term 'registration' includes approval under the Educational and Care Services National Law Act 2010 (Vic).

3.2 The Authority will provide the Organisation with access to all Applicable Authorities Policies

and all Standards requested by the Organisation.

Continuity of Service Delivery

- 3.3 The Organisation agrees that it will not suspend or cease delivery of all or part of the Services except in accordance with clauses 12 [Suspension], 13 [Cessation] or 14 [Termination of Agreement].
- 3.4 Without limiting clause 3.3, if the Organisation proposes to suspend or cease delivery of all or part of the Services (other than in accordance with clauses 12 [Suspension], 13 [Cessation] or 14 [Termination of Agreement]), the Organisation will give written notice to the Authority at least three (3) months before it suspends or ceases delivery of all or part of the Services and state:
- (a) the reason(s) the Organisation will suspend or cease delivery of those Services;
 - (b) if the Services are to be suspended, how long delivery of those Services will be suspended; and
 - (c) the date from which the delivery of the Services will be suspended or ceased.
- 3.5 If for any reason beyond the Organisation's control it is unable to comply with the time period for advance notice set out in clause 3.4 and the Organisation will suspend or cease, or has suspended or ceased delivery of all or part of the Services (other than in accordance with clauses 12 [Suspension], 13 [Cessation] or 14 [Termination of Agreement]), the Organisation will immediately give written notice to the Authority and state:
- (a) the reason(s) the Organisation will suspend or cease, or has suspended or ceased, delivery of those Services;
 - (b) if the Services are to be suspended, how long delivery of those Services will be suspended; and
 - (c) the date from which the delivery of the Services will be suspended or ceased.

Compliance with Standards

- 3.6 Unless exempted by the Authority, the Organisation will:
- (a) undertake a performance review against the Standards by an Independent Review Body once every three (3) years; and
 - (b) obtain accreditation and remain accredited by the Independent Review Body.
- 3.7 If required by the Authority, the Organisation will undertake any additional performance reviews in relation to compliance with the Standards or accreditation referred to in clause 3.6.
- 3.8 The Organisation agrees and consents to an Independent Review Body:
- (a) notifying the Authority once it has been engaged by the Organisation;
 - (b) providing a copy of its report about the Organisation to the Authority; and
 - (c) providing any other information to the Authority concerning or arising out of the review of the Organisation.
- 3.9 The Authority will notify the Organisation if it requests information from an Independent Review Body about a review of the Organisation unless there is justifiable reason for not doing so, including but not limited to compromising collection of evidence in an investigation.
- 3.10 The Organisation agrees and consents to the publication by the Authority of information about

the Organisation's performance against the Standards.

- 3.11 If an Organisation engages a subcontractor to deliver all or part of the Services under clause 10 [Assignment and Subcontracting], the contract between the Organisation and the subcontractor must include a term that provides that, unless exempted by the Authority, the subcontractor agrees to allow an Independent Review Body to access the subcontractor's premises or place of business to conduct a performance review of the Organisation against the Standards.

4 Funding

- 4.1 If the Organisation meets its obligations under this Agreement to the reasonable satisfaction of the Authority, the Authority will pay the Funding to the Organisation in accordance with this Agreement and the Service Agreement Requirements.
- 4.2 The Organisation and the Authority agree that payment of all or part of the Funding is not an admission by the Authority that the Organisation has met its obligations under this Agreement to the reasonable satisfaction of the Authority.
- 4.3 Adult, Community and Further Education funded activities are not subject to indexation.

Use of Funding

- 4.4 The Organisation agrees to use the Funding only for the Services and in accordance with this Agreement or as agreed by the Authority in writing.
- 4.5 The Organisation will do all things necessary to make sure that all payments made by the Organisation from the Funding (including payments to subcontractors) are correctly made and properly authorised and that the Organisation maintains proper and diligent control over the incurring of all liabilities.
- 4.6 The Organisation will not use any of the following as security for the purpose of obtaining or complying with any form of loan, credit, payment or other interest unless the Authority consents in writing:
- (a) the Funding;
 - (b) this Agreement including any right, title or interest created under it; or
 - (c) any Asset or Project Intellectual Property.
- 4.7 The Organisation will not spend the Funding on donations to members of State or Commonwealth Parliament or political parties.

The organisation shall advise the Authority if the Activity is completed for less than the original total project budget. In such an event the Funding shall be reduced on a pro rata basis and such reduction in the Funding shall be deducted from the final grant payment or may be otherwise recovered from the organisation.

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

the Authority may, subject to clause 4.9 (A) in its absolute discretion:

- (d) give written notice to the Organisation requiring the Organisation to repay that part of the Funding and any GST paid to the Organisation in respect of that Funding and the Organisation will repay that amount to the Authority within thirty (30) Days, or such other time period as agreed, of receiving the written notice from the Authority; or
 - (e) re-negotiate the delivery of Services by the Organisation.
- 4.9A The Authority may only exercise its rights under clause 4.8 if:
- (a) the Authority has provided written notice to the Organisation setting out the reasons why the Authority has formed an opinion of the kind required by clauses 4.8(a) - 4.8(c) and stating that the Authority intends to exercise its rights under clause 4.8; and
 - (b) the Authority has considered any representations made by the Organisation in relation to the matter within ten (10) Business Days after the Authority has provided notice in accordance with clause 4.8(a).

Goods and Services Tax

- 4.9 In this clause, italicised words or expressions have the same meaning as set out in the GST Act.
- 4.10 The Funding set out in Schedule 4 is exclusive of GST. If GST is payable on all or part of the Services under clause 4.11, it will be paid to the Organisation at the same time as the Funding set out in Schedule 4.
- 4.11 The Organisation and the Authority agree that if GST is payable on the supply of the Services by the Organisation under this Agreement, the Authority will pay the Organisation an additional amount equal to the GST payable on or for the taxable supply.
- 4.12 If GST is payable on the supply of the Services by the Organisation under this Agreement, unless otherwise specified in any Schedule, the Organisation and the Authority agree to a recipient created tax invoice (*RCTI*) arrangement under this Agreement authorised under section 29-70(3) of the GST Act and that:
- (a) the Authority at the Start Date is registered for GST and agrees that it will notify the Organisation if it ceases to be registered for GST or ceases to satisfy any of the requirements of GST Ruling GSTR 2000/10;
 - (b) the Authority will reasonably comply with its obligations under the taxation laws;
 - (c) the Authority can issue an *RCTI* in respect of a taxable supply made to the Authority of goods or services provided by the Organisation under this Agreement;
 - (d) the Authority will issue a copy of each *RCTI* to the Organisation and retain the original;
 - (e) the Authority will issue a copy of each adjustment note to the Organisation and retain the original;
 - (f) the Authority will not issue a document that would otherwise be an *RCTI*, on or after the date when it or the Organisation has ceased to satisfy the requirements of GST Ruling GSTR 2000/10;
 - (g) the Organisation will not issue tax invoices in respect of taxable supplies of goods or services to the Authority; and
 - (h) the Organisation acknowledges that as at the Start Date it is registered for GST and has an active Australian Business Number and agrees that it will notify the Authority within seven (7) Days if it ceases to be registered.
- 4.13 If, as at the Start Date the Organisation is not required by Law to be registered for GST and

during the Term of this Agreement the Organisation becomes registered for GST, the Organisation will give written notice to the Authority within seven (7) Days of becoming registered for GST.

- 4.14 If for any reason the RCTI arrangement specified in clause 4.12 is unable to be implemented or ceases, the Organisation must give the Authority a tax invoice in respect of any taxable supply made to the Authority by the Organisation in connection with the Agreement prior to any payment of Funding to the Organisation.
- 4.15 Any repayment under clause 4.8(d) that includes an amount for GST must be accompanied by an adjustment note relating to taxable supplies for which the Authority previously issued an RCTI to the Organisation or the Organisation previously issued a tax invoice to the Authority.

Funding Acknowledgement

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

5 Conflict of Interest

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

6 Recordkeeping

Financial Records

- 6.1 The Organisation will keep full and accurate Records so that:
- (a) all financial transactions, including receipts and payments, from the Funding are

- clearly and separately identifiable;
- (b) if required by Law or the Authority, financial statements under the Australian Accounting Standards can be prepared;
- (c) if required by Law or the Authority, the Organisation's accounts and Records can be audited in accordance with Australian Auditing Standards; and
- (d) all of the Organisation's taxation liabilities and payments can be clearly identified.

