

In reply please quote

Ref: [Insert]

[Insert date]

[name of addressee]

[position of addressee]

[successful bidder]

[address]

Dear [addressee]

**RE: VicHealth - Co-Design Panel- Future Healthy Investments**

I am pleased to advise you that VicHealth is offering you a Standing Offer on the terms and conditions of the Agreement enclosed with this letter.

If you wish to accept this offer, please sign and date the Agreement and return it to VicHealth as soon as possible. No agreement will be formed until VicHealth has received a correctly signed agreement.

Please contact Melinda Swale who will be the primary contact for this contract on or [mswale@vichealth.vic.gov.au](mailto:mswale@vichealth.vic.gov.au) if you have any questions.

We look forward to working with you on this project.

Yours sincerely

[Approver name as per DOA]

[Approver title]

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**Victorian Health Promotion Foundation**

Level 2, 355 Spencer Street, West Melbourne VIC 3003  
PO Box 13137, Law Courts VIC 8010  
T +61 3 9667 1333 W [vichealth.vic.gov.au](http://vichealth.vic.gov.au)  
E [vichealth@vichealth.vic.gov.au](mailto:vichealth@vichealth.vic.gov.au)  
ABN 20 734 406 352

**Patrons**

The Honourable Linda Dessau AC  
Governor of Victoria (Patron-in-Chief)  
Sir James Gobbo  
Professor Emeritus  
Sir Gustav Nossal AC CBE



VICTORIAN HEALTH PROMOTION FOUNDATION (**VicHealth**)

ABN 20 734 406 352 of Level 2, 355 Spencer Street, West Melbourne VIC 3003

AND

[Insert Successful Bidder Name] (**Service Provider**)

[ABN/ACN] of [Address]

# **Agreement for the provision of Services**

## **(Standing Offer)**

Ref: OPP-20275

## PARTIES

The Victorian Health Promotion Foundation (ABN: 20 734 406 352) of Ground Level 2, 355 Spencer Street, West Melbourne VIC 3003

("VicHealth")

and

the party identified as "Service Provider" in item 1 of Schedule 1

("You" "Your")

## BACKGROUND

- (A) You wish to provide the Services to VicHealth.
- (B) VicHealth has agreed to engage You to make a standing offer to provide the Services in accordance with this Agreement.
- (C) The Parties agree to work together throughout the Term in accordance with the terms of this Agreement to continuously improve the provision of Services under this Agreement for the benefit of both Parties.

## AGREED TERMS AND CONDITIONS

### INTERPRETING THIS AGREEMENT

#### 1 DEFINITIONS AND INTERPRETATION

##### 1.1 Definitions

In this Agreement:

**ADC** has the meaning given to that term in clause 18.2(a).

**Agreement** means this agreement for the provision of Services, including the Schedules and any annexures to the Schedule or items incorporated by reference.

**Business Day** means a day which is not a Saturday, Sunday or public holiday (being a public holiday appointed as such under the *Public Holidays Act 1993 (Vic)* in Melbourne.

**Change in Control Notice** has the meaning given to that term in clause 17(a).

**Code of Practice** means a code of practice as described in, and approved under, the PDP Act.

**Commencement Date** means the date from which Your standing offer to provide the Services will commence, as specified as such in Item 2 of Schedule 1.

**Commissioners** means the Privacy and Data Protection Deputy Commissioner appointed under the PDP Act and the Information Commissioner and the Public Access Deputy Commissioner appointed under the *Freedom of Information Act 1982 (Vic)*.

**Completion Date** for a Statement of Work Contract, means the date You are required to complete the Services required under the Statement of Work Contract as specified in the Statement of Work Contract.

**Confidential Information** means any technical, scientific, commercial, financial or other information of, about or in any way related to, VicHealth, including any information designated by VicHealth as confidential, which is disclosed, made available, communicated or delivered to You in connection with this Agreement, but excludes information which:

- (a) is in or which subsequently enters the public domain (and confidential information will not be deemed to be in the public domain merely because it relates to other information which may be in the public domain), other than as a result of a breach of an obligation of confidentiality;
- (b) You can demonstrate was in Your possession before the date of this Agreement;
- (c) You can demonstrate was developed by You independently of any disclosures previously made by VicHealth; or
- (d) is lawfully obtained by You on a non-confidential basis from a person who is not bound by a confidentiality agreement with VicHealth or otherwise prohibited from disclosing the information to You.

**Contract Materials** means any materials (including any part of a Deliverable) which You create (whether alone or jointly with any other person) in performing the Services under this Agreement or any Statement of Work Contract.

**Contract Publishing System** means the system of the Victorian Government for publication of details of contracts entered into by

some Victorian Public Entities, including any replacement or amended system.

**Control** means, in relation to You, the ability of any person to, directly or indirectly, exercise effective control over You (including the ability to determine the outcome of decisions about Your financial operating and other policies) by virtue of the holding of voting shares, units or other interest in You or by any other means.

**Data** means all data, information, text, drawings, statistics, analysis and other materials embodied in any form which is:

- (a) supplied by or on behalf of VicHealth in connection with this Agreement (Input Data); or
- (b) generated, placed, stored, processed, retrieved, printed, accessed or produced utilising the Input Data or in the course of supply the Services or the Deliverables.

**Data Security Breach** means any actual or suspected unauthorised or erroneous disclosure of, or access to, any Confidential Information, any Personal Information or Health Information.

**Deliverable** means any item or material (including reports and other documentation) produced or delivered by You as an output of the Services.

**Dispute** has the meaning given to that term in clause 18.1(a).

**Dispute Notice** has the meaning given to that term in clause 18.1(a).

**Expiry Date** means the date set out in Item 2 of Schedule 1.

**Fees** means any fixed fees payable to You for the provision of specified Services under a Statement of Work Contract, determined in accordance with the Price Schedule.

**Guidelines** has the meaning given to that term in clause 18.2(a).

**Health Information** has the meaning as defined in the *Health Records Act 2001 (Vic)*.

**Health Privacy Principles** means the health privacy principles set out in the *Health Records Act 2001 (Vic)*.

**IBAC** means the commission established under the *Independent Broad-based Anti-corruption Commission Act 2011 (Vic)* and includes any other organisation that may, from time to time, perform the functions of the commission.

**Indemnified Party** has the meaning given to that term in clause 24(a).

**Index** has the meaning given to that term in clause 10.6(a).

**Information Privacy Principles** has the meaning given in the PDP Act.

**Initial Insurance** has the meaning given to that term in clause 26(c).

**Insolvency Event** means, in relation to You, any of the following:

- (a) anything that reasonably indicates that there is a significant risk that You are or will become unable to pay debts as they fall due, including:
  - (i) execution or distress being levied against any of Your income or assets;
  - (ii) a meeting of Your creditors being called or held;
  - (iii) a security becoming enforceable or being enforced in relation to any of Your assets or undertakings;
  - (iv) a step being taken to make You bankrupt or to wind You up;
  - (v) the appointment to You of a controller or administrator as defined in section 9 of the Corporations Act 2001 (Cth);
  - (vi) You entering into any type of agreement, composition or arrangement with, or assignment for the benefit of, all or any class of Your creditors; or
  - (vii) You being made subject to a deed of company arrangement;
- (b) a step being taken to have a receiver, receiver and manager, liquidator or provisional liquidator appointed to You or any of Your assets; or
- (c) You ceasing, or indicating that You are about to cease, carrying on business.

**Intellectual Property Rights** means all intellectual property rights at any time recognised by law, including all present and future copyright, all proprietary rights in relation to inventions (including patents), registered and unregistered trademarks, trade secrets and know how,

registered designs, circuit layouts, and all other proprietary rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

**Invitation** means the documents published by VicHealth inviting the market place to submit offers to provide the Services pursuant to this Agreement.

**IPR Claim** has the meaning given to that term in clause 24(e).

**Key Personnel** has the meaning given to that term in clause 6(a).

**Laws** means:

- (a) any statute, regulation or subordinate legislation of the Commonwealth of Australia, the State of Victoria or local or other government in force in the State of Victoria, irrespective of where enacted; and
- (b) lawful requirements of any government or government department or other body or a governmental, semi-governmental, judicial, municipal, statutory or public entity or authority (including a statutory authority or a State-owned enterprise), a self-regulatory authority established under statute or a stock exchange (wherever created or located) or a person (whether autonomous or not) who is charged with the administration of a law.

**Losses** has the meaning given to that term in clause 24(a).

**Mediation** has the meaning given to that term in clause 18.1(c)(ii).

**Milestone** means a milestone specified in Item 2 of Schedule 2 or a Statement of Work (as relevant).

**Milestone Date**, for a Milestone, means the date specified in Item 2 of Schedule 2 or a Statement of Work (as relevant) by which You must perform the Milestone.

**Model Litigant Guidelines** means the guidelines regarding the conduct of litigation by the State, as updated from time to time.

**Moral Rights** has the meaning given to that term in the *Copyright Act 1968* (Cth) and includes a right of a similar nature that is conferrable by statute, and that exists or comes into existence anywhere in the world.

**Offer** means the documentation and any supporting materials lodged by You in response to the Invitation containing an offer to provide Services in the form finally accepted by VicHealth.

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

**Personal Information** has the meaning given to that term in the PDP Act.

**Personnel** of a party includes the officers, employees, agents, contractors, sub-contractors and Key Personnel of that party.

**Pre-Existing Intellectual Property** means all materials owned by or licensed to a party as at the Commencement Date or developed by or on behalf of a party independently of this Agreement and any Statement of Work Contracts.

**Price Schedule** means the schedule of Rates and/or Fees payable by VicHealth to You for the provision of the Services under a Statement of Work Contract, as set out in Schedule 2.

**Privacy Obligations** has the meaning given to that term in clause 23.7.

**Proposal** has the meaning given to that term in clause 4.5(a).

**Protective Data Security Standard** means any standard issued under Part 4 of the PDP Act.

**Public Sector Employee** has the same meaning as in the *Public Administration Act 2004* (Vic).

**Quote** means a quote from You provided under clause 3.3.

**Rates** means the monetary amount (whether charged on an hourly, daily, weekly or other time-related basis) payable to You for the provision of specified Services under a Statement of Work Contract, determined in accordance with the Price Schedule.

**Replacement Staff** has the meaning given to that term in clause 6(b).

**Representative** means, in respect of each party, the person(s) specified in Item 8 of Schedule 1, or any replacement person(s) appointed in accordance with clause 13.1(c).

**Request for Quote** means a request for a quote for the provision of Services issued by VicHealth to You under clause 3.2.

**Service Credit** means the amount by which the sums paid by VicHealth will be reduced for a failure by You to meet a Service Level Requirement, as calculated in accordance with Schedule 3.

**Service Level Requirements** means the minimum levels at which You must provide the Services as specified in Schedule 3, as amended from time to time in accordance with clause 4.5.

**Service Provider** means the party named as "Service Provider" in item 1 of Schedule 1, identified as "You", "Your" in the beginning of this Agreement.

**Services** means the services, including any Deliverables, offered by You pursuant to this Agreement, as specified in Schedule 2, and in relation to a Statement of Work Contract, means the specific Services to be provided as set out in the relevant Statement of Work.

**Specifications** means the specifications to which the Services must comply, including any relevant performance requirements, technical constraints and quality standards, as set out in Schedule 4.

**Staff Costs** means Pay as you go (PAYG) Income Tax Instalments, withholding tax (including PAYG withholding), superannuation contributions or charge amounts, fringe benefits tax, workers' compensation insurance premiums, payroll tax and any like taxes and charges arising out of or in relation to this Agreement, or any engagement arising under this Agreement (together with all interest or penalties payable by reference to those costs).

**Start Date** means the date on which the provision of Services is to start under a Statement of Work, as specified in the relevant Statement of Work.

**State** means the Crown in right of the State of Victoria.

**Statement of Work** means an order for Services submitted by VicHealth to You that is in, or substantially in, the form set out in Annexure A.

