

Short Form Funding

Agreement Details

Parties	
Us	Victorian Health Promotion Foundation (ABN 20 734 406 352) (VicHealth) Ground Floor, 15 Pelham Street, Carlton Melbourne, Victoria, 3053 Tel: (03) 9667 1333
You	[Organisation name, ABN, Address, Contact information]
Contract Title	Top Spin Local Area Marketing
Contract ID	TBC
Description of Work to be carried out under the Project ("Work")	Description of Work: Top Spin Local Area Marketing Objective: Increase awareness and public support for alcohol change Outcomes: Increased awareness of Top Spin resulting in competition entries Deliverables: Marketing activities as per Work Plan (TBC)
Term	Commencement Date: February 2019/TBC Expiry Date: May 2019/TBC
Permitted Extension Period	<i>n/a</i>
Our Representative	Name: Caroline Hardiman Tel: 03 9667 1353 Email: alcohol@vichealth.vic.gov.au
Your Representative	Name: Tel: Email:
Change to insurance requirement	<i>No change</i>
Ownership of IP	<input type="checkbox"/> Funded party ("you") <input checked="" type="checkbox"/> VicHealth ("we", "us") <p>If this detail specifies that VicHealth owns the IP in Project Material developed by funded party:</p> <p>(a) All rights in any Project Intellectual Property are owned by Us and You hereby unconditionally and irrevocably assign, and agree to assign, to Us all rights (including all rights in Intellectual Property (IPRs), title and interest in and to such Project Intellectual Property immediately on creation.</p> <p>(c) We grant You a non-exclusive, non-transferable, worldwide, royalty free licence to use, reproduce, adapt and otherwise exploit the Project Intellectual Property:</p> <p>(i) solely for the purpose of conducting the Project during the Term in accordance with this Agreement; and</p> <p>(ii) as otherwise permitted by VicHealth in writing.</p> <p>(d) You warrant that any Project Intellectual Property created by You or any of Your employees, officers, agents or contractors does not infringe, and its use in any way by Us in accordance with this</p>

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	Agreement will not infringe, the IPRs of any person, and you have obtained all necessary consents from authors to acts that would but for the consent infringe moral rights. (e) You grant to us a worldwide, irrevocable, non-exclusive, royalty-free, perpetual licence to use and reproduce your name, logo and endorsements for the purpose of promoting and reporting the Project.
Payment (excl GST)	[TBC up to a maximum of \$10,000 ex GST]
Amendments to standard terms and conditions	N/A

Milestones and Payment Schedule

TBC

Contingencies:

TBC

Note: Payments Contingent on VicHealth satisfaction of Contract Milestones and requirements.

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Signed for and on behalf of **Victorian Health Promotion Foundation (ABN 20 734 406 352)** by its duly authorised representative:

Signed as authorised representative for **[Org name (ABN)]**. By executing this Agreement the signatory warrants that the signatory is duly authorised to sign this Agreement on behalf of [Org name].

.....
Signature

.....
Signature

.....
Name

.....
Name

.....
Title

.....
Title

.....
Date

.....
Date

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Terms and Conditions

1 DEFINITIONS

In this Agreement, capitalised words have the meaning given in the Details section, unless otherwise defined below.

2 OBLIGATIONS OF THE PARTIES

- (a) You must, in accordance with this Agreement:
 - (i) Complete the Work in accordance with each Milestone (if applicable), diligently, effectively, to a high and professional standard and to our satisfaction; and
 - (ii) pay all the costs for the Work (whether or not such costs are covered by the Milestone amounts set out in the Agreement Details (Milestone Amount) paid by us).
- (b) Subject to clause 4, we will pay to you the Milestone Amounts.
- (c) We may extend, by not longer than the Permitted Extension Period, any date for completion of a Milestone.
- (d) If the Work involves you preparing a report, the report will be provided in a format suitable for publication and we may notify you within 10 business days from receiving a report if we do not accept it, in which case we may require you to submit a revised report or provide additional information, or we may immediately terminate this Agreement in accordance with clause 14.
- (e) If you provide research or evaluation as part of the Work, you will provide us with all raw data collected as part of the Work, as reasonably requested by us, in both identified (for our reference) and de-identified (for publication) form and ensure you obtain all permissions, consents and licences to enable this.
- (f) Data provided to us must be provided in a machine-readable format, with a data dictionary and with metadata, or as otherwise directed by us.
- (g) During the Term and for seven years after the expiration or termination of this Agreement:
 - (i) you must keep all records relevant to this Agreement, including all background and Project Intellectual Property and accounting records (**Project Records**);
 - (ii) we or our auditor may, at our own cost and upon reasonable notice, conduct inspections and audits of the Project Records and take copies of the Project Records.