Recordkeeping

- 6.2 The Organisation will deal with all Records in accordance with the standards issued under the PR Act, including but not limited to:
- (a) storing the Records;
 - (b) implementing and maintaining a recordkeeping system that creates and maintains full and accurate hard copy and / or electronic Records for all Services delivered under this Agreement; and
 - (c) ensuring the security of the Records.
- 6.3 Subject to clause 6.7, the Organisation will maintain custody of and manage the Records:
- (a) as specified by the Authority and in accordance with any Applicable Authorities Policy;
 - (b) in such a way that will allow the Records to be quickly and easily accessed, retrieved, reviewed, used and kept by the Authority and Victorian Government; and
 - (c) without limitation to paragraph (a) or (b), in such a way that will allow the Organisation to:
 - (i) respond to any request from the Authority for access to Records under clause 6.5; and
 - (ii) advise the Authority about Records that may fall within the scope of a request or direction received by the Authority under the FOI Act or any other Law where the details of such request or direction are provided to the Organisation by the Authority in writing.
- 6.4 In addition to any other obligation under clause 6 or clause 15 [Transition of Services], the Organisation will immediately provide access to and copies of Records to the Authority or any third party nominated by the Authority at the Authority's written request in any of the following circumstances:
- (a) if required under the PR Act or any other relevant Law;
 - (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].
- 6.4A In addition to any other obligation under clause 6 or clause 15 [Transition of Services], the Organisation will provide the Authority, or any third party nominated in writing by the Authority, with access to and copies of Records within five (5) Business Days of receiving a written request from the Authority.
- 6.4B Where the Organisation, acting reasonably and in good faith, is unable to comply with clause 6.4A within the time specified in that clause, the Organisation may make a written request for an extension of time in which to comply. The Authority will not unreasonably refuse to consent to a requested extension.

Freedom of Information

- 6.5 If requested by the Authority, the Organisation will advise it about all Records that may fall within the scope of a request or direction received by the Authority under the FOI Act.
- 6.6 The Organisation will provide access to the Authority and any other person authorised by the Authority exercising rights under the FOI Act, or any other Laws that apply to the Records as long as they remain in the Organisation's possession or control.

Disposal of Records

- 6.7 The Organisation will only dispose of a Record in accordance with the standards issued under the PR Act, other relevant legislation and any specific instructions provided by the Authority and Victorian Government.

Ownership of Records

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

7 Assets

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

Assets Purchased Entirely with Funding

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

Assets Purchased Partially with Funding

- 7.8 If the Organisation:
- (a) purchases an Asset using the Funding and monies from another source;
 - (b) ceases delivery of all or part of the Services (for whatever reason); and
 - (c) provides the Authority with satisfactory written evidence proving that the Asset was partially purchased with monies from another source,
- the Organisation agrees to comply with any request of the Authority for the Organisation to:
- (d) obtain the consent of any interested third party and sell the Asset and use the proceeds to reimburse the Authority with an amount equal to the amount of Funding that was used to purchase the Asset, less any amount of depreciation;
 - (e) reimburse the Authority with an amount equal to the amount of Funding that was used to purchase the Asset, less any amount of depreciation; or
 - (f) obtain the consent of any interested third party and transfer ownership of and deliver the Asset to the Authority or to a third party as the Authority directs.
- 7.9 For the purposes of this clause 7, depreciation will be calculated in accordance with the Australian Accounting Standard (AASB116), Property Plant and Equipment (as amended from time to time) and any Applicable Authorities Policies.
- 7.10 This clause 7 (and clause 4.6, to the extent that it relates to Assets) applies only in respect of Assets for which Funding has been specifically allocated under this Service Agreement.

8 Reporting

- 8.1 The Organisation will provide the Authority with information about and report on the Services in accordance with the Schedules and as and when requested by the Authority.
- 8.2 The Organisation will provide the Authority with any information or Record that relates to the delivery of the Services or shows how the Funding has been spent by the Organisation as and when requested by the Authority.
- 8.3 The Organisation will prepare its financial Records in accordance with:
- (a) if required by the Authority, any Applicable Authorities Policies; and
 - (b) if required by Law or the Authority, the Australian Accounting Standards.
- 8.4 The Organisation will comply with the Authority's Business Governance Status Assessment (BGSA) guidelines: see: <https://www.education.vic.gov.au/training/providers/learnlocal/Pages/network.aspx> as described in the Service Agreement Requirements, and provide the Authority with the information and documentation set out in any Applicable Authorities Policies including but not limited to:
- (a) a certification signed either in writing or electronically, in accordance with any

Applicable Authority Policy, by an authorised officer as outlined in the BGSA guidelines) from the Organisation; and

- (b) the Organisation's annual report containing financial statements, if applicable, or completed Authority financial reporting forms.

8.5 The Organisation will submit its annual Business Governance Status Assessment (BGSA) information, certification and documentation to the Authority within:

- a) three (3) months of the end of the Organisation's financial operating period;
- b) such other time as agreed by the Authority in writing.

9 Audit and Performance Review

9.1 The Authority may conduct, or the Authority may engage a third party to conduct, a performance review or an audit of the Organisation at any reasonable time, at the Authority's own expense:

- (a) for the purpose of monitoring and assessing the Organisation's performance of its obligations under this Agreement or delivery of the Services;
- (b) if the Authority has reasonable concerns that the Organisation may not be delivering, or may be unable to deliver, all or part of the Services in accordance with this Agreement;
- (c) if the Organisation's Records give the Authority reasonable concern about the Organisation's compliance, or ability to comply, with this Agreement;
- (d) if the Authority has reasonable concerns that the Organisation is not financially stable;
- (e) if the Authority has reasonable concerns that the Organisation has misused all or part of the Funding; or
- (f) to confirm whether the Funding has been used for the correct purposes.

9.2 The Organisation will:

- (a) cooperate with and provide assistance to the Authority or any third party engaged by the Authority to conduct an audit or performance review;
- (b) make available to the Authority or any third party engaged by the Authority all information and Records needed for the audit or performance review in accordance with any written request from the Authority or third party engaged by the Authority, and provide the Authority or any third party engaged by the Authority with copies of all Records needed for the audit or performance review; and
- (c) allow the Authority or any third party engaged by the Authority access to the Organisation's premises or place of business to carry out the audit or performance review.

10 Assignment and Subcontracting

10.1 The Organisation may not assign its rights or obligations under this Agreement without the Authority's prior written consent, which must not be unreasonably withheld.

10.2 The Organisation may only Subcontract all or part of the Services with the Authority's prior written consent, which must not be unreasonably withheld.

10.3 Without limiting clause 22 [The Authority's Consent], the Authority will only provide consent to a proposed Subcontract if:

- (a) the Organisation satisfies the Authority that the subcontractor can deliver the Services to be Subcontracted on the same terms and conditions as this Agreement;
- (b) the contract between the Organisation and the subcontractor is made on the same terms and conditions as this Agreement, including a term that expressly allows the Authority to access the subcontractor's premises or place of business to conduct a performance review or audit of the subcontractor on the same terms and conditions as clause 9 [Audit and Performance Review]; and
- (c) the Organisation agrees to comply with any reasonable conditions imposed by the Authority as a condition of granting its consent.

10.4 The Organisation agrees that it is:

- (a) responsible for the delivery of the Services including any part of the Services that is Subcontracted; and
- (b) accountable for any acts, omissions and mistakes of any subcontractor in performing all or part of the Services as though they were the Organisation's own acts, omissions and mistakes.

11 Dispute Resolution

11.1 The Organisation and the Authority 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 fourteen (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 twenty one (21) Days after receipt of the First Notice, then either party may give written notice (the **Second Notice**) to the other party requesting that the Dispute be referred to the Dispute Resolution Officer for resolution;
- (d) within fourteen (14) Days of receipt of the Second Notice, the parties will either meet with the Dispute Resolution Officer to discuss the Dispute or provide written submissions regarding the Dispute;
- (e) within twenty-eight (28) Days of receipt of the Second Notice, the Dispute Resolution Officer will provide their decision to the parties in writing;
- (f) either party may, within fourteen (14) Days from the date the Dispute Resolution Officer provides their decision in writing under clause 11.2(e), provide written notice to the other party referring the Dispute to mediation (the **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 fourteen (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(f), 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) 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 (7) 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 twenty-eight (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.
- 11.4A Nothing in this clause 11 prevents the parties from mediating earlier than provided for under the process set out in this clause 11 if otherwise agreed by the parties.
- 11.5 The parties will continue to perform their obligations under this Agreement despite the existence of any Dispute. Nothing in clause 11 affects the parties' abilities to exercise their rights under clauses 12 [Suspension], 13 [Cessation] and 14 [Termination of Agreement].