**Statement of Work Contract** means a contract for the provision of Services which is formed between VicHealth and You in accordance with clause 3.6.

**Supplier Code of Conduct** means the Supplier Code of Conduct issued by the Victorian Government for suppliers providing goods or services to the Victorian Government (as amended from time to time).

**Tax Invoice** has the meaning given in the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

**Term** means the duration of this Agreement, as calculated in accordance with clause 28.

**Victorian Public Entity** means:

- (a) a public sector body as defined in section 4 of the Public Administration Act 2004 (Vic);
- (b) a statutory corporation, a State owned company, a State body or a State business corporation as those terms are defined in the State Owned Enterprises Act 1992 (Vic);
- (c) a Council as defined in the Local Government Act 1989 (Vic); or
- (d) an entity which receives the majority of its funding from any of the entities listed in paragraphs (a) to (c) or any entity under the control of any of the entities listed in paragraphs (a) to (c).

**Victorian Public Sector Commission (VPSC) Code of Conduct** means the Code of Conduct for Public Sector Employees 2015 (as amended or replaced from time to time), issued by the Victorian Public Sector Commission pursuant to section 61 of the *Public Administration Act 2004* (Vic), unless the Services are services of a kind usually provided by directors of Victorian Public Entities or VicHealth is a special body, in which case it means either the Code of Conduct for Directors of Victorian Public Entities 2016 or the Code of Conduct for Victorian Public Sector Employees of Special Bodies 2015 (each as issued by the Victorian Public Sector Commission pursuant to section 61 of the *Public Administration Act 2004* (Vic) and as amended or replaced from time to time).

**Workplan** has the meaning given to it by Item 5 of Schedule 2

## 1.2 Interpretation

Unless expressed to the contrary, in this Agreement:

- (a) 'You', 'Your' and 'Service Provider' are interchangeable words referring to the same party;
- (b) words in the singular include the plural and vice versa;
- (c) any gender includes the other genders;
- (d) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (e) 'includes' and 'including' are not words of limitation;

- (f) no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it;
- (g) Your obligations, if more than one person, under this Agreement are joint and several and each person constituting You acknowledges and agrees that it will be causally responsible for the acts and omissions, including breaches of this Agreement, of the other as if those acts or omissions were Your own;
- (h) Your rights, if more than one person, under this Agreement, including the right to payment, jointly benefit each person constituting You;
- (i) if the date on or by which any act must be done under this Agreement is not a Business Day, the act must be done on or by the next Business Day;
- (j) a reference to:
  - (i) a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority;
  - (ii) a person includes the person's legal personal representatives, successors, assigns and persons substituted by novation;
  - (iii) any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision;
  - (iv) '\$', 'dollars' or 'AUD' is a reference to the lawful currency of the Commonwealth of Australia and all amounts payable under this Agreement are payable in Australian dollars; and
  - (v) a party or parties is a reference to VicHealth and You (as the case requires).
  - (vi) Headings
- (ii) is calculated in accordance with the Rates and Fees specified in the Price Schedule; and
- (iii) contains:
  - (A) the total amount payable by VicHealth for the provision of the required Services; and
  - (B) a full breakdown of the Rates and/or Fees comprising that amount, including by reference to Milestones and Deliverables, if applicable.

### 3.4 Receipt of Quotes

On receipt of a Quote, VicHealth may:

- (a) negotiate with You the terms of the Quote, following which You must resubmit a Quote containing the revised agreed terms;
- (b) accept the Quote, in which case VicHealth must issue a Statement of Work; or
- (c) decline to accept the Quote, in which case no Statement of Work Contract will be formed.

### 3.5 Contents of a Statement of Work

A Statement of Work issued by VicHealth must specify:

- (a) the identity of VicHealth, VicHealth's Representative and the order number;
- (b) Your details;
- (c) the specific Services to be provided to VicHealth (which may be some or all of the Services described in Schedule 2), including the quantity of each item required;
- (d) the applicable Rates and/or Fees, and the consequent amounts that will be payable to You;
- (e) the Start Date and Completion Date;
- (f) the Key Personnel, if any, required to provide the Services;
- (g) any applicable Milestone(s) and Milestone Date(s) relevant to the performance of the Services;
- (h) any invoicing and/or notice requirements that are required in addition to, or instead of, the invoicing and/or notice requirements set out in Schedule 1; and
- (i) whether liquidated damages, under clause 8.3 are to apply to failures to provide Services or Deliverables by the required dates.

### 3.6 When a Statement of Work Contract is formed

A Statement of Work Contract is formed, and the Statement of Work will become binding on You and VicHealth, upon receipt of the Statement of Work by You.

Unless and until a Statement of Work Contract is formed:

- (a) a Quote will not be binding on You or VicHealth;
- (b) You must not start performing or charge VicHealth for any Services; and
- (c) VicHealth has no liability to pay for any Services.
- (d) You must promptly in writing confirm to VicHealth Your receipt of a Statement of Work and the formation of the Statement of Work Contract.

### 3.7 Terms incorporated into a Statement of Work Contract

A Statement of Work Contract incorporates all of the terms of this Agreement (other than clauses 2, 3.1, 3.2, 3.3, 3.4, 3.5, 28.1 and 28.2 (and any corresponding Items in the Schedules)), with such necessary changes as should be made to reflect the formation of the relevant Statement of Work Contract under this Agreement.

### 3.8 Inconsistency

Where there is any inconsistency between the provisions of this Agreement and any Statement of Work Contract, the provisions of this Agreement will prevail to the extent of that inconsistency.

### 3.9 Costs of preparing Requests for Quotes, Quotes and Statement of Works

You are not entitled to charge VicHealth for the development of a Quote or a draft Statement of Work. Each party is responsible for its own costs relating to the development, negotiation and finalisation of each Statement of Work Contract.

## PROVIDING THE SERVICES

### 4 PERFORMANCE OF SERVICES

#### 4.1 When Services start and end under a Statement of Work Contract

- (a) You must start providing Services under a Statement of Work Contract on the Start Date.

### 1.3 Headings do not affect the interpretation of this Agreement.

## REQUESTING THE SERVICES

### 2 STANDING OFFER TO PROVIDE THE SERVICES

You make a standing offer to provide the Services to VicHealth until this Agreement expires or is validly terminated.

### 3 ORDERING SERVICES

#### 3.1 VicHealth may issue a Request for Quote

At any time during the Term, VicHealth may:

- (a) issue a Request for Quote to You; or
- (b) through Your Representative, verbally request that You provide a Quote.

#### 3.2 Requests for Quote

A Request for Quote issued by VicHealth:

- (a) may specify the date by which a Quote is required to be delivered to VicHealth;
- (b) may specify whether a Quote is to be provided in a form other than a draft Statement of Work;
- (c) must specify the information required to be included in a Statement of Work (except for that information which VicHealth is unable to provide or calculate);
- (d) must specify the type of Quote required by VicHealth (namely a fixed price Quote, a time and materials Quote or a combination of both); and
- (e) must specify any other information relevant to the Services to be provided or that VicHealth requires You to include in Your Quote.

#### 3.3 Provision of Quotes

Within two Business Days of receipt of a Request for Quote (or a verbal request for a Quote), or the later period specified in the Request for Quote (or verbally requested), You must provide to VicHealth a Quote. The Quote must be in the form of a draft Statement of Work (in the form set out in Annexure A), or in the form otherwise requested by VicHealth, and must include:

- (a) the information specified in the Request for Quote (including confirmation of the proposed dates and Milestones);
- (b) a quote for the provision of the requested Services that:
  - (i) is calculated on the basis requested by VicHealth in Your Request for Quote;

- (b) You must:
  - (i) complete the Services required under a Statement of Work Contract by the Completion Date; and
  - (ii) meet each Milestone by Your Milestone Date.
- (c) You must provide the Services required under a Statement of Work Contract until the earliest to occur of:
  - (i) the date that You complete those Services (whether or not this occurs on, before, or after the applicable Completion Date); and
  - (ii) the date that the Statement of Work Contract is terminated.

#### 4.2 Your Service performance obligations

- (a) You must provide the Services:
  - (i) to the reasonable satisfaction of VicHealth and in a proper, timely and efficient manner using that standard of care, skill, diligence, prudence and foresight that would reasonably be expected from a prudent, expert and experienced provider of services that are similar to the Services;
  - (ii) in accordance with any reasonable directions given by VicHealth; and
  - (iii) in accordance with the Service Level Requirements.
- (b) You must:
  - (i) act in good faith and in the best interests of VicHealth;
  - (ii) comply with all statements and representations as to Your performance of the Services set out in the Offer and any applicable Quote;
  - (iii) without limiting Your obligations under clause 8.1, keep VicHealth informed of all matters of which it ought reasonably be made aware and provide such information in relation to the provision of the Services as may reasonably be required by VicHealth; and
  - (iv) use appropriately skilled and qualified Personnel to provide the Services.

#### 4.3 Acceptance

- (a) After performance of the Services or delivery of any Deliverable provided as part of the Services, VicHealth may undertake such reviews as it considers necessary to determine whether the Services or Deliverable(s) are fit for purpose and comply with this Agreement (including the Service Level Requirements). After reviewing the Services or Deliverable(s), VicHealth may notify You in writing:
  - (i) of its acceptance of the Services or Deliverable(s) if it is satisfied that the Services or Deliverable(s) are fit for purpose and comply with this Agreement; or
  - (ii) if the Services or Deliverable(s) are not fit for purpose or do not comply with this Agreement, in which case clause 4.3(b) will apply.
- (b) If VicHealth notifies You that the Services or Deliverable(s) are not fit for purpose or do not comply with this Agreement You must promptly rectify the non-compliance in the Service or Deliverable(s), following which VicHealth will undertake further review of the Services or Deliverable(s) in accordance with clause 4.3(a). This process will continue until, at VicHealth's discretion, VicHealth:
  - (i) waives, in writing, the requirement for the Services or Deliverable(s) to comply with this Agreement;
  - (ii) is satisfied that the Services or Deliverable(s) comply with this Agreement and accepts the Services or Deliverable(s) in accordance with clause 4.3(a)(i);
  - (iii) conditionally accepts the Services or Deliverable(s), subject to You agreeing to rectify the non-compliance within a reasonable timeframe and on such terms as VicHealth specifies; or
  - (iv) subject to VicHealth having provided You with at least two opportunities to rectify the non-compliance pursuant to clause 4.3(a)(ii), immediately terminate this Agreement and/or the relevant Statement of Work Contract by written notice to You. If VicHealth terminates this Agreement and/or the relevant Statement of Work Contract under this clause 4.3(b)(iv), VicHealth will be

entitled to a full refund of all moneys paid to You in respect of the Services or Deliverable(s) which VicHealth is unable to use following termination.

- (c) If VicHealth fails to notify You of Your acceptance or rejection of the Services or Deliverable(s) pursuant to clause 4.3(a)(i) or 4.3(a)(ii) within a reasonable period following performance of the Services or delivery of any Deliverable, You may notify VicHealth in writing of this fact, following which VicHealth must promptly respond to You in accordance with clause 4.3(a)(i) or 4.3(a)(ii), as the case may be.
- (d) No act or omission on the part of VicHealth in connection with this clause 4.3 constitutes deemed acceptance of a Service or Deliverable.

#### 4.4 You must provide equipment

You must, at Your own cost, provide any and all equipment (including computer hardware and software) necessary for the performance of the Services.

#### 4.5 Variations

- (a) Either party may, at any time, give written notice to the other party proposing a variation to the scope of the Services or the Service Level Requirements. Within five Business Days of giving or receiving such notice, You must provide a written proposal (**Proposal**) setting out:
  - (i) the Rates and/or Fees that would apply with respect to the provision of the varied Services or Service Level Requirements (based on the value for money proposition reflected in the then current Price Schedule). Any increase to the Rates and/or Fees proposed by You must represent the increase in the cost to You of providing the varied Services or complying with the varied Service Level Requirements (as applicable);
  - (ii) whether or not it is intended that the variation applies to current Statement of Work Contracts, if any; and
  - (iii) any other impacts that the change will have on Your ability to perform Your obligations under this Agreement.
- (b) VicHealth may accept a Proposal by notifying You in writing. In the absence of such acceptance, the Services must be performed in accordance with this Agreement without any variation. Unless VicHealth specifies in its notice to You, the variations contained in the Proposal will apply only to Statement of Work Contracts formed following notification to You of VicHealth's acceptance of that Proposal.