3 COMPLIANCE WITH LAWS AND STANDARDS

- (a) You must carry out the Work:
 - (i) in a manner that ensures the safety of persons and property; and
 - (ii) in accordance with all laws, codes and standards, and our lawful requirements or policies which we provide to you.
- (b) You must not do or fail to do anything that may damage or bring into disrepute, or attract public or media attention which may be detrimental to our, or the Victorian Government's, reputation, including being directly or indirectly associated with the tobacco industry.

4 INVOICING AND PAYMENT

Invoices

- (a) We will issue you a recipient created tax invoice (or invoices) related to the funding payable for the Work or upon achieving any Milestones (if applicable). You are required to provide Your ABN and state whether you are registered for GST.
- (b) Payment will be conditional upon us being provided with any evidence we reasonably require to substantiate payment, including the completion of a Milestone (if applicable).
- (c) Unless we consider you are not entitled to payment under clause 4(d), We will pay all invoiced amounts which comply with clauses 4 and 4(b), and which are not in dispute, within 30 days of any invoice invoice.

Entitlement to payment and obligation to reimburse

- (d) You are not entitled to payment for any tasks undertaken in respect of the Work or any Milestone Amount (if applicable) or reimbursement of any kind if:
 - (i) in our opinion:
 - A. this Agreement has not been complied with; or
 - B. the Work is not making satisfactory progress.
- (e) You must reimburse us for any amount already paid by us that, in our opinion, was:
 - (i) not used for, or applied to, the Work in accordance with this Agreement;
 - (ii) paid in circumstances where we are not satisfied that the Work was or is making satisfactory progress; or
 - (iii) paid in circumstances where you have not complied, or subsequent to the payment do not comply, with this Agreement.

Right of set-off

- (f) Without disadvantage to any other rights, we may deduct from amounts otherwise payable to you, amounts which are payable to us, whether under this Agreement or otherwise.

5 GST

- (a) In this clause 5, additional defined terms have the meanings given to them in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- (b) Unless otherwise specified, the consideration specified in this Agreement excludes any amount for GST.
- (c) If a supply under this Agreement (**Supply**) is subject to GST, the Party paying for the Supply must pay to the Party making the Supply an additional amount equal to the amount payable multiplied by the applicable GST rate (**additional amount**).
- (d) The additional amount is payable at the same time as the consideration for the Supply is payable or to be provided, subject to receipt of a Tax Invoice from the supplier in relation to the Supply.
- (e) If the additional amount differs from the amount of GST payable by the supplier, the Parties must adjust the additional amount.
- (f) If a Party is entitled to be reimbursed or indemnified under this Agreement, the amount to be reimbursed or indemnified excludes any amount for GST for which the Party is entitled to an Input Tax Credit.

6 REPORTS

- (a) Unless we otherwise agree in writing, you must prepare and submit to us all reports required in accordance with any reporting criteria, templates and directions notified by us, including a final report (to be submitted at the final Milestone Date) in a form suitable for public dissemination.
- (b) We will notify you within a reasonable time from receiving a report if we do not accept the report, in which case we may require you to submit a revised report or provide additional information, or we may immediately terminate this Agreement in accordance with clause 14.
- (c) After the expiry or termination of this of this Agreement, you must, upon request, promptly provide information in relation to the Work and return all other information belonging to us which has been provided to you for the purposes of this Agreement.

7 INSURANCE

- (a) Subject to any insurance requirements set out in the Details, you must, at your own cost, throughout the Term or longer if required by law, maintain all relevant insurances required to appropriately insure the Work and completion of the Milestones (if applicable) including:
 - (i) public and product liability insurance of \$10 million per occurrence; and
 - (ii) professional indemnity insurance of \$5 million per claim,and if requested provide us with satisfactory evidence that you have complied with your obligations to insure under this clause 7.
- (b) Any indemnity proceeds or other payment made to or recoverable by you under any insurance policy for any damage to, loss (including loss of use) or destruction of any Asset or property associated with the Work must be promptly applied by you to ensure that such is repaired and reinstated.