12 Suspension

Service Suspension

- 12.1 At any time during the Term, the Authority may, in the Authority's absolute discretion, request the Organisation to immediately suspend delivery of the Services, or part of the Services, by giving written notice, if:
- (a) the Organisation has failed to meet the Standards and performance targets listed in any Schedule in respect of the Services;
 - (b) the Organisation or its subcontractor is undergoing or is about to undergo a performance review or audit under clauses 9.1(b)-(e) [Audit and Performance Review];
 - (c) the Organisation/Learn Local Provider has failed to follow any Applicable Authority Policy or the Organisation's own policies;
 - (d) the Organisation has misused Funding or has shown an inability to properly manage its assets;
 - (e) the Organisation has breached this Agreement and notice has been given to the Organisation by the Authority under clause 14.1 [Termination of Agreement]; or

- (f) the Organisation or its officer, board member, employee, member, volunteer, subcontractor, representative or agent has breached any Law applicable to the Services or the operation of the Organisation.
- 12.1A At any time during the Term, the Authority may, in the Authority's absolute discretion, request the Organisation to suspend delivery of the Services, or part of the Services, by giving ten (10) Business Days' written notice, if the Authority reasonably suspects any of the following:
- (a) that the Organisation has failed, or is likely to fail, to meet the Standards and performance targets listed in any Schedule in respect of the Services;
 - (b) that the Organisation has failed, or is likely to fail, to follow any Applicable Authority Policy or the Organisation's own policies;
 - (c) that the Organisation has misused Funding or its assets or is unable to properly manage its assets; or
 - (d) that the Organisation or its officer, board member, employee, member, volunteer, subcontractor, representative or agent has breached any Law applicable to the Services or the operation of the Organisation.
- 12.2 The Organisation will suspend delivery of all or part of the Services at the request of the Authority under this clause 12.
- 12.3 The Authority may, by giving written notice to the Organisation reduce the Services to be delivered under this Agreement to reflect any suspension of all or part of the Services under this clause 12. Without limiting this clause 12.3, the Organisation agrees to the Authority varying any Schedule to reflect the reduction of the Services to be delivered by the Organisation under this Agreement.
- 12.4 The Organisation agrees that the Authority may fund a third party to deliver all or part of the Services that have been suspended under this clause 12.
- 12.5 The Organisation and the Authority may exercise any of their rights under clauses 11 [Dispute Resolution], 12 [Suspension], 13 [Cessation] and 14 [Termination of Agreement] at any time during the suspension of the Services under this clause 12.

Suspension of Funding

- 12.6 Without limiting clause 12.2, the Authority may, in the Authority's absolute discretion, immediately stop paying all or part of the Funding on giving written notice to the Organisation if any of the following occurs:
- (a) the Organisation does not meet, or report on, a milestone that is linked to a payment, as referred to in any Schedule;
 - (b) the Organisation has failed to meet the Standards and performance targets listed in any Schedule in respect of the Services;
 - (c) the Organisation has misused Funding or its assets or has shown an inability to properly manage its assets;
 - (d) the Organisation has breached the Agreement and notice has been given to the Organisation by the Authority under clause 14.1 [Termination of Agreement];
 - (e) the Authority has reasonable concerns that the Organisation is not financially stable; or
 - (f) the Authority has requested the Organisation to suspend all or part of the Services under clause 12.1.

- 12.6A Without limiting clause 12.2, the Authority may, in the Authority's absolute discretion, stop paying all or part of the Funding on giving ten (10) Business Days' written notice to the Organisation if any of the following occurs:
- (a) the Authority reasonably suspects that the Organisation has failed, or is likely to fail, to meet the Standards and performance targets listed in any Schedule in respect of the Services;
 - (b) the Authority reasonably suspects that the Organisation has misused Funding or is unable to properly manage its assets; or
 - (c) the Authority has requested the Organisation to suspend all or part of the Services under clause 12.1A.
- 12.7 The Authority may, by giving written notice to the Organisation, reduce the Funding to be paid by the Authority under this Agreement to reflect any suspension of all or part of the Funding under clause 12.6. Without limiting this clause 12.7, the Organisation agrees to the Authority varying any Schedule to reflect the reduction of the Funding to be paid by the Authority under this Agreement.
- 12.8 The Organisation and the Authority may exercise any of their rights under clauses 11 [Dispute Resolution], 12 [Suspension], 13 [Cessation] and 14 [Termination of Agreement] at any time during the suspension of the Funding under this clause 12.

13 Cessation

- 13.1 At any time during the Term, the Authority may, in the Authority's absolute discretion, request the Organisation to immediately and permanently cease delivery of part of the Services by giving written notice, if:
- (a) notice has been given to the Organisation by the Authority under clause 14.1 [Termination of Agreement] and the breach has not been satisfactorily remedied by the Organisation within thirty (30) Days of receiving the notice;
 - (b) in the reasonable opinion of the Authority, the Organisation commits a serious or Material Breach of this Agreement which is not capable of remedy;
 - (c) the Authority reasonably considers that the Organisation has behaved in a way that may:
 - (i) be contrary to prevailing community standards;
 - (ii) be regarded by the public as unacceptable; or
 - (iii) bring the reputation of the Organisation into disrepute, and the Authority reasonably believes that continued association with the Organisation may be detrimental to the reputation of the Authority; or
 - (d) if the Organisation breaches an essential term of this Agreement as described in clause 14.4. [Termination of Agreement].
- 13.1A If at any time during the Term the Authority does not receive sufficient funds from either the Victorian Government or Commonwealth Government to finance the program or part of the Services or there is a change in Victorian Government policy which affects the program or part of the Services, the Authority may, in the Authority's absolute discretion, request the Organisation to permanently cease delivery of part of the Services by giving three (3) months' written notice.
- 13.1B If the Authority provides written notice to the Organisation under clause 13.1A, the Authority

will, at the time of providing that notice or as soon as reasonably practicable after, advise the Organisation in writing of any further actions that the Authority in its sole discretion reasonably expects to take in relation to or as a result of the cessation of Services under clause 13.1A.

- 13.1C If the Organisation ceases delivery of part of the Services at the request of the Authority under clause 0, the Authority will pay the reasonable costs (other than loss of profit or income) necessarily incurred and substantiated by the Organisation that arise directly from the cessation. The Organisation will use its best efforts to minimise any such costs arising from the cessation.
- 13.2 The Organisation will cease delivery of part of the Services at the request of the Authority under this clause 13.
- 13.3 The Authority will give written notice to the Organisation as soon as possible if the Authority requires the Organisation to cease delivery of part of the Services under this clause 13.
- 13.4 If the Authority requests the Organisation to cease part of the Services under this clause 13, the Authority may also stop payment of part of the corresponding Funding at the same time.
- 13.5 The Authority may, by giving written notice to the Organisation, permanently reduce the Services to be delivered by the Organisation and the Funding to be paid by the Authority under this Agreement to reflect any cessation of part of the Services under this clause 13. Without limiting this clause 13.5, the Organisation agrees to the Authority varying any Schedule to reflect the reduction of the Services and the Funding under this Agreement.
- 13.6 The Organisation agrees that the Authority may fund a third party to deliver all or part of the Services that have been ceased under this clause 13.

14 Termination of Agreement

Termination for Breach

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

Termination by the Authority

- 14.3 The Authority may terminate this Agreement immediately by giving written notice to the Organisation:
- (a) if an Insolvency Event occurs in relation to the Organisation;
 - (b) if the Organisation is a natural person and becomes:
 - (i) mentally incapacitated;
 - (ii) dies;
 - (iii) is incapacitated through illness for more than thirty (30) Days; or
 - (iv) is convicted of a crime punishable by a term of imprisonment;
 - (c) if the Organisation has a Change in Control which the Authority reasonably believes would negatively affect the Organisation's ability to comply with this Agreement;

- (d) if, in the reasonable opinion of the Authority, the Organisation commits a serious or Material Breach of this Agreement which is not capable of remedy;
 - (e) if the Authority reasonably considers that the Organisation has behaved in a way that:
 - (i) is inconsistent with prevailing community standards;
 - (ii) may be regarded by the public as unacceptable; or
 - (iii) may bring the reputation of the Organisation into disrepute, and the Authority reasonably believes that its continued association with the Organisation may be detrimental to the reputation of the Authority; or
 - (f) if the Organisation breaches an essential term of this Agreement as described in clause 14.4. The breach of an essential term is a repudiation of this Agreement.
- 14.4 The essential terms of this Agreement are clauses 3.1(e) [Quality of Service Delivery], 4.4, 4.5, 4.6 and 4.7 [Funding].
- 14.5 If the Authority does not receive sufficient funds from either the Victorian Government or the Commonwealth Government to finance the program or the Services, the Authority will give written notice to the Organisation as soon as possible and may terminate this Agreement by giving at least three (3) months' written notice.
- 14.6 If there is a change in Victorian Government policy which affects the program or the Services, the Authority may terminate this Agreement by giving the Organisation at least three (3) months' written notice.
- 14.7 The Organisation will immediately comply with any directions in a notice given under clause 14.3, 14.4 or 14.6.
- 14.7A If the Authority terminates this Agreement under clause 14.4 or 14.6, it will pay the reasonable costs (other than loss of profit or income) necessarily incurred and substantiated by the Organisation that arise directly from the termination. The Organisation will use its best efforts to minimise any such costs arising from termination.
- 14.7B The total amount payable by the Authority to the Organisation, if any, under clause 14.7A will not exceed the total amount of Funding that would have been payable under the Agreement had it not been terminated, less any amount already paid under the Agreement.

Insolvency Event

- 14.7C The Organisation must immediately notify the Authority in writing if the Organisation becomes subject to, or anticipates becoming subject to, any Insolvency Event.