#### 4.6 Co-operation with third parties

Where VicHealth engages a third party to provide goods or services which are related to or otherwise necessary for VicHealth to accept the Services, You agree to provide all reasonable assistance and co-operation as required by that third party to ensure VicHealth receives the third party's goods or services, and the Services, in a seamless and efficient manner.

### 5 ACCESS AND SAFETY

#### 5.1 Access to premises

If You require access to the premises of VicHealth in connection with the provision of the Services, VicHealth will, subject to its usual security requirements, permit You reasonable access to the premises at such times as may be reasonably necessary to enable You to provide the Services.

#### 5.2 Obligations

When You enter the premises of VicHealth, You must (and must ensure that Your Personnel will):

- (a) protect people and property;
- (b) prevent nuisance and unnecessary noise and disturbance;
- (c) act in a safe and lawful manner and comply with the safety standards and policies of VicHealth (as notified to You);
- (d) comply with any lawful directions of VicHealth or its Personnel; and
- (e) comply with the *Occupational Health and Safety Act 2004* (Vic) and any applicable regulations made under that Act.

#### 5.3 Safety of children

- (a) You must comply, and ensure that all Your Personnel (including approved sub-contactors) comply, with the *Child Wellbeing and Safety Act 2005* (Vic) and the *Worker Screening Act 2020* (Vic).

- (b) You must ensure that prior to any of Your Personnel (including approved sub-contractors) commence any part of the Services which involves direct and unsupervised work with children:
  - (i) each relevant individual passes a Working With Children Check (**WWCC**); and
  - (ii) You are in possession of a copy of each relevant individual's assessment notice (including assessment notices for individuals engaged by approved sub-contractors); and
  - (iii) if You receive a negative notice regarding the WWCC for an individual engaged for the Services, You must immediately and permanently remove that person from any role that usually involves direct and unsupervised contact with a child.
- (c) You must retain copies of all WWCC assessment notices You receive.
- (d) If Your Personnel (including approved sub-contractors) will have direct and unsupervised contact with children, You must implement Child Safe Standards in accordance with *Child Wellbeing and Safety Act 2005 (Vic)* so that:
  - (i) the safety of all relevant children is promoted;
  - (ii) child abuse (as defined in the *Child Wellbeing and Safety Act 2005 (Vic)*) is prevented; and
  - (iii) allegations of child abuse are properly responded to.
- (e) You must allow VicHealth (or its nominee) to carry out audits of Your compliance with this clause and provide VicHealth with access to or copies of Your WWCC records and any other information VicHealth may reasonably require.
- (f) If You are in breach of this clause, You immediately on becoming aware of the breach:
  - (i) notify VicHealth in writing; and
  - (ii) take steps to rectify the breach.

## 6 YOUR PERSONNEL

- (a) If Key Personnel are required to perform the Services, as indicated by Item 4 of Schedule 1, then the Services must be performed by the persons specified in Item 4 of Schedule 1 (**Key Personnel**) and referenced in the relevant Statement of Work Contract. You may not remove or replace any Key Personnel without VicHealth's written consent, which will not be unreasonably withheld.
- (b) If any of the Key Personnel are unable to provide the Services, You must promptly notify VicHealth of that fact and provide details of alternate, suitably qualified and experienced Personnel to replace such Key Personnel (**Replacement Staff**).
- (c) VicHealth must notify You in writing within two Business Days as to whether or not it accepts the Replacement Staff proposed by You pursuant to clause 6(b). You acknowledge and agree that VicHealth will be under no obligation to accept any Replacement Staff proposed by You if VicHealth is not satisfied as to the qualifications and experience of such person.
- (d) VicHealth may request that You withdraw any of Your Personnel (including any Key Personnel) from providing any part of the Services. If VicHealth makes a request under this clause 6(d), You must:
  - (i) promptly arrange for that person to cease being involved in providing the Services;
  - (ii) ensure that the person does not return to VicHealth's premises except with VicHealth's prior written consent, which may be withheld in its absolute discretion; and
  - (iii) replace that person with another person of suitable ability and qualifications, at no additional charge within the time period specified by VicHealth, which must be reasonable in the circumstances.

## 7 SPECIFICATIONS

### 7.1 The Specifications

The Services must comply in all respects with the Specifications.

### 7.2 Variation of Specifications

- (a) VicHealth may, at any time, give written notice to You proposing a variation to the Specifications (including any resulting extension of the Completion Date or a Milestone Date).

- (b) You must, if it reasonably considers that a proposed variation will result in an increase in the Rates and/or Fees for providing the Services, or affect any Completion Date and/or Milestone Date(s) under any current Statement of Work Contracts, within five Business Days of receiving a notice under clause 7.2(a), provide to VicHealth a written proposal for a variation to the Price Schedule (based on the value for money proposition reflected in the current Price Schedule), and if applicable, the Completion Date and/or Milestone Date(s).
- (c) VicHealth may, by giving written notice to You, accept such proposal in full or with conditions, or reject the proposal, within five Business Days of its receipt from You. If VicHealth rejects the proposal, the parties may negotiate to finalise any aspects of Your proposal. In the absence of acceptance by VicHealth of a proposal, the Services must be provided in accordance with this Agreement without such variation.

## 8 DELAYS AND FAILURE TO PERFORM

### 8.1 Duty to warn of delays and failures to perform

- (a) If You are aware of any actual or possible delay in the provision of the Services or delivery of a Deliverable, including any failure to complete the Services by the Completion Date or a Milestone by the relevant Milestone Date, You:
  - (i) must advise VicHealth by written notice immediately upon becoming aware of such delay or possible delay; and
  - (ii) may include in the notice a request for an extension of time.
- (b) A notice given under clause 8.1(a) must set out:
  - (i) the circumstances giving rise to the actual or possible delay, including the cause of the delay;
  - (ii) the likely length of the actual or possible delay; and
  - (iii) the steps You intend to take to prevent the delay from occurring or minimise the delay.
- (c) On request from VicHealth, You must promptly provide any additional information VicHealth requires about a notice given under clause 8.1(a).
- (d) VicHealth may, in its absolute discretion and by written notice to You, extend any Milestone Date or Completion Date.

### 8.2 Effect of failures to perform

- (a) If You fail to perform any of the Services or deliver any Deliverables in accordance with this Agreement, VicHealth:
  - (i) will not be required to pay for those Services or Deliverables until they are provided in accordance with the requirements set out in this Agreement; and
  - (ii) may issue a notice to You requiring You to remedy any default in a Deliverable or re-perform the Services within the time specified by VicHealth (which time must be reasonable having regard to the nature of the relevant Services or Deliverables).
- (b) If:
  - (i) the default referred to in clause 8.2(a) is remedied; or
  - (ii) the relevant Services are re-performed to the standard required by this Agreement, including the applicable Service Level Requirements, and otherwise to the reasonable satisfaction of VicHealth,
- (c) If:
  - (i) the default referred to in clause 8.2(a) is not capable of being remedied or the Services are not capable of being re-performed; or
  - (ii) You fail within the time specified to remedy the default or re-perform the Services within the time specified in the notice issued under clause 8.2(a),

VicHealth will pay the applicable Rates and/or Fees for the remedied Deliverable or re-performed Services (which the parties acknowledge may be less than the cost to You of remedying the default in the Deliverable or re-performing the Services).

VicHealth may either have the Services or Deliverables remedied or re-performed by a third party or do so itself. In either case, You must pay the reasonable costs incurred by VicHealth in doing so.



- (d) If VicHealth exercises its rights under clause 8.2(c), VicHealth will issue You with an invoice for all reasonable costs incurred in remedying the default or re-performing the Services. You must pay this invoice within 10 Business Days of receiving it.
- (e) Nothing in this clause 8.2 derogates or otherwise limits any other remedy available to VicHealth at Law.

### 8.3 Liquidated damages payable for failing to meet required dates

- (a) If liquidated damages apply to Statement of Work Contracts formed under this Agreement, as indicated by Item 3 of Schedule 1, and You fail to provide the relevant Services or Deliverables, or VicHealth does not accept the relevant Services or Deliverables, by the dates specified in Item 3 of Schedule 1 or the relevant Statement of Work Contract, VicHealth may recover from You (or deduct from money owed to You) liquidated damages.
- (b) Liquidated damages will be payable at the rate specified in Item 3 of Schedule 1 or the relevant Statement of Work Contract for each day that You do not provide the Services or VicHealth does not accept the Deliverables after the relevant date for performance. You will not be required to pay liquidated damages to the extent that a delay is caused by VicHealth.
- (c) The parties agree that any such liquidated damages constitute a genuine and reasonable pre-estimate of the loss that would be incurred by VicHealth arising from such failure by You, and are not VicHealth's sole remedy in relation to the circumstances giving rise to the liquidated damages.

## PRICING AND PAYMENTS

### 9 PRICE FOR THE SERVICES

- (a) The Price Schedule according to which You will charge VicHealth for the Services is set out in Schedule 2. Subject to any change in the Rates and/or Fees agreed under clause 4.5 or 9(d), the Rates and/or Fees are fixed for the Term and are inclusive of all taxes (excluding GST).
- (b) If Schedule 2 permits You to recover expenses and/or disbursements in relation to the Services, You must notify VicHealth in writing of any such expenses and/or disbursements it may incur, excluding any discounts, rebates or refunds paid or payable to You, before the expense or disbursement, as the case may be, is incurred.
- (c) After receiving notification of any expenses in accordance with clause 9(b), VicHealth will either:
  - (i) approve the expense and/or disbursement; or
  - (ii) decline the expense and/or disbursement, in which case VicHealth will not be liable if You incur that expense and/or disbursement.
- (d) Where a price review mechanism is set out in Item 5 of Schedule 1:
  - (i) the parties will adopt that price review mechanism in accordance with the requirements in Item 5 of Schedule 1; and
  - (ii) any revised Rates and/or Fees resulting from the operation of the price review mechanism in Item 5 of Schedule 1 will take effect from the review dates set out in Item 5 of Schedule 1.

### 10 GST AND OTHER TAXES

#### 10.1 Definitions

Terms used in this clause 10 have the same meanings given to them in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (GST Act).

#### 10.2 Consideration is exclusive of GST

Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under or in accordance with this Agreement are exclusive of GST.

#### 10.3 GST Gross Up

If GST is imposed on any supply made under or in accordance with this Agreement, the recipient of the taxable supply must pay to the party making the taxable supply an amount equal to the GST payable on or for the taxable supply. Subject to the recipient first receiving a valid Tax Invoice, payment of the GST amount will be made at the same time the consideration for the taxable supply is to be paid or provided in accordance with this Agreement.

### 10.4 Reimbursement

If this Agreement requires a party to pay for, reimburse or contribute to any expense, loss or outgoing (**Reimbursable Expense**) suffered or incurred by another party, the amount required to be paid, reimbursed or contributed by the first party will be the amount of the Reimbursable Expense net of input tax credits (if any) to which the other party is entitled in respect of the Reimbursable Expense plus any GST payable by the other party.

### 10.5 Adjustment Event

If an adjustment arises in relation to a taxable supply made under this Agreement, You must recalculate the amount payable on account of GST under clause 10.3 to take account of the adjustment event. You must issue an adjustment note to VicHealth within 28 days of becoming aware of the adjustment event. A corresponding payment to reflect the adjustment must be made by You to VicHealth, or by VicHealth to You, as the case may be.