8 LIABILITY AND INDEMNITIES

Your liability and indemnity to us

- (a) You indemnify us, our employees, agents and officers (**Indemnified Parties**) and hold us and each of them harmless against any liability and any other loss, damage, claim, action or expense (including legal expense) (**Loss**) incurred or suffered by any of them in connection with the Agreement or the Work which arises directly or indirectly from or in connection with:
 - (i) any fraudulent, wilful, unlawful, dishonest or negligent act or omission by you or your employees, agents or officers;
 - (ii) any breach of this Agreement by you;
 - (iii) any injury to, or death of, a natural person and any loss of or damage to, real or personal property caused or contributed to by you or your employees, agents or officers;
 - (iv) any claim, action, demand, or proceeding by a third party against the Indemnified Parties caused or contributed to by you, your employees, agents or officers; or
 - (v) any act or omission by you or your employees, agents or officers.
- (b) Your liability under clause 8(a) to an Indemnified Party will be reduced to the extent that any negligent act or omission or wilful misconduct by that Indemnified Party directly caused the relevant Loss.

Our liability to you

- (c) We are not liable to you in any circumstance whatsoever for any consequential, indirect or incidental loss, special loss or damage or economic loss, loss of revenue, loss of production or loss of profit (whether direct or indirect).
- (d) To the fullest extent permitted by law, our liability under or in connection with this Agreement is limited in aggregate to an amount equal to the total Milestone Amounts payable by us under this Agreement.

9 ACKNOWLEDGEMENT

- (a) You must obtain our approval prior to releasing any information concerning the Work, the Parties or this Agreement.
- (b) Subject to clause 9(a), you must acknowledge our contribution in any site signage, report, publication, promotion, announcement and the like, oral or written, regarding the Work in a form approved by us in writing.
- (c) You must obtain our written permission prior to using our or the Victorian Government's name, logo or endorsement (if any) in promotional material and communications relating to the Work.

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- (d) We may withdraw any permission given under clause 9(c) at any time, and upon notice of withdrawal you must immediately stop using our and the Victorian Government's name, logo and endorsements.

10 CONFIDENTIALITY

- (a) Subject to this clause 10, each Party must keep information of the other Party which, by its nature is or is described by the other Party to be confidential (Confidential Information), confidential at all times, and must not, without the other Party's written consent:
- disclose any Confidential Information to any person; or
 - use or allow any person to use any Confidential Information for any purpose other than the performance of this Agreement.
- (b) A Party may disclose Confidential Information of the other Party:
- to the extent required by law or in connection with legal proceedings; and
 - to its professional advisers for purposes connected to this Agreement.
- (c) We may disclose your Confidential Information for public accountability purposes or to comply with any reporting obligation.
- (d) You agree to us publishing or making available information in relation to you or the Work as may be required by the Auditor-General, to comply with the *Freedom of Information Act 1982* (Vic) or otherwise by law.

11 PRIVACY AND DATA PROTECTION

- (a) For the purposes of this clause 11, **Personal Information and public sector data** have the meanings given to them in the *Privacy and Data Protection Act 2014* (Vic) (**Privacy Act**).
- (b) You must, and must procure that your employees, agents, officers and subcontractors comply with:
- the Information Privacy Principles set out in the Privacy Act;
 - the VicHealth Privacy policy as amended from time to time and as published on our website <https://www.vichealth.vic.gov.au/search/funding-partner-privacy-policy>
 - and assist us to comply with, the Victorian Protective Data Security Standards under Part 4 of the Privacy Act; and
 - any other applicable laws, principles, policies and codes dealing with the collection, holding, use, disclosure, storage, management, transfer or granting of access rights to Personal Information and public sector data,

in relation to any Personal Information and public sector data collected, held, used, managed, disclosed, transferred or stored in relation to this Agreement and in the same way and to the same extent as we would have been bound had the relevant act been done by us (where applicable).

12 INTELLECTUAL PROPERTY

Definitions

- (a) In this clause 12:
- Intellectual Property** includes patents, know-how, copyright, designs, semiconductor or circuit layout rights, trade marks, trade secrets, data, rights in Confidential Information, business or company names and other proprietary rights or any right to registration of such rights, whether created before or after the date of this Agreement and whether protected under common law or statute; and
 - Project Intellectual Property** means all Intellectual Property including reports, case studies and background information, photographs, audio visual material and other deliverables specified in this Agreement produced by or on your behalf in the course of the Work.

Your warranty

- (b) You warrant to us that you have all necessary rights and consents (including any necessary consents from authors to acts that would infringe moral rights) in relation to Project Intellectual Property or otherwise to perform your obligations under clause 12(e).