Termination without Fault by the Organisation

- 14.8 The Organisation may terminate this Agreement at any time by giving the Authority at least three (3) months' written notice.
- 14.9 If the Organisation elects to terminate this Agreement under clause 14.8, the Organisation will pay the reasonable costs (other than loss of profit or income) necessarily incurred and substantiated by the Authority that arise directly from the termination. The Authority will use its best efforts to minimise any such costs arising from termination.

Remedy

- 14.10 The Organisation acknowledges and accepts that the Authority will suffer financial and other loss and damage if the Organisation fails to comply with its obligations under this Agreement,

and that monetary damages will be an insufficient remedy.

- 14.11 The Organisation acknowledges and accepts that, in addition to any other remedy that may be available at law or in equity, the Authority is entitled to injunctive relief to prevent a breach of this Agreement and to compel specific performance.

15 Transition of Services

- 15.1 On expiry or termination of this Agreement for any reason or if the Organisation ceases to deliver the Services, the Organisation will comply with any written notice from the Authority requesting the Organisation to:
- (a) within five (5) Business Days hand over to the Authority or any third party nominated by the Authority all Records provided to the Organisation by the Authority relating to the delivery of the Services;
 - (b) within five (5) Business Days transfer to the Authority or any third party nominated by the Authority all Records created, managed and maintained relating to the delivery of the Services in a format and in a way that allows the Records to be quickly and easily accessed, retrieved, reviewed, kept and used by the Authority or third party nominated by the Authority;
 - (c) within thirty (30) Days after the expiry or termination of this Agreement or the cessation of any Services under clause 13 [Cessation], provide the Authority with:
 - (i) a financial acquittal detailing all the Funding paid to the Organisation by the Authority and spent by the Organisation (including any unspent Funding);
 - (ii) a copy of the current Asset Register; and
 - (iii) any other outstanding information, documentation or reports the Organisation is required to provide the Authority under this Agreement; and
 - (d) provide (and require any subcontractor engaged by the Organisation to provide all reasonable assistance to the Authority to transfer all or part of the Services, functions and operations provided by the Organisation under this Agreement to the Authority or any third party nominated by the Authority, including:
 - (i) answering questions and providing other information as may be reasonably sought by the Authority and/or any third party nominated by the Authority; and
 - (ii) handing over client information and any material or Records held by the Organisation or any subcontractor engaged by the Organisation relating to the delivery of the Services, regardless of the manner of storage, to the Authority and/or to any third party nominated by the Authority.
- 15.1A Where the Organisation, acting reasonably and in good faith, is unable to comply with clause 15.1(a) or 15.1(b) within the time specified in that clause (as the case may be), the Organisation may make a written request for an extension of time in which to comply. The Authority will not unreasonably refuse to consent to a requested extension.
- 15.2 If this Agreement has not expired or been terminated and the Organisation ceases to deliver any part of the Services, the Organisation will comply with clause 15.1 in respect of the part of the Services that have been suspended under clause 12 [Suspension] or ceased under clause 13 [Cessation].
- 15.3 The obligations in this clause 15 will continue for a period of three (3) years after the expiry or termination of this Agreement.

16 Intellectual Property

- 16.1 The Background Intellectual Property of each party remains the property of that party.
- 16.2 The Organisation will own all Project Intellectual Property unless clause 16.3 applies.
- 16.3 If the Authority considers that some or all of the Project Intellectual Property should be owned by the Authority, the Authority will give written notice to the Organisation prior to the delivery of those Services that give rise to that Project Intellectual Property. In considering whether some or all of the Project Intellectual Property should be owned by the Authority, the Authority will have regard to the Whole of Victorian Government Intellectual Property Policy (as amended or replaced from time to time).
- 16.4 If the Authority gives written notice to the Organisation under clause 16.3, the Project Intellectual Property specified in the notice is owned by the Authority.
- 16.5 The Organisation grants, and the Authority accepts, a Licence over:
- (a) the Project Intellectual Property not owned by the Authority;
 - (b) the Background Intellectual Property, if any; and
 - (c) any Intellectual Property of a third party, if any,
- to the extent needed to allow the Authority to enjoy the full benefit of the Services and this Agreement.
- 16.5A For the avoidance of doubt, the Licence granted to the Authority by the Organisation under clause 16.5 does not include a Licence to use any Background Intellectual Property that is not needed to allow the Authority to enjoy the full benefit of the Services or this Agreement.
- 16.6 At the request of the Authority, the Organisation will provide the Authority with copies of all licensed materials and Intellectual Property and in a way that allows the Authority to exercise the Authority's rights under the Licence.
- 16.7 The Organisation warrants that it has the right to grant the Licences referred to in clause 16.5.
- 16.8 The Organisation will obtain all consents needed for any Licence, including in relation to any Moral Right. For the purposes of this clause 16.8, *Moral Right* has the meaning set out in section 189 of the *Copyright Act 1968* (Cth).
- 16.9 The Organisation will properly manage the Project Intellectual Property to allow the Authority to enjoy the full benefit of the Services and this Agreement, which may include taking any necessary action to:
- (a) register, maintain the registration of, protect, manage, exploit and (as appropriate) commercialise the Project Intellectual Property for the benefit of the Victorian public;
 - (b) maintain, improve, enhance and develop the Project Intellectual Property to the fullest extent reasonably necessary to maintain its usefulness and appropriateness to the Organisation and the Authority for the delivery of the Services;
 - (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 Authority or other Victorian Government policies in respect of the Project Intellectual Property.
- 16.10 The Organisation will not accept co-funding, or involve any person in the delivery of the Services, on terms that would jeopardise or limit any Licence to be granted to the Authority

without obtaining the Authority's prior agreement and written consent.

17 Privacy, Data Protection and Protected Disclosures

Privacy

- 17.1 The Organisation acknowledges that it is a Contracted Service Provider and/or an 'organisation' within the meaning of the HR Act and irrespective of whether a federal privacy code applies to the Organisation under the Commonwealth Privacy Act, it agrees to be bound by:
- (a) the Information Privacy Principles contained in the PDP Act;
 - (b) the Health Privacy Principles contained in the HR Act; and
 - (c) any applicable code of practice made under the PDP Act or the HR Act,
- when performing its obligations under this Agreement in the same way and to the same extent that the Authority would be bound if the Authority were to perform the Organisation's obligations under this Agreement.
- 17.2 Without limiting clause 17.1 and subject to clause 17.4, the Organisation agrees, in delivering the Services or fulfilling its obligations pursuant to this Agreement, to be bound by:
- (a) any applicable standards issued by the Information Commissioner under Part 4 of the PDP Act as if it were a Public Sector Agency;
 - (b) any provision of a Protective Data Security Plan developed for the Authority under the PDP Act that applies to the Organisation or to any Public Sector Data, Personal Information and Health Information; and
 - (c) any provision of the Commonwealth Privacy Act which applies to:
 - (i) the Organisation; or
 - (ii) in the same way and to the same extent that the Authority would be bound if the Authority were to perform the Organisation's obligations under this Agreement, the Authority.
- 17.3 In delivering the Services under the Agreement, the Organisation will:
- (a) collect, hold, use, manage, disclose, and transfer Public Sector Data, Personal Information and Health Information, only for this Agreement and in accordance with the PDP Act, HR Act and (to the extent applicable) the Commonwealth Privacy Act;
 - (b) not do anything that would breach a Health Privacy Principle contained in the HR Act or an Information Privacy Principle contained in the PDP Act;
 - (c) comply with the HR Act and any applicable code of practice made under the HR Act as if it were an 'organisation' within the meaning of the HR Act;
 - (d) comply with the PDP Act and any applicable code of practice made under the PDP Act;
 - (e) comply with:
 - (i) Part 4 of the PDP Act, as if it were a Public Sector Agency;
 - (ii) the Victorian Protective Data Security Standards and any other applicable standards issued under Part 4 of the PDP Act (including as updated from time to time) and any supporting security guidance, as if it were a Public Sector Agency; and