### 10.6 CPI Reviews

You agree that, if:

- (a) the parties agree to review the Rates and/or the Fees pursuant to clause 9(d) by reference to a specific index or indices (**Index**); and
- (b) such Index is increased as a result of any change to either (or both) the GST rate or the GST base,
- (c) the impact of that GST related increase on the Index will be excluded for the purposes of calculating any consideration or other adjustments under this Agreement. If requested by VicHealth, the parties must use their best endeavours to agree either a replacement Index, or an adjustment to the published Index, for the purposes of excluding the impact of the GST related increase on the Index. If the parties cannot agree within 10 Business Days on either a replacement Index, or an adjustment to the published Index, the Dispute will be resolved in accordance with clause 18.

### 10.7 Other taxes

Subject to the other provisions of this Agreement, the Rates and/or Fees include all taxes (other than GST), duties (including stamp duty), charges, fees and other imposts of whatever kind (including any fine or penalty imposed in connection with them) that may be levied, assessed, charged or collected in connection with this Agreement.

### 11 STAFF COSTS

- (a) You will indemnify and keep indemnified VicHealth from and against all liability for the Staff Costs in any way relating to the Services.
- (b) If VicHealth is or becomes liable to pay any Staff Costs, VicHealth may deduct the amount of its liability for the Staff Costs from any amount due by VicHealth to You, whether under this Agreement or otherwise.

### 12 INVOICING AND PAYMENT

#### 12.1 Invoicing

- (a) VicHealth will issue You a recipient created tax invoice (or invoices) relating to the Services. You are not required to issue VicHealth with any invoices under this Standing Offer unless expressly stated otherwise. You are required to provide Your ABN and state whether You are registered for GST.
- (b) Unless otherwise agreed by Us in writing, Services will be paid by electronic transfer. We will arrange payment of the Services to Your nominated bank account and will issue You a remittance advice for Your records.

#### 12.2 Payment of invoices

- (a) Subject to the remainder of this clause 12.2, VicHealth will pay each undisputed invoice which meets the requirements in clause 12.1 to You, less any amount required by Law, within 30 days of receipt of the invoice.
- (b) An invoice will not be paid until such time as the invoice is certified for payment by VicHealth's Representative. An invoice will not be certified for payment unless VicHealth's Representative is satisfied that it is correctly calculated with respect to the Services that are the subject of the relevant invoice.
- (c) If VicHealth's Representative disputes the invoiced amount (whether in whole or in part) for any reason, VicHealth must pay the undisputed amount of such invoice (if any), and notify You of the amount VicHealth believes is due for payment. If You and

VicHealth are unable to agree on the balance of the invoiced amount, the dispute will be referred for determination in accordance with clause 18. If requested, You will withdraw the disputed Tax Invoice and issue a replacement Tax Invoice for the undisputed amount.

- (d) Payment of an invoice is not to be taken as:
- (i) evidence or an admission that the Services have been provided in accordance with the Specifications, Service Level Requirements or otherwise in accordance with this Agreement;
  - (ii) evidence of the value of the Services supplied;
  - (iii) an admission that the Services were satisfactorily supplied;
  - (iv) an admission of liability; or
  - (v) acceptance or approval of Your performance,
- but must be taken only as payment on account.

## GOVERNANCE AND RELATIONSHIP MANAGEMENT

### 13 CONTRACT MANAGEMENT

#### 13.1 Parties' Representatives

- (a) For the purposes of ensuring a productive and efficient relationship between You and VicHealth under this Agreement, You and VicHealth each agree to nominate the relevant person(s) specified in Item 8 of Schedule 1 as its Representative in relation to all queries, consents, approvals, complaints and disputes required or arising under or in connection with this Agreement.
- (b) You will have regard to all requirements of VicHealth's Representative and will comply with all reasonable directions of VicHealth's Representative.
- (c) Either party may nominate a replacement Representative by providing the other party with written notice. The appointment of the replacement Representative will be effective from the date on which such notice is given.

#### 13.2 Workplan

If required by Item 5 of Schedule 2, You must prepare a workplan identifying the key tasks and obligations under this Agreement, and the party or person responsible for completing or otherwise performing the relevant task or obligation (**Workplan**).

#### 13.3 'Value adding' initiatives

- (a) You agree that You will, to the extent that it is commercially feasible to do so, identify new measures or initiatives during the Term to continuously improve the provision of Services under this Agreement, including through the:
  - (i) identification of efficiencies in the provision of Services;
  - (ii) implementation of any applicable technological improvements; and
  - (iii) utilisation of any applicable industry-wide productivity gains,
  - (iv) with a view to achieving improvements in value for both parties.
- (b) Any value adding measures or initiatives identified by You will be discussed with VicHealth and, if accepted by VicHealth, implemented by the parties as soon as practicable. If the implementation of a value adding measure or initiative in accordance with clause 13.3 results in a change to the Services or the Service Level Requirements, the parties will follow the process in clause 4.5.

#### 13.4 Service Level Requirements

- (a) You must meet or exceed the Service Level Requirements when performing the Services.
- (b) Your performance against the Service Level Requirements must be tracked, monitored and reported on by You to VicHealth in accordance with Schedule 3.
- (c) Where You fail to meet any of the Service Level Requirements, You must, at no additional cost to VicHealth, promptly:
  - (i) notify VicHealth of the failure in writing; and
  - (ii) arrange all additional resources reasonably necessary to perform the Services in accordance with the Service Level Requirements as soon as reasonably practicable.
- (d) Without limiting clause 13.4(c), if there is any failure by You to meet a Service Level Requirement, Service Credits will be payable

by You if specified in Schedule 3. If applicable, the parties agree that the Service Credits are a genuine pre-estimate of the loss likely to be suffered by VicHealth as a result of Your actions, including the diminution in value of the Services resulting from the failure and do not constitute a penalty.

#### 13.5 Progress report

You must provide to VicHealth's Representative:

- (a) a progress report in respect of Your performance under this Agreement or each Statement of Work Contract, such report to be provided at the times, in the format and containing the matters specified in Item 9 of Schedule 1 and
- (b) all other data or information that VicHealth's Representative may request to enable it to adequately assess Your performance.

#### 13.6 Contract management review

The parties' Representatives must meet at the time and in the manner specified in Item 10 of Schedule 1 to discuss contract management issues and to review Your performance under this Agreement and the Statement of Work Contracts, including:

- (a) a review of Your compliance with the Service Level Requirements; and
- (b) an examination of the value adding measures or initiatives proposed or implemented by the parties pursuant to clause 13.3.

### 14 SUB-CONTRACTING

- (a) You must not sub-contract to any person any of Your obligations under this Agreement or a Statement of Work Contract without the prior written consent of VicHealth, which consent may be given (conditionally or unconditionally) or withheld by VicHealth in its absolute discretion.
- (b) If requested by VicHealth, You must provide reasonable details of the following when requesting VicHealth's approval for a proposed sub-contractor under clause 14(a):
  - (i) the purposes for which the proposed sub-contractor will be employed, including the scope of any services to be provided by the proposed sub-contractor;
  - (ii) the proposed sub-contractor's capabilities in performing services of a similar nature;
  - (iii) the proposed sub-contractor's financial standing;
  - (iv) evidence that each employee of the proposed sub-contractor has successfully passed a WWCC (if that employee will have direct and unsupervised contact with children); and
  - (v) a copy of the proposed sub-contract (provided that commercially sensitive payment or security terms, and pricing information, may be omitted).
- (c) You must ensure that any sub-contractor engaged by You complies with all obligations imposed on You by this Agreement.
- (d) You will not, as a result of any sub-contracting arrangement, be relieved from the performance of any obligation under this Agreement and will be liable for all acts and omissions of a sub-contractor as though they were Your actions.
- (e) No sub-contractor engaged by You will itself be entitled to sub-contract or assign Your obligations.

### 15 COMPLIANCE WITH LAW AND POLICY

#### 15.1 General Law and Policy

You must, in performing Your obligations under this Agreement and any Statement of Work Contract, comply with:

- (a) all Laws affecting or applicable to the provision of Services by You under this Agreement, including any Laws specified in Item 1 of Schedule 1; and
- (b) both VicHealth and the State's policies and procedures as notified to You in writing from time to time.

#### 15.2 Harmful Industries Relationship funding and Procurement Policy

You acknowledge and agree that:

- (a) You have read VicHealth's Harmful Industries Relationship Funding and Procurement Policy which may be found at <https://www.vichealth.vic.gov.au/search/vichealth-harmful-industry-relationship-funding-and-procurement-policy>;
- (b) Your Offer contains an accurate harmful industry relationship declaration form.

### 15.3 Victorian Public Sector Commission Code of Conduct

Where, in the course of providing the Services, You, or Your Personnel:

- (a) supervise or work with Public Sector Employees;
- (b) undertake work that is of a similar nature to the work undertaken by Public Sector Employees at premises or a location generally regarded as a public sector workplace; or
- (c) use or have access to public sector resources or information that are not normally accessible or available to the public,

You must (and must ensure that Your Personnel) comply with the VPSC Code of Conduct.

### 15.4 Supplier Code of Conduct

You acknowledge that:

- (a) the Supplier Code of Conduct is an important part of the State's approach to procurement and describes the State's minimum expectations regarding the conduct of its suppliers;
- (b) You have read the Supplier Code of Conduct; and
- (c) the expectations set out in the Code are not intended to reduce, alter or supersede any other obligations which may be imposed on You, whether under this Agreement or at Law.

### 15.5 Employment policy

- (a) You and any Personnel engaged in the provision of the Services must not:
  - (i) engage in unethical work practices; or
  - (ii) engage employees or sub-contracted workers upon terms and conditions which do not meet industry standards generally applicable in Victoria.
- (b) Where a federal industrial award may apply to the capacity in which an employee is engaged by You, or by a sub-contractor, in the provision of the Services, You must:
  - (i) where applicable, comply with the better off overall test under section 193 of the *Fair Work Act 2009* (Cth) in relation to any enterprise agreement You are bound by; or
  - (ii) otherwise ensure that the conditions on which that employee is engaged are no less beneficial to the employee than the rates and conditions under that award.

### 15.6 No unlawful inducements

- (a) You will not, and will ensure that Your Personnel will not, directly or indirectly, offer, promise, agree to pay, give, accept, or solicit anything of value (including to or from any third party) in order to secure any reward or improper benefit other than payment for the performance of their obligations under this Agreement.
- (b) VicHealth may terminate this Agreement immediately on notice to You if You or any of Your Personnel is found to have engaged in any conduct under clause 15.6(a) and recover the amount of any loss resulting from such termination as a debt due from You.

## 16 CONFLICT OF INTEREST

- (a) You warrant to VicHealth that You do not, and will ensure that Your Personnel do not, hold any office or possess any property, are not engaged in any business, trade or calling and do not have any obligations by virtue of any contract whereby, directly or indirectly, duties or interests are or might be created in conflict with, or might appear to be created in conflict with, their duties and interests under this Agreement.
- (b) You must promptly inform VicHealth of any matter which may give rise to an actual or potential conflict of interest and comply with any reasonable directions given by VicHealth in terms of dealing with that conflict.
- (c) You acknowledge and agree that failure to comply with this clause 16 will constitute a breach of a fundamental term of this Agreement.

## 17 CHANGE IN CONTROL

- (a) You must notify VicHealth in writing of any change in Control of You (or of Your ultimate holding company) within five Business Days after that change occurs (**Change in Control Notice**).
- (b) VicHealth may, upon receiving a Change in Control Notice, in its absolute discretion, terminate this Agreement and any Statement of Work contracts on written notice to You.
- (c) Termination under clause 17(b) will take effect from VicHealth's nominated date, provided the nominated date is no later than 12 months after VicHealth received the Change in Control Notice.