Ownership of Intellectual Property

- (c) Unless specified in Details, the Parties acknowledge that subject to clause 12(e), all Project Intellectual Property vests in you and remains your property; and
- (d) our Intellectual Property remains our property at all times.

Our rights to use Intellectual Property

- (e) We may use or exploit the Project Intellectual Property and all modifications to it made by you (**Modifications**) for any purpose consistent with our general objectives and you grant to us a worldwide, irrevocable, non-exclusive, royalty-free, perpetual licence to use, reproduce, disclose, make public, modify or otherwise exploit, as well as to sublicense:
- the Project Intellectual Property;
 - any Modifications; and
 - any Intellectual Property that is incorporated into any outputs of the Work, whether owned by you or a third party (**Background Intellectual Property**), to the extent such Background Intellectual

Property is so incorporated or otherwise required to enable the Project Intellectual Property to be exploited for those purposes.

- (f) For the avoidance of doubt, our right to sub-licence under clause 12(d) includes the right to do so under any form of creative commons licence (available at creativecommons.org.au).
- (g) Without limiting clause 12(d), you grant to us a worldwide, irrevocable, non-exclusive, royalty-free, perpetual licence to use and reproduce your name, logo and organisational summary for promotion and reporting of the Work.

Indemnity by you

- (h) You indemnify, and must at all times keep us indemnified, against any Loss arising out of or in connection with any infringement or alleged infringement by you or us of the Intellectual Property rights relating to the Work of any third person.

13 CONFLICT OF INTEREST

- (a) You must not, and must ensure your employees, agents and contractors do not, hold any office or property, be involved in any business, trade or calling, or have any obligations under any contract whereby, directly or indirectly, duties or interests are or might be created (or appear to be created) in conflict with your duties and interests under this Agreement.
- (b) You must promptly notify us of any matter which may give rise to a breach of clause 13(a).

14 TERMINATION

Grounds for termination

- (a) Without disadvantage to any other rights we may have, we may terminate this Agreement immediately or on a specified date by issuing a notice to you if:
- you become insolvent, go into liquidation, are wound up, dissolved, commit an act of bankruptcy or enter into a scheme of arrangement with any creditor;
 - you appoint, or are appointed, an administrator or receiver;
 - any of your officers is found guilty of breaking any law;
 - you provide any false or misleading information to us;
 - you are found to have misused any amounts provided to you by us;
 - you fail to carry out the Work or complete any Milestone (if applicable) to our satisfaction;
 - you commit a material breach of any of your obligations under this Agreement (for the avoidance of doubt a breach of clause 3(a) or 13 constitutes a material breach); or
 - you do anything which brings your, our or the Victorian Government's reputation into disrepute and as a consequence, in our opinion, our continued association with you will, or may, be detrimental to our or the Victorian Government's reputation or messages, including offering us or our employees or Board members a gift, benefit or hospitality.

Termination for convenience

- (b) Despite any other term of this Agreement, we may terminate this Agreement upon 30 days' written notice to you.

15 ASSIGNMENT AND SUBCONTRACTING

- (a) We may at any time assign, novate or subcontract any or all of our rights and obligations under this Agreement.
- (b) You must not assign, novate or subcontract this Agreement (or any rights or obligations under it) without our prior written consent, which we may withhold or give subject to conditions.

16 GENERAL

- (a) This Agreement contains the entire agreement between the Parties as to its subject matter.
- (b) The relationship between the Parties under this Agreement does not constitute a partnership, agency, joint venture or any form of fiduciary relationship or contract of employment.
- (c) Time is of the essence in this Agreement.
- (d) Waiver of any provision of or right under this Agreement must be in writing signed by the Party entitled to the benefit of the provision or right being waived.
- (e) This Agreement may only be varied by written agreement signed by both Parties.
- (f) Clauses 6(c), 8, 9, 10, 11 and 12, and any other clause that by its nature is intended to survive termination, survive expiry or termination of this Agreement.
- (g) You warrant to us that you have the power to enter into and perform the obligations of this Agreement without breaching any other legal rights or obligations.
- (h) All notices, approvals, consents or other communications under this Agreement must be provided in writing to the other Party's Representative.
- This Agreement may be executed in counterparts.
 - This Agreement is governed by the laws of Victoria, and each Party submits to the non-exclusive jurisdiction of the courts of Victoria.