- (iii) any specific policies and procedures, as specified by the Authority at the time of entry into this Agreement or as amended or replaced by the Authority giving the Organisation a minimum of 20 Business Days' written notice, for the purpose of the Authority meeting its own obligations under Part 4 of the PDP Act and the Victorian Protective Data Security Standards;
- (f) take reasonable steps to protect all Public Sector Data, Personal Information and Health Information against misuse and loss, and unauthorised access, interference, corruption, deletion, modification or disclosure;
- (g) promptly cooperate with any reasonable requests or enquiries made by the Authority in relation to the Organisation's compliance with (or breach, or potential breach, of) its obligations under this clause 17, including any investigation, complaints or enforcement action by the Victorian Information Commissioner, the Health Complaints Commissioner or the Australian Information Commissioner;
- (h) not transfer Public Sector Data, Personal Information and Health Information obtained while delivering the Services 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 such information stored in Australia unless:
 - (i) specifically permitted by this Agreement;
 - (ii) the Organisation has entered into a written and executed contract with the relevant third party recipient that contains an equivalent provision to this clause 17;
 - (iii) required by law; or
 - (iv) the third party receiving or having access to that information is subject to a law or other binding scheme in that third party's location or jurisdiction of incorporation that effectively upholds principles for fair handling of that information which are substantially similar to the laws referred to in clause 17.1;
- (i) comply with any direction, guideline, determination or recommendation made by the Information Commissioner or the Health Complaints Commissioner;
- (j) make sure that any person (including any subcontractor) who may deal with Public Sector Data, Personal Information and Health Information on behalf of the Organisation in relation to the Services or this Agreement is made aware of the obligations in this clause 17;
- (k) immediately notify the Authority if the Organisation becomes aware of a breach, or possible breach, of any of the obligations in clauses 17.3(a) to 17.3(i), by the Organisation, or any person acting for or on behalf of the Organisation (including any subcontractor) in relation to all or part of the Services or this Agreement;
- (l) make sure that any Subcontract it enters into imposes the obligations in this clause 17 on the subcontractor; and
- (m) ensure that it makes individuals to whom the Organisation provides Services aware that:
 - (i) the Organisation may collect and disclose information to the Authority for specific purposes, including for the purpose of providing its services to the individual and for the Authority's auditing and monitoring of the Organisation;
 - (ii) the Authority may disclose the information received from the Organisation to:

- (A) other Victorian Governmental Agencies; and
- (B) if requested by the Auditor-General, the Ombudsman, or the Minister responsible for the portfolio under which the Services operate; and
- (iii) unless the Personal Information is destroyed by the Organisation, it will ultimately be disposed of to, or at the direction of, the Authority or the Keeper of Public Records.

17.3A Despite anything to the contrary in this clause 17, if the Organisation is a 'public hospital', a 'public health service' or a 'multi-purpose service' within the meaning of the *Health Services Act 1988* (Vic):

- (a) clauses 17.2 and 17.3(e) do not apply to the Organisation; and
- (b) the Organisation's obligations under clause 17.3(j) do not apply in respect of Public Sector Data.

Protected Disclosure Act

17.4 If the *Protected Disclosure Act 2012* (Vic) applies to the Organisation, the Organisation agrees to comply with and be bound by the provisions of that Act in connection with the Services and its obligations pursuant to this Agreement.

Data Breach Notification

17.5 Without limiting clause 17.3, the Organisation must:

- (a) immediately notify the Authority in writing of any suspected, likely or actual:
 - (i) unauthorised access to, or unauthorised disclosure of, any Public Sector Data, Personal Information and Health Information (together, **Data**); or
 - (ii) any loss of Data in circumstances where unauthorised access to, or unauthorised disclosure of, Data has occurred or is likely to occur, which the Organisation believes or suspects is likely to result in serious harm to the Authority or to any individual to whom the Data relates (each, a **Data Breach**) immediately after becoming aware of the Data Breach and, in any event, within 24 hours of becoming aware of the Data Breach, with such notification to include:
 - (iii) a description of the Data Breach and the kinds of Data affected by the Data Breach; and
 - (iv) whether or not the Organisation believes or suspects that the Data Breach may amount to an Eligible Data Breach; and
- (b) comply with all reasonable instructions or directions of the Authority in relation to that suspected, likely or actual Data Breach.

17.6 After notifying the Authority in accordance with clause 17.5 and unless instructed in writing by the Authority otherwise, the Organisation must:

- (a) immediately investigate and promptly take all steps reasonably available to the Organisation to remedy the Data Breach and to mitigate any harm to individuals which may result from the Data Breach;
- (b) provide the Authority with all information, documents and assistance reasonably required by the Authority in respect of the Data Breach;
- (c) provide the Authority with ongoing updates with respect to Data Breach until such time

- as the Authority reasonably determines that the Data Breach has been remedied; and
- (d) not notify the Victorian Information Commissioner, the Health Complaints Commissioner or the Australian Information Commissioner or affected individuals of the Data Breach without first following the process described in clauses 17.7 to 17.9.
- 17.7 The Authority will reasonably consult with the Organisation with respect to whether or not the occurrence of a Data Breach is to be notified to Relevant Regulators and/or affected individuals, but (following such consultations) the Authority will be solely responsible for determining whether or not the occurrence of a Data Breach will be notified to:
- (a) the Victorian Information Commissioner, the Health Complaints Commissioner and/or the Australian Information Commissioner (together, **Relevant Regulators**); and/or
- (b) affected individuals.
- 17.8 If the Authority determines that any such notification is to be made, then the Organisation must (as directed by the Authority) as soon as practicable either:
- (a) provide all necessary information, documents and assistance required by the Authority in order for the Authority to prepare such notifications and for the Authority to notify the Relevant Regulators and/or affected individuals; or
- (b) prepare a draft written statement for notification to the Relevant Regulators and/or affected individuals (as determined by the Authority), obtain the Authority's written approval to that statement and the method of notification for issuing such statement, and, if so instructed, issue the statement to the Relevant Regulators and/or affected individuals on behalf of itself and the Authority. For the purpose of this clause, if the Data Breach is an Eligible Data Breach (as determined by the Authority), then the written statement to be prepared under this clause 17.8 must comply with the requirements of section 26WK(3) of Part IIIC of the Commonwealth Privacy Act.
- 17.9 If:
- (a) the Authority has determined under clause 17.7 that a Data Breach is not be notified to any Relevant Regulator and/or affected individuals; and
- (b) the Organisation (acting reasonably) considers that it nevertheless would be required under the Commonwealth Privacy Act to notify the Data Breach (as an Eligible Data Breach) to the Australian Information Commissioner and affected individuals,
- then the Organisation must notify the Authority of this and must promptly prepare a draft written statement for notification to the Australian Information Commissioner and affected individuals, consult with the Authority in relation to that statement and the method of notification for issuing such statement, and issue the statement to the Australian Information Commissioner and affected individuals on behalf of itself and, if agreed, the Authority. The written statement to be prepared under this clause 17.9 must comply with the requirements of section 26WK(3) of Part IIIC of the Commonwealth Privacy Act.

18 Confidential Information

- 18.1 The Organisation and the Authority may disclose information (including on the internet) about the content of this Agreement unless the information is Confidential Information.
- 18.2 Each party agrees to treat all Confidential Information as confidential and not to disclose it to any third party without the prior written consent of the other party, except in the following circumstances:
- (a) where the disclosure is required by Law or by this Agreement;

- (b) where the disclosure is reasonably required by any persons performing their obligations under this Agreement;
- (c) any disclosure 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 Services operate; or
- (e) if the disclosing party is the Authority to other Victorian Governmental Agencies.

18.3 Subject to clause 18.2, 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.

19 Indemnity

19.1 The Organisation indemnifies the Authority against all Liability the Authority may incur in respect of any Claim including Claims relating to:

- (a) loss of or damage to property;
- (b) death or personal injury;
- (c) a breach of any third party's Intellectual Property rights;
- (d) a breach of privacy or data security Law; and
- (e) a breach of its obligations under clause 6 [Recordkeeping]; arising in any way from:
 - (i) the Organisation's breach of this Agreement or any Law; or
 - (ii) an unlawful or negligent act or omission of the Organisation or its officers, board members, employees, agents, volunteers or subcontractors in connection with the Services or this Agreement.

19.2 The Organisation's Liability will be reduced to the extent that Liability is caused or contributed to by an unlawful or negligent act or omission of the Authority or its officers or employees.

19.3 For the purposes of this clause 19:

- (a) 'Claim' includes any action, proceeding, demand or investigation of any nature or kind (including any allegation of a claim); and
- (b) 'Authority' includes all its officers and employees.

20 Insurance and Risk Management

Insurance

20.1 The Organisation will:

- (a) on and from the Start Date have appropriate insurance coverage for its operational and business risks with one or more of the following:
 - (i) the Victorian Managed Insurance Authority or, if the Organisation is a Council, Liability Mutual Insurance;
 - (ii) an insurer authorised under the *Insurance Act 1973* (Cth); or
 - (iii) an insurer approved in writing by the Authority;
- (b) provide the Authority with proof of the Organisation's insurance cover on request;
- (c) maintain appropriate insurance coverage for the Term, and, if those policies are underwritten on a 'claims made' basis, for no less than seven (7) years after the

completion of the Services; and

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

20.1A Without limiting clause 20.1 and unless otherwise provided for in Schedule 5, if the Organisation provides Services to Children, the Organisation warrants that at all times the insurance coverage obtained in accordance with clause 20.1(a) includes public and products liability insurance written on an occurrence basis covering legal liability (regardless of how this liability arises) for death or bodily injury of any person and loss and destruction of, and damage to, any property, and includes liability for Child Abuse for the Minimum Insured Amounts.