## 18 DISPUTES

### 18.1 Parties to meet

- (a) If any dispute arises under or in connection with this Agreement or a Statement of Work Contract (**Dispute**), either party may at any time give written notice to the other (**Dispute Notice**) requesting that a meeting take place to seek to resolve the Dispute.
- (b) The parties' Representatives must, within five Business Days of the date of service of a Dispute Notice, meet to discuss the Dispute in good faith with a view to resolving the Dispute.
- (c) If the Dispute has not been resolved within:
  - (i) 10 Business Days from the date of service of a Dispute Notice or such later date as the parties may agree, it will escalate to the nominated senior executive officer (or equivalent) of each of VicHealth and You, who will promptly meet and discuss the Dispute in good faith with a view to resolving the Dispute; and
  - (ii) 15 Business Days of the date of service of a Dispute Notice or such later date as the parties may agree, the Dispute is referred to mediation (**Mediation**) in accordance with clause 18.2.

### 18.2 Mediation

- (a) Subject to clause 18.2(b), the Mediation will be conducted by the Australian Disputes Centre (**ADC**) in accordance with the ADC mediation guidelines (**Guidelines**). The Guidelines set out the procedures to be adopted, the process of selection of the mediator, and the costs involved. The terms of those Guidelines (as amended from time to time) are incorporated into this Agreement.
- (b) The mediator will be selected by mutual agreement. If the parties have not reached agreement on a mediator within three Business Days of the date that the Dispute was referred to Mediation (or such other time frame agreed between the parties), the mediator will be selected in the manner specified in the Guidelines.
- (c) Each party must bear its own costs in relation to the Mediation and the costs of the mediator will be shared equally by the parties.
- (d) Any breach of the Guidelines will constitute a breach of this Agreement.

### 18.3 Arbitration or litigation

- (a) If the parties fail to settle the Dispute at the Mediation in accordance with clause 18.2, the parties may agree to submit the Dispute for determination at arbitration under the Rules of Arbitration of the Institute of Arbitrators and Mediators Australia by one or more arbitrators appointed in accordance with those rules. The parties acknowledge that any determination made at arbitration will be final and binding.
- (b) If the parties do not agree to refer the Dispute to arbitration in accordance with clause 18.3(a), either party may submit the Dispute for resolution to the exclusive jurisdiction of the Courts of Victoria, Australia.

### 18.4 Performance during Dispute resolution

The parties to a Dispute will continue to perform their respective obligations under this Agreement and the relevant Statement of Work Contract pending the resolution of the Dispute under this clause 18.

### 18.5 Interlocutory relief

Nothing in this clause 18 restricts or limits the right of either party to obtain urgent interlocutory or injunctive relief, or to immediately terminate this Agreement where this Agreement provides such a right.

## 19 NOTICES

### 19.1 Giving a communication

A notice, demand, certification, process or other communication relating to this Agreement (or a Statement of Work Contract) must be in writing in the English language, and may be sent by pre-paid post, pre-paid courier, document exchange or (only if an email address is included in Item 19 of Schedule 1 or as specified in a Statement of Work Contract) by email as follows:

- (a) to VicHealth: to the relevant address which is set out in Item 19 of Schedule 1 (or as specified in the Statement of Work Contract); and
- (b) to You: to the relevant address which is set out in Item 19 of Schedule 1 (or as specified in the Statement of Work Contract).

## 19.2 Time of delivery

A notice or document will be taken to be delivered or served as follows:

- (a) in the case of delivery in person or by courier, when delivered;
- (b) in the case of delivery by post within Australia, seven Business Days after the date of posting or, if sent via a next day delivery service, on the next Business Day following the date of posting;
- (c) in the case of delivery by post to or from an address outside Australia, ten Business Days after the date of posting; and
- (d) in the case of email, when the message is correctly addressed to and successfully transmitted to that party's email address, and acknowledgment of receipt is recorded on the sender's computer.

## 19.3 After hours communications

If any notice or document is delivered or deemed to be delivered:

- (a) after 5.00pm in the place of receipt; or
- (b) on a day which is a Saturday, Sunday or public holiday in the place of receipt,

it is taken as having been delivered at 9.00am on the next day which is not a Saturday, Sunday or public holiday in that place.

## INFORMATION AND INTELLECTUAL PROPERTY

### 20 ACCESS TO RECORDS

#### 20.1 You must retain records

You must, during the Term and for a period of seven years after the performance of the Services, keep true and particular accounts and records of all Services provided under this Agreement (and any Statement of Work Contract) and all associated records, including all supporting materials used to generate and substantiate Tax Invoices submitted in respect of the Services supplied under this Agreement.

#### 20.2 Right to access and audit

- (a) VicHealth or its authorised representatives may, during ordinary business hours, inspect and/or audit the accounts and records of You relating to Your compliance with Your obligations under this Agreement, including calculation of the Rates and/or Fees. VicHealth or its authorised representatives will be entitled to take copies of or extracts from any such records.
- (b) You must participate promptly and cooperatively in any audits conducted by VicHealth or its authorised representative.
- (c) Except in those circumstances in which VicHealth determines that notice is not practicable or appropriate, VicHealth must give You reasonable notice of an audit and, where reasonably practicable, an indication of which documents or class of documents the auditor may require access to.
- (d) If the outcome of an audit does not require any corrective action, each party must bear its own costs associated with any audits. If the audit identifies any error, non-compliance or inaccuracy requiring remedial action (other than a trivial or insignificant error, non-compliance or inaccuracy), VicHealth's costs in respect of the audit will, if notified by VicHealth to You, be payable by You as a debt due to VicHealth.
- (e) You must promptly take corrective action in order to rectify any error, non-compliance or inaccuracy identified in any audit relating to the way You have, under this Agreement:
  - (i) provided any Service or Deliverable; or
  - (ii) calculated any Rates and/Fees or any other amounts or fees billed to VicHealth.

### 21 INTELLECTUAL PROPERTY RIGHTS

#### 21.1 Contract Materials

- (a) Unless specified otherwise in Item 11 of Schedule 1, ownership of the Contract Materials will vest in You.
- (b) If Item 11 of Schedule 1 specifies that ownership of the Contract Materials vests in VicHealth, You hereby assign and agree to assign to VicHealth all right, title and interest (including all Intellectual Property Rights) in the Contract Materials. To avoid doubt, nothing in this clause 21.1(b) requires You to assign Your Intellectual Property Rights in Your Pre-Existing Intellectual Property.
- (c) Where clause 21.1(b) applies, You warrant that You will be entitled to own and assign to VicHealth any and all Contract Materials in accordance with clause 21.1(b).

#### 21.2 Ownership of Pre-Existing Intellectual Property

- (a) VicHealth's and, unless specified otherwise in Item 1 of Schedule 1, Your Pre-Existing Intellectual Property will remain vested in each of them (or the relevant third parties).
- (b) If Item 1 of Schedule 1 specifies that ownership of Your Pre-Existing Intellectual Property vests in VicHealth, You hereby assign and agree to assign to VicHealth all right, title and interest (including all Intellectual Property Rights) in Your Pre-Existing Intellectual Property incorporated in or otherwise required to use the Contract Materials or any Deliverables.
- (c) Where clause 21.2(b) applies, You warrant that You will be entitled to assign to VicHealth any and all Pre-Existing Intellectual Property incorporated in or otherwise required to use the Contract Materials or any Deliverables.

#### 21.3 Licence of Pre-Existing Intellectual Property by You

- (a) Subject to clause 21.3(c), You hereby irrevocably and unconditionally grant to VicHealth, free of additional charge, a non-exclusive, royalty-free, worldwide, transferable, licence (including the right to sub-licence) to exercise all Intellectual Property Rights in:
  - (i) the Contract Materials, where ownership of the Contract Materials remains with You under clause 21.1(a); and
  - (ii) any of Your Pre-Existing Intellectual Property incorporated in or otherwise required to use the Contract Materials, any Deliverables, or to obtain the benefit of the Services, where ownership of Your Pre-Existing Intellectual Property remains with You.
- (b) Unless specified otherwise in Item 1 of Schedule 1, the licence granted in this clause 21.3 is perpetual.
- (c) The licence granted to VicHealth in clause 21.3(a) is subject to any additional licence terms specified in Item 1 of Schedule 1.

#### 21.4 Licence of Pre-Existing Intellectual Property and Contract Materials by VicHealth

VicHealth grants You a non-exclusive, non-transferable, royalty-free licence to use:

- (a) VicHealth's Pre-Existing Intellectual Property;
- (b) where ownership of the Contract Materials vests in VicHealth, the Contract Materials; and
- (c) where ownership of Your Pre-Existing Intellectual Property vests in VicHealth, Your Pre-Existing Intellectual Property,

for the sole purpose of performing, and only to the extent required to perform, the Services and complying with its obligations under this Agreement and any Statement of Work Contracts for the Term.

#### 21.5 Moral Rights

- (a) You warrant that VicHealth may use any Service or Deliverable (or any part of any Service or Deliverable) in any way, without identifying any person as the individual responsible for creating any particular material comprised in it, without infringing the Moral Rights of any person.
- (b) If specified in Item 1 of Schedule 1, You must obtain from any person (including Your Personnel and Personnel of any sub-contractor) whose Moral Rights may be affected, a written consent, in the form required by VicHealth, that such person:
  - (i) irrevocably consents to any amendment of the material to which the Moral Rights relate in any manner by VicHealth and for any purposes;
  - (ii) irrevocably consents to VicHealth using or applying the materials to which the Moral Rights relate for any purpose and in any manner, including by identifying VicHealth as the author of the material, without any attribution of authorship;
  - (iii) agrees that his or her consent extends to acts and omissions of any of VicHealth's licensees and successors in title; and
  - (iv) agrees that his or her consent is a genuine consent under the *Copyright Act 1968* (Cth) and has not been induced by duress.
- (c) You must ensure that in relation to any consent required under clause 21.5(b):
  - (i) the consent has not been obtained by duress; and

- (ii) the consent has not been obtained on the basis of a false or misleading statement.
- (d) You must provide a copy of any consent required under clause 21.5(b) to VicHealth, upon request.

## 21.6 Additional obligations

You must do all things reasonably requested by VicHealth to give full effect to this clause 21, including entering into further agreements to assign the rights referred to in clauses 21.1 and 21.3 to the extent applicable.

## 22 DATA

- (a) Data will remain (and, if necessary, will become) the property of VicHealth. If VicHealth is specified in Item 11 of Schedule 1 as the owner of the Intellectual Property in Contract Materials, you will assign to VicHealth from the date of creation all Intellectual Property Rights in any Data created by or on behalf of You. For the avoidance of doubt, Data includes data that does not form part of the Deliverables.
- (b) If You or a sub-contractor is deemed to be the first owner of any database right or other Intellectual Property Rights in the Data, If VicHealth is specified in Item 11 of Schedule 1 as the owner of the Intellectual Property in Contract Materials, it must assign those Intellectual Property Rights to VicHealth.
- (c) You must only use the Data to the extent necessary to perform Your obligations under this Agreement.
- (d) You must:
  - (i) subject to any more stringent requirements imposed pursuant to this Agreement, prohibit and prevent any person who does not have the appropriate level of security clearance from gaining access to the Data; and
  - (ii) comply with any policies of VicHealth in effect from time to time in respect of the secure disposal of equipment and destruction of records and the Data.
- (e) If You suspect that any Data has (or may) become lost or corrupted or there is unauthorised access to that Data, You will immediately notify VicHealth and propose remedial action, including action to ensure that this does not recur.
- (f) You must not, and must ensure that Your Personnel and sub-contractors do not, without VicHealth's prior written consent:
  - (i) remove Data or allow the Data to be removed from VicHealth's premises or equipment; or
  - (ii) take, disclose or make available the Data or allow the Data to be taken, disclosed or made available outside of Victoria.

## 23 CONFIDENTIALITY, PRIVACY AND DATA PROTECTION

### 23.1 Use of Confidential Information

- (a) You must keep the Confidential Information confidential and secure and must (and must ensure that Your Personnel and advisers will):
  - (i) use and reproduce Confidential Information only to the extent necessary to perform Your obligations under this Agreement; and
  - (ii) not disclose or otherwise make available Confidential Information other than to Your Personnel who have a need to know the information to enable You to perform Your obligations under this Agreement.
- (b) You acknowledge that VicHealth will be entitled (in addition to any other remedy it may have) to seek an injunction or other equitable relief with respect to any actual or threatened breach by You of this clause 23.1 and without the need on the part of VicHealth to prove any special damage or to comply with the requirements of clause 18.
- (c) You must not make any public announcement in relation to this Agreement without the prior written consent of VicHealth.
- (d) On request by VicHealth, You must ensure that all of Your Personnel involved in providing the Services who may have access to VicHealth's Confidential Information execute a deed of confidentiality in a form acceptable to VicHealth prior to commencing the provision of any Services under or in connection with this Agreement.

### 23.2 Exceptions to Your obligations of confidentiality

- (a) Notwithstanding clause 23.1, You may disclose the Confidential Information:
  - (i) to Your legal advisors, auditors and other advisors who require this information to provide advice to You in relation to this Agreement or a Statement of Work Contract; or
  - (ii) subject to clause 23.4, if required to do so by Law, court order, a House of Parliament, or Committee of a House of Parliament.

### 23.3 Prevention of use or disclosure of Confidential Information

- (a) You must immediately notify VicHealth in writing of any actual, threatened or suspected unauthorised use or disclosure of any Confidential Information, and must include in Your notification:
  - (i) the nature of the Confidential Information; and
  - (ii) the person to whom the Confidential Information has been (or may be) disclosed or is being used by.

### 23.4 Disclosure by You required by Law

- (a) Subject to You first complying with clause 23.4(b)(iv), 23.4(b)(v) and 23.4(b)(vi), You may disclose Confidential Information to the extent that is required under clause 23.4(b)(i) or 23.4(b)(ii).
- (b) In the event that You:
  - (i) are required by Law, court order, a House of Parliament, or a Committee of a House of Parliament to disclose all or any part of the Confidential Information; or
  - (ii) anticipate or have cause to anticipate that it may be required by Law, court order, a House of Parliament, or a Committee of a House of Parliament,
  - (iii) You must, as soon as possible and to the extent permitted by the relevant requirement:
  - (iv) notify VicHealth of such actual or anticipated requirement(s);
  - (v) cooperate fully with VicHealth to try to lawfully avoid or limit the scope of that disclosure, if VicHealth so requests; and
  - (vi) take such steps as VicHealth reasonably requires to permit VicHealth to have a reasonable opportunity to oppose or to restrict such disclosure by lawful means.
- (c) If required by VicHealth, if You are required to disclose Confidential Information to a Court, You must notify the Court of the obligations You owe to VicHealth in respect of the Confidential Information and use Your reasonable endeavours to have the relevant Confidential Information disclosed only on a confidential basis and any proceedings be held in private (as appropriate).

### 23.5 Your consent to disclosure of information

You consent to VicHealth publishing or otherwise making available information in relation to You (and the provision of the Services):

- (a) as may be required in order to comply with the requirements of the Contract Publishing System;
- (b) to other Victorian Public Entities or Ministers of the State of Victoria in connection with the use of the Services;
- (c) to any public sector agency (of the State, any other state or territory or the Commonwealth) for the purposes of benchmarking, provided that it will not identify You;
- (d) to the office of the Auditor General appointed under section 94A of the Constitution Act 1975 (Vic) (Auditor-General) or the ombudsman appointed under the Ombudsman Act 1973 (Vic) (Ombudsman);
- (e) to comply with the Law, including the Freedom of Information Act 1982 (Vic); or
- (f) to the IBAC.

### 23.6 Return of Confidential Information by You

- (a) All Confidential Information will remain the property of VicHealth and all copies or other records containing Confidential Information (or any part of it) must, except to the extent necessary to comply with:
  - (i) clause 20;
  - (ii) any requirements of Law; or

(iii) any reasonable requirements of professional indemnity insurance,  
upon request or upon termination or expiry of this Agreement, be returned by You to VicHealth, or at the election of VicHealth, destroyed.

- (b) Upon the occurrence of any of the events specified in clause 23.6(a), You must not make any further use of, exploit or deal with in any way the relevant Confidential Information unless expressly permitted to do so by clause 23.
- (c) You must not refuse to comply with, or delay the performance of, Your obligations under clause 23.6(a) whether on the basis of any alleged lien, set off, proprietary or quasi proprietary right or any other claim or demand against VicHealth or any other person.
- (d) Despite clause 23.6(a), You may retain copies of information (including Confidential Information) that You are required to retain for Your legitimate internal audit or quality assurance purposes, but any information so retained will be retained and held subject in all respects to the terms of this Agreement.

### 23.7 Privacy

- (a) You acknowledge that You will be bound by the Information Privacy Principles, Health Privacy Principles and any applicable Code of Practice, including the Victorian Protective Data Security Standards under Part 4 PDP Act (together, **Privacy Obligations**) with respect to any act done or practice engaged in by You for the purposes of this Agreement, in the same way and to the same extent as the Privacy Obligations would have applied to VicHealth in respect of that act or practice had it been directly done or engaged in by VicHealth.
- (b) You agree that You will, and you must procure that your officers, employees, agents and subcontractors will:
- (i) assist VicHealth to comply with its obligations under the Privacy Obligations, to the extent possible;
  - (ii) comply with the VicHealth Privacy Policy as amended from time to time and as published on the Website at
  - (iii) <https://www.vichealth.vic.gov.au/search/funding-partner-privacy-policy>
  - (iv) in relation to any Personal Information or Health Information collected by, disclosed to, or accessible by You in connection with this Agreement;
  - (v) immediately notify VicHealth upon becoming aware of any breach of the Privacy Obligations and comply with all directions of VicHealth in respect of the breach;
  - (vi) provide VicHealth with such co-operation as VicHealth requires in relation to resolving any complaint concerning privacy; and
  - (vii) provide access to or amendment of any record as directed by VicHealth.
- (c) You also agree to comply with any directions made by any of the Commissioners, the Commonwealth Privacy Commissioner or the Victorian Health Services Commissioner relevant to this Agreement.
- (d) Without limiting clauses 23.7(a) to 23.7(c), in relation to any Personal Information obtained by You in connection with this Agreement, You must:
- (i) not collect, use, disclose, store, transfer or handle the information except in accordance with the Privacy Obligations;
  - (ii) not, without the prior consent of VicHealth, disclose the information to a person who is outside Victoria;
  - (iii) take all reasonable steps to ensure that the information is protected from misuse, interference or loss, and from unauthorised access, modification or disclosure;
  - (iv) take all reasonable steps to destroy or permanently de-identify information that is no longer needed for the purposes of this Agreement;
  - (v) co-operate with any reasonable request or direction VicHealth makes which relates to the protection of the information or the exercise of the functions of any of the Commissioners, the Commonwealth Privacy Commissioner or the Victorian Health Services Commissioner;

- (vi) ensure that access to the information is limited to those of Your Personnel who are required to access that information for the purposes of this Agreement; and
- (vii) comply with any reasonable direction of VicHealth in relation to a complaint concerning privacy received by either party.

### 23.8 Data protection

You acknowledge that VicHealth is bound by the Protective Data Security Standards. You will not do any act or engage in any practice that contravenes a Protective Data Security Standard or would give rise to contravention of a Protective Data Security Standard by VicHealth in respect of any Data collected, held, used, managed, disclosed or transferred by You on behalf of VicHealth under or in connection with this Agreement.

### 23.9 Data Security Breaches

- (a) If You become aware of a Data Security Breach, You must immediately notify VicHealth and undertake remedial action to mitigate the impact of the breach and ensure that this does not recur.
- (b) You must will notify VicHealth in advance, as soon as reasonably practicable, if You are is required by Law or otherwise intend to report the Data Security Breach to any of the Office of the Australian Information Commissioner or any affected individuals.
- (c) You must comply with VicHealth's reasonable directions in relation to the Data Security Breach, including providing VicHealth with a reasonable opportunity to be involved with and approve any report or notification under clause 23.9(c); and
- (d) You must provide reasonable assistance to VicHealth if VicHealth seeks to report the Data Security Breach to the Victorian Information Commissioner, Victorian Deputy Commissioner for Privacy and Data Protection or the Victorian Health Complaints Commissioner, or notify any affected individuals.

## LIABILITY

### 24 LIABILITY

- (a) You indemnify, and will at all times hold harmless, defend and keep VicHealth and each of its Personnel indemnified (**Indemnified Party**), against any liabilities, losses, damages, costs and expenses (including all legal and settlement costs determined on a full indemnity basis) (**Losses**) or compensation arising out of, or in any way connected with, any:
  - (i) breach of this Agreement by You including any failure to provide the Services in accordance with this Agreement or any Statement of Work;
  - (ii) any warranty given by You under of this Agreement being incorrect or misleading;
  - (iii) personal injury, including sickness and death;
  - (iv) property damage;
  - (v) a breach of an obligation of confidence or privacy, whether under this Agreement or otherwise;
  - (vi) fraudulent acts or omissions;
  - (vii) any wilful misconduct or unlawful act or omission;
  - (viii) breaches of logical or physical security;
  - (ix) loss or corruption of Data;
  - (x) any third party claim arising out of a breach of this Agreement by You or Your Personnel (including breach of warranty) or any negligent act or omission of You or Your Personnel; or
  - (xi) any infringement or alleged infringement of the Intellectual Property Rights, Moral Rights or any other rights of any person, including any third party, which was caused, or contributed to by, any act or omission of You or any of Your Personnel.
- (b) Your liability to indemnify VicHealth under clause 24(a) is reduced to the extent that any wilful, unlawful or negligent act or omission of VicHealth or its Personnel contributed to their liability, loss, damage, cost, expense or compensation.
- (c) To the extent that the indemnity in this clause 24 refers to persons other than VicHealth, VicHealth holds this clause on trust for those other persons.

- (d) If any indemnity payment is made by You under this clause 24, You must also pay to the Indemnified Party an additional amount equal to any tax which is payable by the Indemnified Party in respect of that indemnity payment.
- (e) VicHealth may, in its absolute discretion, permit You, at Your expense, to handle all negotiations for settlement and, as permitted by Law, to control and direct any litigation that may occur following a claim that receipt of the Services or use of the Deliverables violates the Intellectual Property Rights, Moral Rights or any other rights of a third party (**IPR Claim**).
- (f) If VicHealth requests You to defend an IPR Claim in accordance with clause 24(e):
  - (i) You must comply at all times with any Government policy relevant to the conduct of the IPR Claim (including the Model Litigant Guidelines) and with any conditions imposed and directions given by VicHealth;
  - (ii) You may not settle or compromise the IPR Claim conducted by You without VicHealth's consent;
  - (iii) VicHealth may, at any time, give notice to You that VicHealth wishes to conduct the IPR Claim (including associated settlement discussions) and You will permit VicHealth to do so; and
  - (iv) You must comply at all times with any instructions provided by VicHealth in relation to the day to day conduct and management of the IPR Claim.
- (l) You will not vary the Specifications of the Services without first obtaining the written consent of VicHealth; and
- (m) if Item 1 of Schedule 1 states that You are entering into this Agreement on behalf of a trust:
  - (i) You are a validly appointed trustee of the Trust;
  - (ii) there has not been any contravention of or non-compliance with any of the terms of the Trust Deed;
  - (iii) You have the right to be indemnified out of, and a lien over, the assets of the Trust except where You are fraudulent, negligent or in breach of trust;
  - (iv) this Agreement does not conflict with the operation or terms of the Trust or the Trust Deed;
  - (v) this Agreement constitutes valid and enforceable obligations of the Trust;
  - (vi) You have full and valid power and authority under the Trust to enter into this Agreement and to carry out the transactions contemplated by this Agreement (including all proper authorisations and consents);
  - (vii) You enter into this Agreement and the transactions evidenced by it for the proper administration of the Trust and for the benefit of all of the beneficiaries of the Trust; and
  - (viii) it is the sole trustee of the Trust,

and the terms **Trust** and **Trust Deed** have the meaning given to them in Item 1 of Schedule 1.