Risk Management

20.2 The Organisation will:

- (a) manage risk in accordance with Australian/New Zealand Risk Management Standard: AS/NZS ISO 31000:2018 (**Australian Standard**) as amended from time to time or as otherwise specified in any Applicable Authority Policies;
- (b) arrange for its chief executive officer or a board member of the Organisation to attest that:
 - (i) the Organisation's risk management processes (**Processes**) are consistent with the Australian Standard or any Applicable Authority Policies;
 - (ii) during the Term, the Organisation has managed risk in accordance with the Australian Standard or any Applicable Authority Policies;
 - (iii) within the twelve (12) months prior to attestation, the Organisation has undertaken a review of the Processes to ensure compliance with the Standard or any Applicable Authority Policies;
 - (iv) the Processes satisfactorily and effectively manage the Organisation's risks; and
 - (v) the Organisation's board, committee of management or audit or risk committee has verified that the Processes satisfactorily and effectively manage the Organisation's risks; and
- (c) provide the Authority with the attestation required under clause 20.2(b):
 - (i) within three (3) months after the beginning of an Organisation's financial operating period; or
 - (ii) seven (7) Days after the Organisation's annual general meeting; or
 - (iii) such other time as agreed by the Authority in writing.

20.3 If the Organisation is required to make an attestation under the Victorian Government Risk Management Framework in its annual report, clause 20.2 does not apply.

21 Variation

21.1 Unless otherwise provided in this Agreement, the Organisation and the Authority agree that this Agreement may only be varied if:

- (a) both parties agree in writing to the variation; or
- (b) the Authority notifies the Organisation in writing of a proposed variation to this Agreement and the date the proposed variation will take effect from (the **Effective**

Date), and the Organisation continues to deliver all or part of the Services or delivers new services as described in the proposed variation after the Effective Date.

22 The Authority's Consent

- 22.1 Where the Authority's consent or approval is required under this Agreement:
- (a) the Organisation will:
 - (i) make its request in writing a reasonable time before the date on which the consent or approval is required by the Organisation; and
 - (ii) provide any information or documentation required or requested by the Authority;
 - (b) the Authority 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 Authority's consent will not be valid unless provided in writing.
- 22.2 Any consent provided under this Agreement is not deemed to be consent in the context of any other Agreement and will not operate to relieve the Organisation of any obligation under this Agreement or confer any liability on the Authority.
- 22.3 The Organisation will comply with the terms and conditions of any consent.
- 22.4 Where the Authority's consent or approval is requested by the Organisation under this clause 22, the Authority will provide its response to the Organisation under clause 22.1(b) within a reasonable time.

23 Status of Organisation

- 23.1 The Organisation and the Authority agree and acknowledge that:
- (a) nothing in this Agreement creates any joint venture, partnership, employment or agency relationship between the Organisation and the Authority; and
 - (b) neither party has authority to incur any liability or make any representation on behalf of the other.
- 23.2 The Organisation is solely responsible and liable for paying superannuation, payroll or any other tax, WorkCover levy or any similar payments or entitlements in relation to its employees.
- 23.3 If the Organisation is not a natural person and unless otherwise provided for in Schedule 5, the Organisation warrants that it:
- (a) is a duly incorporated legal entity capable of entering into this Agreement,
 - (b) complies with all Laws under which it is incorporated; and
 - (c) is not subject to any Insolvency Event.
- 23.4 The Organisation will provide the Authority with evidence of the Organisation's legal status or identity if requested by the Authority and will give written notice to the Authority within five (5) Business Days of any changes to the Organisation's legal status coming into effect.
- 23.5 Prior to any proposed Change in Control, the Organisation will:
- (a) give written notice to the Authority with reasonable time for the Authority to consider

- the impact of the proposed Change in Control; and
 - (b) provide any information or documentation required or requested by the Authority about the proposed Change in Control.
- 23.6 If the Organisation is a partnership, joint venture or consortium of two (2) or more persons, all such persons are liable both individually and as a group to the Authority for the full performance of this Agreement.
- 23.7 Where the Organisation or any part of it is a partnership, this Agreement will not terminate automatically on the death, retirement or resignation of one or more members of such partnership.
- 23.8 The Organisation's Primary Contact has authority to bind the partnership, joint venture or consortium and each of its members.

24 Notices

- 24.1 Any notice, approval or consent from one party to another must be in writing and be signed by an officer who is authorised to sign and legally bind that party. This clause 24 does not apply to variations to this Agreement made in accordance with clause 21 [Variation].
- 24.2 Any notice, approval or consent must be addressed to the Authority's Primary Contact or the Organisation's Primary Contact and will be properly given or served by a party if that party:
- (a) delivers it by hand;
 - (b) posts it by mail to the address listed in Schedule 1 or to another address as notified in writing by the relevant party;
 - (c) transmits it by facsimile to the facsimile number listed in Schedule 1 or to another facsimile number as notified in writing by the relevant party; or
 - (d) transmits it by electronic mail to the email address listed in Schedule 1 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 (2) Business Days after the date of posting;
 - (c) if delivered by any other method of post, six (6) Business Days after the date of posting (if posted to an address in the same country) or ten (10) Business Days after the date of posting (if posted to an address in another country);
 - (d) in the case of a facsimile transmission, on the day of transmission if the party giving the notice has a transmission confirmation report showing an error free facsimile transmission, unless the transmission is made:
 - (i) on a non-Business Day; or
 - (ii) after 5:00 pm on a Business Day;

- in which case the notice will be taken to be received on the next Business Day; or
- (e) in the case of an email, on the day the email is sent if the party giving the notice has a confirmation report or any other written evidence that the email has reached the recipient's mailbox, unless the email is sent:

- (i) on a non-Business Day; or
- (ii) after 5:00 pm on a Business Day;

in which case the notice will be taken to be received on the next Business Day.

25 Waiver

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

26 Survival

- 26.1 The following clauses will continue to apply after the end of this Agreement: 1.4 [Governing Law], 3.8 [Service Delivery], 0 to 4.8 [Funding], 6 [Recordkeeping] 7.4, 7.5, 7.7 and 7.8 [Assets], 8 [Reporting], 11 [Dispute Resolution], 15 [Transition of Services], 16 [Intellectual Property], 17 [Privacy, Data Protection and Protected Disclosures], 18 [Confidential Information], 19 [Indemnity], 20 [Insurance and Risk Management], and clauses 25 [Waiver] to 30 [Counterparts].

27 Costs and Duty

- 27.1 Each party must bear its own costs arising out of the negotiation, preparation and execution of this Agreement. All duty (including stamp duty and any fines, penalties and interest) payable on or in connection with this Agreement and any instrument executed under or any transaction evidenced by this Agreement must be borne by the Organisation.

28 Entire Agreement

- 28.1 This Agreement contains the entire agreement between the parties with respect to its subject matter. It sets out the only conduct, representations, warranties, covenants, conditions, agreements or understandings (collectively *Conduct*) relied on by the parties and supersedes all earlier Conduct by or between the parties in connection with its subject matter.

29 Severability

- 29.1 If any provision of this Agreement is illegal, void, invalid or unenforceable for any reason, 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.

30 Counterparts

- 30.1 This Agreement may be executed in any number of counterparts. All counterparts together will be taken to constitute one instrument.

Schedule 1

Details

1	Authority (clause 1.1)	The State of Victoria as represented by the Adult, Community and Further Education (ACFE) Board (ABN 18 149 951 421)
2	Organisation (clause 1.1)	Sample NGO Incorporated An entity established under the Associations Incorporation Reform Act 2012 (Vic). Registration # A12345678X
3	Start Date (clause 1.1)	1 July 2019
4	End Date (clause 1.1)	30 June 2024
5	Dispute Resolution Officer (clause 1.1)	Executive Director Engagement Participation and Inclusion Division, Higher Education and Skills, Department of Education and Training
6	Organisation's Primary Contact (clause 1.1)	Anna McGillivray, President
7	Organisation's address (clause 24.2)	145 Smith Street Fitzroy 3065
8	Organisation's facsimile number (clause 24.2)	
9	Organisation's e-mail address (clause 24.2)	president@sample.org.au
10	Authority's Primary Contact (clause 1.1)	ACFE Contact
11	Authority's address	2 Treasury Place, East Melbourne, Victoria, 3002
12	Authority's e-mail address	department.contact@dept.vic.gov.au

Schedule 2

Services

2.1 Overview

This describes the Services that the Organisation is required to deliver under this Agreement. These Services include:

- (i) activities;
- (ii) service plans (which themselves are made up of activities); and
- (iii) data collection requirements.

2.2 Activities

This section 2 sets out the activities the Organisation is required to undertake or provide in accordance with this Agreement and as further described in the relevant Activity Description.

Activity Number	Activity
612021	Training Delivery Support Grant
612026	Pre Accredited Delivery

2.3 Service Plans

This section sets out the service plan requirements the Organisation must deliver in accordance with this Agreement.

Organisation Name: Sample NGO Incorporated
Agreement Number: 88888-19
Agreement Version: 5
Lead Region/Group: Grampians - ACFE

Service Plan

Service Plan: ACFE - Pre-Accredited and Associated Grants – Service Plan # 46930 – Variation # 2
Primary Service Provider: Sample NGO Incorporated
Region/Group: Grampians - ACFE

This Service Plan is milestone based. Funding will be paid on the satisfactory delivery of the milestone specified. Any milestones paid in a previous financial year will not be displayed below.