## REPRESENTATIONS AND WARRANTIES

### 25 WARRANTIES

You represent and warrant to VicHealth that:

- (a) You have the right to enter into this Agreement and perform the Services and provide the Deliverables;
- (b) the execution, delivery and performance of this Agreement by You does not contravene any contractual, legal or other obligation that applies to You;
- (c) You hold all licences, permits, consents and authorisations required under any Law in relation to the provision of the Deliverables and Services;
- (d) You are entitled to use and deal with any Intellectual Property Rights, and obtained all necessary consents to use and deal with any Moral Rights, which may be used by You in connection with the Services and Deliverables and to grant to VicHealth the licences contemplated by this Agreement;
- (e) the receipt of the Services and the possession or use of any Deliverable by VicHealth will not infringe the Intellectual Property Rights or other rights of any person or any Laws;
- (f) the Services will be:
  - (i) provided with due care and skill;
  - (ii) provided in accordance with all applicable standards, principles, practices and in accordance with the requirements of this Agreement (including the Specifications and any Statement of Work Contract); and
  - (iii) completed within a reasonable time;
- (g) You have the accreditation or membership of professional or other bodies in relation to the provision of the Services as set out in the Offer and that You will use Your best endeavours to maintain such accreditation or membership during the Term;
- (h) You and Your Personnel are appropriately qualified and have the requisite knowledge, skill and expertise to provide the Services in accordance with this Agreement;
- (i) whilst on the premises owned or controlled by VicHealth, You and Your Personnel will at all times comply with VicHealth's lawful directions and policies, of which You are notified or is otherwise aware, including any applicable occupational health and safety and security policies;
- (j) where VicHealth has, either expressly or by implication, made known to You any particular purpose for which the Services are required, the Services will be performed in such a way as to achieve that result;
- (k) all representations made by You in or in connection with the Offer were and remain accurate and You have and will maintain at all relevant times the quality assurance arrangements set out in the Offer (if any);

### 26 INSURANCE

- (a) You must (and must ensure that any sub-contractors appointed by You) obtain and maintain for the Term and, if requested by VicHealth, for a period of up to seven years after the provision of the Services, the insurances specified in Item 16 of Schedule 1 in respect of any claim related to this Agreement.
- (b) You must, within 10 Business Days of a request by VicHealth, provide evidence of the currency of any insurance You are required to obtain under this Agreement.
- (c) Where any insurance You are required to obtain and maintain is due to expire (**Initial Insurance**), You must, on request by VicHealth, provide VicHealth with evidence of the currency of relevant replacement insurance prior to the expiration of the Initial Insurance (**Replacement Insurance**).
- (d) If this clause applies, as indicated by Item 1 of Schedule 1, any Replacement Insurance obtained pursuant to clauses 26(a) or 26(c) must be:
  - (i) taken out with an insurer acceptable to VicHealth; and
  - (ii) on terms (including any excess) which are acceptable to VicHealth.

### 27 ACCIDENT COMPENSATION

You must ensure that, in respect of Your Personnel and any other persons engaged by You to provide the Services, You:

- (a) comply with the provisions of the Workplace Injury Rehabilitation and Compensation Act 2013 (Vic);
- (b) insure against Your liability to pay compensation, whether under Law or otherwise; and
- (c) produce to VicHealth on request any certificates or like documentation required by the *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic).

## TERM AND TERMINATION

### 28 TERM

#### 28.1 Initial Term

This Agreement begins on the Commencement Date and continues until the Expiry Date, unless extended in accordance with clause 28.2 or terminated earlier in accordance with its terms.

#### 28.2 Extension

- (a) This Agreement may be extended beyond the Expiry Date, as agreed by the parties in writing, for the period or periods specified in Item 2 of Schedule 1.
- (b) Any such further term or terms will be on the same terms and conditions as this Agreement (excluding, in respect of the final further period, this clause 28.2).

## 29 TERMINATION

### 29.1 Termination for cause

VicHealth may terminate this Agreement and any or all Statement of Work Contracts with immediate effect (or with effect from a specified date) by giving notice in writing to You if You:

- (a) fail to provide the Services in accordance with the Service Level Requirements or otherwise in accordance with the requirements of this Agreement;
- (b) breach any provision of this Agreement or a Statement of Work Contract and, where that breach is capable of remedy, fails to remedy the breach within 10 Business Days after receiving written notice requiring it to do so (or such later date as may be specified in that notice);
- (c) breach any provision of this Agreement that is not capable of remedy;
- (d) or any of Your Personnel involved in the provision of the Services are guilty of fraud, dishonesty or any other serious misconduct;
- (e) commit any act or do anything that may be prejudicial or otherwise detrimental to the reputation of the State;
- (f) or Your Representatives commit any act which brings Your, Our or the Victorian Government's reputation into disrepute and, as a consequence, VicHealth believes that its continued association with You may be detrimental to its reputation; or
- (g) suffer from an Insolvency Event.]

### 29.2 Termination without cause

- (a) VicHealth may terminate a Statement of Work Contract without cause on notice to You (such termination to take effect upon receipt of the notice or such later date as specified in the notice).
- (b) If a Statement of Work Contract is terminated pursuant to clause 29.2(a), VicHealth will pay You:
  - (i) for the Services performed in accordance with the Statement of Work Contract up to the date of the termination; and
  - (ii) the unavoidable and substantiated costs incurred by You as a direct result of the termination, excluding any loss of profit,and VicHealth has no other liability to You in relation to the termination of that Statement of Work Contract.
- (c) When VicHealth issues a notice under clause 29.2(a), You must immediately comply with any directions given in the notice and do all that is possible to mitigate Your losses arising from the termination of the relevant Statement of Work Contract.

### 29.3 Grounds for termination by You

- (a) You may terminate a Statement of Work Contract by giving at least 20 Business Days written notice to VicHealth if VicHealth fails to pay amounts due under that Statement of Work Contract which have the following characteristics:
  - (i) are the subject of Tax Invoices complying with this Agreement;
  - (ii) are due and payable in accordance with this Agreement;
  - (iii) are not the subject of a good faith dispute;
  - (iv) are overdue for a period of at least 60 Business Days; and
  - (v) are amounts for which a demand has been made, provided that the demand clearly states that the amount has been overdue for a period of at least 60 Business Days and that You will have the right to terminate the Statement of Work Contract on 20 Business Days' notice after the expiration of five Business Days following service of the demand if the demand is not met within that five Business Day period.
- (b) Clause 29.3(a) constitutes Your sole and exclusive right to terminate a Statement of Work Contract, and You have no right to terminate this Agreement.

### 29.4 Consequences of termination or expiry

- (a) Termination or expiry of this Agreement or a Statement of Work Contract will not prejudice any right of action or remedy which may have accrued to either party prior to termination or expiry.
- (b) On termination or expiration of this Agreement or a Statement of Work Contract (as the case may be), You must immediately cease using all materials (whether in written or electronic form) that contain or encapsulate any Data or Confidential Information in

relation to the Agreement or the Statement of Work Contract (as the case may be) and, at the election of VicHealth:

- (i) delete or destroy the materials, as applicable; or
- (ii) return the materials to VicHealth in the format in which they were first provided by VicHealth and, in addition, if required by VicHealth, in a non-proprietary and open access file format (such as .txt, .csv, .rft, etc) as specified by VicHealth,

at no additional cost to VicHealth.

### 29.5 Survival

Clauses 1, 3.7, 4, 8, 9, 10, 11, 12, 13, 14(c), 14(d), 15, 18, 19, 20, 21, 22, 23, 24, 25, 26, 29 and 30 of this Agreement survive the termination or expiry of this Agreement and any Statement of Work Contract or the completion of the Services and may be enforced at any time.

## OTHER MISCELLANEOUS TERMS

### 30 GENERAL

#### 30.1 Legal costs

Except as expressly stated otherwise in this Agreement, each party must pay its own legal and other costs and expenses of negotiating, preparing, executing and performing its obligations under this Agreement.

#### 30.2 Amendment

This Agreement may only be varied or replaced by a written document executed by the parties.

#### 30.3 Waiver and exercise of rights

- (a) A waiver of any right, power or remedy under this Agreement must be in writing and signed by the party granting it. The fact that a party fails to do, or delays in doing, something the party is entitled to do under this Agreement does not amount to a waiver.
- (b) A single or partial exercise or waiver by a party of a right relating to this Agreement does not prevent any other exercise of that right or the exercise of any other right.
- (c) A party is not liable for any loss, cost or expense of any other party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

#### 30.4 Severability

Any provision of this Agreement or a Statement of Work Contract which is invalid or unenforceable is to be read down, if possible, so as to be valid and enforceable, and, if that is not possible, the provision will, to the extent that it is capable, be severed to the extent of the invalidity or unenforceability, without affecting the remaining provisions.

#### 30.5 Rights cumulative

Except as expressly stated otherwise in this Agreement, the rights of a party under this Agreement are cumulative and are in addition to any other rights of that party.

#### 30.6 Set off

VicHealth may set off against any sum owing to You under this Agreement, or any Statement of Work Contract, any amount then owing by You to VicHealth.

#### 30.7 Time of the essence

Time is of the essence in relation to the provision of the Services under this Agreement and all Statement of Work Contracts.

#### 30.8 Governing law and jurisdiction

- (a) This Agreement is governed by and is to be construed in accordance with the Laws.
- (b) Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Victoria and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

#### 30.9 Assignment or transfer of rights and obligations

- (a) Subject to clause 30.9(c), a party may not assign any right under this Agreement without the prior written consent of the other party.
- (b) You will be responsible for acts and omissions of any assignee.
- (c) VicHealth may, by notice in writing to You, assign its rights, transfer its obligations or novate this Agreement to any other Victorian Public Entities in the event of any State government restructure or other re-organisation or change in policy.



- (d) Each party agrees to execute any documents necessary to document the exercise of a permitted right of assignment, transfer or novation under this Agreement.

### **30.10 Counterparts**

This Agreement or any Statement of Work Contract may consist of a number of counterparts and, if so, the counterparts taken together constitute one document.

### **30.11 Entire understanding and order of precedence**

- (a) This Agreement is comprised of the following items:
  - (i) clauses 1 to 30 (inclusive) and the Schedules to this Agreement;
  - (ii) the Invitation (if specified in Item 20 of Schedule 1);
  - (iii) the Offer (if specified in Item 20 of Schedule 1 and
  - (iv) any other documents or representations specified in Item 20 of Schedule 1.
- (b) In the event and to the extent of any inconsistency between the items listed in clause 30.11(a), the provisions of the earlier mentioned item will prevail to the extent of the inconsistency. If the inconsistency remains incapable of resolution by reading down, the inconsistent provisions will be severed from the item lower in the order of precedence without otherwise diminishing the enforceability of the remaining provisions of that item.
- (c) Each Statement of Work Contract is comprised of the following items:
  - (i) the terms of this Agreement incorporated into the Statement of Work Contract as specified in clause 3.7;
  - (ii) the Statement of Work;
  - (iii) the Request for Quote;
  - (iv) the Quote; and
  - (v) any other documents or representations specified in the Statement of Work or the Request for Quote.
- (d) In the event and to the extent of any inconsistency between the items listed in clause 30.11(c), the provisions of the earlier mentioned document will prevail to the extent of the inconsistency. If the inconsistency remains incapable of resolution by reading down, the inconsistent provisions will be severed from the item lower in the order of precedence without otherwise diminishing the enforceability of the remaining provisions of that item.
- (e) This Agreement, and each Statement of Work Contract formed under this Agreement, contains everything the parties have agreed in relation to the subject matter it deals with. No party can rely on an earlier written document or anything said or done by or on behalf of another party before this Agreement was executed.
- (f) Except as otherwise provided in clause 30.11(a):
  - (i) all previous negotiations, understandings, representations, warranties, memoranda or commitments concerning the subject matter of a Statement of Work Contract are merged in and superseded by the Statement of Work Contract and are of no effect; and
  - (ii) no oral explanation or information provided by any party to another:
    - (A) affects the meaning or interpretation of this Agreement or a Statement of Work Contract; or
    - (B) constitutes any collateral agreement, warranty or understanding between any of the parties.