Milestone Project Details: 2019 Pre Accredited and Training Delivery Support Grant

Activity: 612026 - Pre Accredited Delivery

Milestone(s)	Target where applicable	Due Date	Funding
Payment 2 - 25% upload of cumulative delivery data via SVTS by 30 March 2019 and data upload verification by DET for payment in April 2019 or next quarterly payment period.	156.67 student contact hours	01/07/2019	\$1,425.67
Payment 3 - 60% upload of cumulative delivery data via SVTS by 15 July 2019 and data upload verification by DET for payment in August 2019 or next quarterly payment period.	156.67 student contact hours	15/08/2019	\$1,425.67
Payment 4 - 80% upload of cumulative delivery data via SVTS by 30 September 2019 and data upload verification by DET for payment in October 2019 or next quarterly payment period.	56.67 student contact hours	15/10/2019	\$515.67
Service Plan Requirements:	<p>Service Agreement Performance Targets Service Plan Level Information (Other Requirements) Funding purpose: The Board supports the provision of vocational training to engage the most educationally disadvantaged learners and initiate vocational and/or employment pathways for them. This funding is for delivery and reporting of pre -accredited vocational training by organisations registered with the ACFE Board (The Board). The Board subsidises the delivery and reporting of pre-accredited vocational training to eligible adult learners in the State of Victoria as defined in the ACFE Board 2019 Pre-accredited Training Delivery Guide. Providers must deliver the hours in accordance with the approved Delivery Plan which forms part of this agreement with the Organisation. The Pre-accredited student contact hours subsidised are to benefit people or groups identified in the ACFE Board 2019 Pre-accredited training delivery guidelines and are for delivery in the local government areas identified in the approved Delivery Plan. No change to delivery area should be made without an agreed variation to the schedule. Special requirements Providers must:</p> <ol style="list-style-type: none"> 1. Be currently registered with the ACFE Board or be an Adult Education Institution. 2. Pass an ACFE Board Business and Governance Status Assessment <ul style="list-style-type: none"> • Learn Local Providers (LLPs) and Learn Local Registered Training Organisation (LLRTOs) that do not hold a current Victorian government accredited training contract must have an ACFE Board Business and Governance Status Assessment (BGS). • Learn Local Registered Training Organisations with a contract to deliver Victorian government subsidised accredited training in 2018 will not be required to complete an ACFE Board Business and Governance Status Assessment. • For more information about completing the BGS see: Business and Governance Status Assessment. 		

3. ensure that the training subsidised by the ACFE Board is being provided to eligible individual learners in the State of Victoria. This includes flexible or online delivery which requires that all delivery involves the physical presence of the learner in Victoria.

4. ensure that the delivery plan reflects the priorities of the ACFE Board and Regional Councils as outlined in the 2019 Pre-accredited Training Delivery Guide.

5. Ensure that no variation to the approved Delivery Plan is made other than by mutual agreement with the Participation, Inclusion and Regional Engagement Branch prior to any variation to delivery.

6. provide the ACFE Board, on request, a copy of the A-frame that has been developed for each pre-accredited training program subsidised through this Agreement.

7. agree to participate in A-frame moderation and verification processes and an Invalid Enrolment audit of government funded activity as required.

Privacy:
Organisations must include a Privacy Notice, using the wording provided in the Pre-accredited Training Delivery Guide for the funding year, updating the Notice with their contact details as part of all enrolment forms. Organisations may need to add further information to cover their use of student data. Where electronic enrolment forms are provided, appropriate electronic confirmation should enable the student to confirm correct details and acceptance of the Privacy notice

Reporting (Refer also Terms and conditions clauses 3.7 & 3.8)

- Maintain an AVETMISS compliant, up-to-date student management system and meet the requirements in the Victorian VET Student Statistical Data Collection Guidelines as well as ensuring that appropriate and sufficient personnel trained in the use of their Student Management System and the SVTS are available to ensure integrity, accuracy and currency of data and reporting.
- Organisations must provide data as referenced in the 2019 ACFE Board Pre-accredited Training Delivery Guide and SVTS Guidelines

• Only data successfully reported via the Skills Victoria Training System (SVTS) will be accepted by the ACFE Board as evidence of meeting agreed 2019 pre-accredited training delivery targets.

Payment Release and Reporting
Consistent with 2018, the subsidy per Student Contact Hours (SCH) will remain at \$9.10 in 2019.
Providers contracted for 2019 Pre-accredited Training Delivery will receive payment upon successful completion of the identified milestone in the 2019 pre-accredited training service plan. Payments will be processed in SAMS where sufficient data has been uploaded in SVTS.

2019 Payment and Reporting schedule

- i. Payment 1 will be released – January 2019 – Upon execution of contract
- ii. Payment 2 will be released - April 2019 – Upon evidence of 25% of enrolment target reported by 30 March in SVTS
- iii. Payment 3 will be released - August 2019 - Upon evidence of 60% of enrolment target reported by 15 July in SVTS
- iv. Payment 4 will be released for payment – October 2019 – Upon evidence of 80% of enrolment target reported by 30 September 2019 in SVTS

Intended target group/s:
The ACFE Board has identified learner groups for specific emphasis in pre-accredited programs. Refer to the 2019 Pre-accredited training delivery guidelines for further information about the learner priority groups.

Funding
(Refer also Terms and Conditions clause 3.4 on Funding)

- Funding for the Activity comes from the ACFE Board Pre-accredited Training budget.
- Total funding for your Organisation for the Activity is outlined below
- Funding outlined will be paid if the Organisation has met the agreed service targets.
- Funding is tied to the volume of services delivered Payments will be adjusted to reflect actual service delivery volume. Final

	<p>reconciliation of delivery against payment will be based on final SVTS data upload as at 15 January 2020 and invoices will be generated for any under delivery.</p> <p>Breach of obligations (Refer also Terms and Conditions clause 3.14 on Cessation)</p> <p>If the Organisation fails to fulfil, or is in breach of any of its obligations under this Agreement, and does not rectify the omission or breach within 30 Days of receiving a notice in writing from the Authority to do so, the Authority will be entitled to terminate this Agreement and may recover from the Organisation any part of the Funding which:</p> <ul style="list-style-type: none"> - has not been legally committed for expenditure by the Organisation in accordance with this Agreement and payable by the Organisation as a current liability (written evidence of which will be required) by the date the notice of termination is given; or - has not, in the Authority's reasonable opinion, been expended by the Organisation in accordance with the terms and conditions of this Agreement
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Service Plan

Service Plan: ACFE - Pre-Accredited and Associated Grants – Service Plan # 49633 – Variation # 0

Primary Service Provider: Sample NGO Incorporated

Region/Group: Grampians - ACFE

This Service Plan is milestone based. Funding will be paid on the satisfactory delivery of the milestone specified. Any milestones paid in a previous financial year will not be displayed below.

Milestone Project Details: 2020 Pre-accredited Training Delivery and Training Delivery Support Grant 2020 Pre-accredited Training Delivery and Training Delivery Support Grant 2020 Pre-accredited Training Delivery and Training Delivery Support Grant

Activity: 612026 - Pre Accredited Delivery
612021 - Training Delivery Support Grant

Milestone(s)	Target where applicable	Due Date	Funding
Payment 1 - 35% advanced payment on Execution of Schedule and approved delivery plan for payment release in January 2020 or next quarterly payment period.	252 student contact hours	15/01/2020	\$2,293.20
2020 Training Delivery Support Grant	N/A	15/01/2020	\$5,500.00
Payment 2 - 25% upload of cumulative delivery data via SVTS by 30 March 2020 and data upload verification by DET for payment release in April 2020 or next quarterly payment period.	180 student contact hours	15/04/2020	\$1,638.00
Payment 3 - 55% upload of cumulative delivery data via SVTS by 31 July 2020 and data upload verification by DET for payment release in August 2020 or next quarterly payment period.	144 student contact hours	15/08/2020	\$1,310.40
Payment 4 - 75% upload of cumulative delivery data via SVTS by 30 September 2020 and data upload verification by DET for payment release in October 2020 or next quarterly payment period.	144 student contact hours	15/10/2020	\$1,310.40
Service Plan Requirements:	<p>Funding purpose Through the Adult, Community and Further Education Board (ACFEB), the Victorian Government provides funding to Learn Local providers (LLPs), AMES Australia and the Centre for Adult Education (CAE), to deliver education and training programs to a broad range</p>		

of Victorians over compulsory school leaving age, with a special focus on people who have had limited prior access to education.

The ACFEB supports the provision of vocational training to engage the most educationally disadvantaged learners and initiate vocational and/or employment pathways for them.

The ACFEB subsidises registered Learn Local providers for the delivery and reporting of pre-accredited vocational training to eligible adult learners as defined in the ACFE Board 2020 Pre-accredited Training Delivery Guidelines (the Guidelines).

Providers must deliver the student contact hours (SCH) in accordance with the approved Delivery Plan which forms part of this agreement and must ensure the Pre-accredited (SCH) subsidised benefit disadvantaged learners identified in the Guidelines and are for delivery in the local government areas identified in the approved Delivery Plan.

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Special requirements

Providers must:

1. Be currently registered with the ACFEB or be covered under the Education and Training Reform Act 2006.
2. Have a completed satisfactory ACFEB Business and Governance Status Assessment - Learn Local Registered Training Organisation (LLRTOs) that do not hold a current Victorian government accredited training contract must have an ACFEB Business and Governance Status Assessment (BGS). For more information about completing the BGS see: Business and Governance Status Assessment.
3. Ensure that the training subsidised by the ACFEB is being provided to eligible individual learners in the State of Victoria. This includes flexible or online delivery which requires that all delivery involves the physical presence of the learner in Victoria.
4. Ensure that no variation to the approved Delivery Plan is made other than by mutual agreement with the Department prior to any variation to delivery.
5. Provide the ACFEB, on request, a copy of the A-frame that has been developed for each pre-accredited training program subsidised through this Agreement.
6. Agree to participate in A-frame moderation and verification processes and an Invalid Enrolment audit of government funded activity as required.
7. Ensure that students are properly enrolled and records are kept to validate student participation.

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Privacy:

Organisations must include a Privacy Notice, using the wording provided in the Victorian VET Student Statistical Collection Guidelines for the funding year, updating the Notice with their contact details as part of all enrolment forms. Providers may need to add further information to cover their use of student data. Where electronic enrolment forms are provided, appropriate electronic confirmation should enable the student to confirm correct details and acceptance of the Privacy notice

Reporting (Refer also Terms and conditions clauses 3.7 & 3.8)

1. Maintain an AVETMISS compliant, up-to-date student management system and meet the requirements in the Victorian VET Student Statistical Data Collection Guidelines as well as ensuring that appropriate and sufficient personnel trained in the use of their Student Management System and the SVTS are available to ensure integrity, accuracy and currency of data and reporting.
2. Providers must report data as referenced in the 2020 ACFEB Pre-accredited Training Delivery Guide and SVTS Guidelines.
3. Only data successfully reported via the Skills Victoria Training System (SVTS) will be accepted by the ACFE Board as evidence of meeting agreed 2020 pre-accredited training delivery targets.

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Payment Release and Reporting

Consistent with 2019, the subsidy per Student Contact Hours (SCH) will remain at \$9.10 in 2020.

Providers contracted for 2020 Pre-accredited Training Delivery will receive payment upon successful completion of the identified milestone in the 2020 pre-accredited training service plan. Payments will be processed in SAMS2 where sufficient data has been uploaded in SVTS.

Payment and Reporting schedule

- i. Payment 1 will be released – January 2020 – or upon execution of contract

- ii. Payment 2 will be released - April 2020 – Upon evidence of 25% of enrolment target reported by 30 March in SVTS
- iii. Payment 3 will be released - August 2020 - Upon evidence of 55% of enrolment target reported by 31 July in SVTS
- iv. Payment 4 will be released for payment – October 2020 – Upon evidence of 75% of enrolment target reported by 30 September in SVTS

Funding (Refer also Terms and Conditions clause 3.4 on Funding)

- Funding for the Activity comes from the ACFEB Pre-accredited Training budget.
- Total funding for your Organisation for the Activity is outlined in Schedule 3 of your Service Agreement.
- Funding outlined will be paid if the agreed target has been met.
- Funding is tied to the volume of services delivered; payments will be adjusted to reflect actual service delivery volume.
- Final reconciliation of delivery against payment will be based on final SVTS data upload as at 15 January 2021 and invoices will be generated for any under delivery.

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Breach of obligations (Refer also Terms and Conditions clause 3.14 on Cessation)

If the Organisation fails to fulfil, or is in breach of any of its obligations under this Agreement, and does not rectify the omission or breach within 30 Days of receiving a notice in writing from the Authority to do so, the Authority will be entitled to terminate this Agreement and may recover from the Provider any part of the Funding which has not been legally committed for expenditure by the Provider in accordance with this Agreement and payable by the Provider as a current liability (written evidence of which will be required) by the date the notice of termination is given; or - has not, in the Authority's reasonable opinion, been expended by the Provider in accordance with the terms and conditions of this Agreement.

2.4 Data Collection Requirements

This section sets out the Organisation's applicable data collection requirements for the Services funded in this Agreement.

Activity	Data Collection Requirements
612026 - Pre Accredited Delivery	SVTS Guidelines on AVETMISS reporting (ACFE) http://www.education.vic.gov.au/svts/

Schedule 3

Applicable Authority Policies

- 1 Service Agreement Requirements:** Outlines the policies and obligations the funded Organisations must comply with and is published online at (<https://fac.dhhs.vic.gov.au/service-agreement-requirements>).
- 2 Program Requirements:** This table lists any applicable statewide program specific requirements applicable for Services funded in this Agreement.

Activity	Program Requirements
612021 - Training Delivery Support Grant 612026 - Pre Accredited Delivery	Pre-accredited Delivery Plan http://www.education.vic.gov.au/training/providers/learnlocal/Pages/deliveryplan.aspx
612021 - Training Delivery Support Grant 612026 - Pre Accredited Delivery	Pre-accredited Quality Framework http://www.education.vic.gov.au/training/providers/learnlocal/Pages/pqf.aspx
612021 - Training Delivery Support Grant 612026 - Pre Accredited Delivery	Pre-accredited Training Delivery Guidelines http://www.education.vic.gov.au/training/providers/learnlocal/Pages/preaccredited.aspx
612021 - Training Delivery Support Grant 612026 - Pre Accredited Delivery	Training Delivery Support Grants Guidelines http://www.education.vic.gov.au/training/providers/learnlocal/Pages/preaccredited.aspx
612021 - Training Delivery Support Grant 612026 - Pre Accredited Delivery	Victorian VET Student Statistical Collection Guidelines http://www.education.vic.gov.au/training/providers/rto/Pages/datacollection.aspx

Schedule 4

Funding summary and Agreement level payment schedule (excludes GST)

1 Overview

This Schedule 4 sets out the Organisation's Funding information and payment schedule and should be read in conjunction with the Service Agreement Requirements. All funding shown is exclusive of GST. Where applicable, GST will be added at time of payment.

2 Funding Summary (excludes GST):

Subject to clause 4, the Funding the Organisation will receive for carrying out each of the Services is outlined in the tables below.

Organisation Name: Sample NGO Incorporated
Agreement Number: 88888-19
Agreement Version: 5
Lead Region/Group: Grampians - ACFE
Australian Business Number (ABN): 12 345 678 901

Region/Group	Service Plan	Activity	Funding Type	2019-20	2020-21
Grampians - ACFE	ACFE - Pre-Accredited and Associated Grants	Pre Accredited Delivery - 612026	Fixed Term - Non Indexable	\$7,298.20	\$2,620.80
Grampians - ACFE	ACFE - Pre-Accredited and Associated Grants	Training Delivery Support Grant - 612021	Fixed Term - Non Indexable	\$5,500.00	
Total				\$12,798.20	\$2,620.80

Queries should be directed to your Authority Primary Contact.

3 Payment Schedule (excludes GST)

Subject to clause 4, the Organisation will be paid in accordance with the payment schedule set out below.

The payment schedule contains Funding at the Agreement level in the current (2019-20) financial year. A new payment schedule for the following financial year will be produced in June each year, where applicable.

All figures are exclusive of GST. Where applicable, GST is added at the time of payment.

Due Date	Amount	Withheld Amount	Total
01/07/2019	\$1,425.67	\$0.00	\$1,425.67
15/08/2019	\$0.00	\$1,425.67	\$1,425.67
15/10/2019	\$0.00	\$515.67	\$515.67
15/01/2020	\$0.00	\$7,793.20	\$7,793.20
15/04/2020	\$0.00	\$1,638.00	\$1,638.00
Grand Total	\$1,425.67	\$11,372.54	\$12,798.21

Queries should be directed to your Authority Primary Contact.

Schedule 5

Agreement Level Information

Additional requirements for the Agreement
There are currently no Additional requirements for this Agreement

AGREED for and on behalf of Sample NGO Incorporated (An entity established under the Associations Incorporation Reform Act 2012 (Vic). Registration # A12345678X)

SIGNED by **Mrs. Anna McGillivray** as
authorised representative for **Sample NGO**
Incorporated in the presence of:

)
)
)

.....
Signature of authorised representative

.....
Signature of witness

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

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

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

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

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

.....
Date

.....
Date

AGREED for and on behalf of the State of Victoria as represented by the Adult Community and Further Education Board (ABN 18149951421)

SIGNED by **ACFE Signatory** as authorised
representative for **the Adult Community and
Further Education Board (ABN
18149951421)** for and on behalf of the **State
of Victoria** in the presence of:

)
)
)

.....
Signature of authorised representative

.....
Signature of witness

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

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

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

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

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

.....
Date

.....
Date