### **30.12 Relationship of parties**

- (a) This Agreement is not intended to create a partnership, joint venture or agency relationship between the parties.
- (b) The parties agree that You are engaged as an independent contractor and not as an employee of VicHealth.

## Schedule 1 - Contract variables

Item 1	<b>Service Provider (Parties, page 1)</b>	<p><i>[Note: legal names should include Pty Ltd or Ltd. Identify where a business is trading under another name.]</i></p> <p>Legal Name:            ABN/ACN:            Trading as:            Address:</p>	
Item 2	<b>Commencement and expiry (Clause 28)</b>	Commencement Date:	
		Expiry Date:	
		Extension period(s):	<i>[insert if applicable, for example: Two(2) x 12 month options to extend]</i>
Item 3	<b>Liquidated Damages (Clause 8.3)</b>	<p><input type="checkbox"/> Liquidated damages are applicable</p> <p><input checked="" type="checkbox"/> Liquidated damages are not applicable</p>	
Item 4	<b>Service Provider's Key Personnel (Clause 6)</b>	<p><input checked="" type="checkbox"/> Key Personnel are applicable</p> <p><i>[Note: If applicable, insert details of Service Provider's employees or contractors who will be engaged in the provision of the Services.]</i></p>	
		Name:	Role:
		<p><input type="checkbox"/> Key Personnel are not applicable</p>	
Item 5	<b>Price review (Clause 9(d))</b>	<p><input type="checkbox"/> A price review mechanism is applicable</p> <p>Review mechanism:  <i>N/A</i></p> <p>Review Dates:  <i>N/A</i></p> <p><input checked="" type="checkbox"/> A price review mechanism is not applicable</p>	
Item 6	<b>Invoicing (Clause 12.1)</b>	<p><input checked="" type="checkbox"/> VicHealth to issue recipient created tax invoice upon satisfactory receipt of deliverables</p> <p><input type="checkbox"/> The Service Provider to invoice VicHealth</p> <p>Invoice requirements:  <i>[Note: Specify any particular payment milestones which apply.]</i></p>	

Item 7	<b>Payment (Clause 12.2)</b>	Payment for Services is to be made in accordance with any of the following methods: <i>Electronic transfer to nominated bank account</i>
Item 8	<b>Parties' Representatives (Clause 13.1)</b>	VicHealth's Representative:
		Name:
		Title:
		Telephone:
		Email:
		Service Provider's Representative:
		Name:
		Title:
		Telephone:
Email:		
Item 9	<b>Progress Report (Clause 13.5)</b>	<input checked="" type="checkbox"/> Progress reports may be required <i>The need for progress reports will be determined in consultation between the provider and VicHealth, based on the level of work delivered by providers.</i> <input type="checkbox"/> Progress reports are not required
Item 10	<b>Contract management review (Clause 13.6)</b>	<input type="checkbox"/> Contract management meetings are required <input checked="" type="checkbox"/> Contract management meetings are not required
Item 11	<b>Ownership of Contract Material (Clause 21.1)</b>	<input checked="" type="checkbox"/> Service Provider <input type="checkbox"/> VicHealth
Item 12	<b>Ownership of Service Provider's Pre-Existing Intellectual Property (Clause 21.2(a))</b>	<input checked="" type="checkbox"/> Service Provider <input type="checkbox"/> VicHealth
Item 13	<b>Duration of licence (Clause 21.3(b))</b>	<input type="checkbox"/> Perpetual <input type="checkbox"/> Other (please specify): <input checked="" type="checkbox"/> Not applicable
Item 14	<b>Licence terms (Clause 21.3(c))</b>	<input type="checkbox"/> Additional licence terms are applicable <input checked="" type="checkbox"/> Additional licence terms are not applicable
Item 15	<b>Moral Rights (Clause 21.5)</b>	<input checked="" type="checkbox"/> You, the Service Provider, must obtain written consent from any person who Moral Rights may be affected. <ul style="list-style-type: none"> <li>•</li> </ul>
Item 16	<b>Trust (Clause 25(m))</b>	<input type="checkbox"/> You, the Service Provider, are entering into this Agreement as a trustee

		<p>If ticked, You are entering into this Agreement on behalf of the Trust and the warranties in clause 25(m) are incorporated into this Agreement, where:</p> <p>Trust means [specify]</p> <p>Trust Deed means [specify]</p> <p><input checked="" type="checkbox"/> You, the Service Provider, are not entering into this Agreement as a trustee</p>										
Item 17	<b>Insurance (Clause 26)</b>	<table border="1"> <thead> <tr> <th>Type of coverage</th> <th>Amount (AUD)</th> </tr> </thead> <tbody> <tr> <td><input checked="" type="checkbox"/> Public liability insurance</td> <td>10 Million</td> </tr> <tr> <td><input type="checkbox"/> Product liability insurance</td> <td>[insert] [per event OR in the aggregate]</td> </tr> <tr> <td><input checked="" type="checkbox"/> Professional indemnity insurance</td> <td>5 Million</td> </tr> <tr> <td><input checked="" type="checkbox"/> Other (please specify): Workers Compensation</td> <td>[insert] [per event OR in the aggregate]</td> </tr> </tbody> </table>	Type of coverage	Amount (AUD)	<input checked="" type="checkbox"/> Public liability insurance	10 Million	<input type="checkbox"/> Product liability insurance	[insert] [per event OR in the aggregate]	<input checked="" type="checkbox"/> Professional indemnity insurance	5 Million	<input checked="" type="checkbox"/> Other (please specify): Workers Compensation	[insert] [per event OR in the aggregate]
		Type of coverage	Amount (AUD)									
		<input checked="" type="checkbox"/> Public liability insurance	10 Million									
		<input type="checkbox"/> Product liability insurance	[insert] [per event OR in the aggregate]									
		<input checked="" type="checkbox"/> Professional indemnity insurance	5 Million									
		<input checked="" type="checkbox"/> Other (please specify): Workers Compensation	[insert] [per event OR in the aggregate]									
<p>Please specify below details of any conditions attaching to such insurance coverage (e.g. run-off insurance)</p> <p>[Insert, if applicable]</p> <p><input type="checkbox"/> Clause 26(d) is applicable to this Agreement</p> <p><input checked="" type="checkbox"/> Clause 26(d) is not applicable to this Agreement</p>												
Item 18	<b>Applicable Laws (Clause 15.1)</b>	<p>You, the Service Provider, must comply with all Laws, including any which may be listed here for information purposes due to their particular relevance to the Services:</p> <p>[Specify any Laws of particular relevance with which the Service Provider must comply as part of this Agreement.]</p> <p>Each Agreement will be different and we recommend you obtain advice at the time.]</p>										
Item 19	<b>Notice particulars (Clause 19)</b>	<b>VicHealth:</b>										
		<table border="1"> <tr> <td>Addressee:</td> <td>[insert VicHealth delegated authority overseeing the Project/Services]</td> </tr> <tr> <td>Address:</td> <td></td> </tr> <tr> <td>Email:</td> <td>[insert the VicHealth addressee's email address]</td> </tr> </table>	Addressee:	[insert VicHealth delegated authority overseeing the Project/Services]	Address:		Email:	[insert the VicHealth addressee's email address]				
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		Email:	[insert the VicHealth addressee's email address]									
		<b>Service Provider:</b>										
		<table border="1"> <tr> <td>Addressee:</td> <td>[Insert director/secretary/CEO or the person with responsibility for the Project]</td> </tr> <tr> <td>Address:</td> <td></td> </tr> <tr> <td>Email:</td> <td>[insert email address of the person identified as addressee]</td> </tr> </table>	Addressee:	[Insert director/secretary/CEO or the person with responsibility for the Project]	Address:		Email:	[insert email address of the person identified as addressee]				
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Address:												
Email:	[insert email address of the person identified as addressee]											

Item 21	<b>Additional Items (Clause 30.11)</b>	<input type="checkbox"/> Additional items form part of this Agreement <input type="checkbox"/> No additional items form part of this Agreement
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## Schedule 2 – Services and Price Schedule

Item 1	Services	Provision of co-design services in accordance with the Specifications
Item 2	Milestones	<p>Milestones will apply to each Statement of Work.</p> <p><i>Note: Payments Contingent on VicHealth satisfaction of Contract Milestones and requirements.</i></p>
Item 3	Price Schedule	<p><b>[Note: Insert details of Rates and/or Fees including the Services to be provided. The Price Schedule should include GST exclusive price; GST payable; and total cost for the Services.]</b></p>
Item 4	Expenses and Disbursements	<p><input type="checkbox"/> You, the Service Provider, may recover expenses and/or disbursements in relation to the Services</p> <p><b>[Note: Tick above if the Service Provider may recover expenses and/or disbursements in relation to the Services.]</b></p> <p>If the box above is ticked, You may recover expenses and/or disbursements in relation to the Services in accordance with the requirements in clauses 9(b) and 9(c).</p> <p><input type="checkbox"/> You, the Service Provider, may not recover expenses and/or disbursements in relation to the Services</p>
Item 5	Workplan	Workplans will be required for each individual Statement of Work

# Schedule 3 – Service Level Requirements

Not Used

## Schedule 4 – Specifications

### Service Requirements

Provision of advisory and consultancy services for:

1. Project Development and Planning for projects. Development and Planning includes but is not limited to:
  - i. Conducting workshops for young people aged up to 25 who experience barriers to good health, or parents of younger children, as identified and selected by VicHealth or its stakeholder. The co-design process should be a meaningful and positive experience for all young people involved.
  - ii. Workshops could involve, but are not limited to, gathering insights into the barriers young people face in local communities, and gathering the ideas young people have which could reduce or remove these barriers.
  - iii. Working with young people to ensure the ideas around each Statement of Work project are inclusive to all young people (including LGBTIQ+, ATSI, CALD populations, low SES populations, and young people with a disability).
  - iv. Working with local councils or other organisations identified by VicHealth as stakeholders to support each Statement of Work Project.
  - v. Working in regional and interface LGAs across Victoria.
2. Identifying and designing solutions for projects. This includes, but is not limited to:
  - i. Consulting with VicHealth Identified stakeholders for each relevant Statement of Work project to consider their expert knowledge.
  - ii. Facilitate engagement between young people and other stakeholders identified by VicHealth to ensure young people's voices are heard, and that young people are actively engaged in the design and delivery of the project.
  - iii. Ensuring stakeholders (including young people engaged on the relevant projects) are aware of and consider, project limitations including but not limited to, COVID-19 restrictions and financial limitations, which may impact on delivery.

### Deliverables

For each Statement of Work You are engaged by VicHealth for You must:

3. Provide a workplan clearly articulating the co-design plan, roles and responsibilities of other stakeholders engaged by VicHealth for the relevant project the Statement of Work relates to and timelines.
4. Deliver co-design sessions, which may include workshops, interviews, surveys etc. with young people. The participatory approach may be a visual, kinaesthetic and oral approach, rather than relying on written approaches. The detail of these sessions will be outlined in the workplan. The duration and number of sessions may vary depending on the project.
5. Develop a risk management plan which outlines risks for the specific project which may include, risks associated with working with young people under 18 years.
6. Analyse information obtained from co-design work (e.g. through workshops), and subsequently prepare a report (or other documentation) which outlines key insights that will inform the development and delivery of future projects.
7. Comply with all Reporting requirements set out in the Statement of Work.



## EXECUTED BY THE PARTIES

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 **Monto Projects Pty Ltd (ABN 44 632 082 216)**. By executing this Agreement the signatory warrants that the signatory is duly authorised to sign this Agreement on behalf of Monto Projects Pty Ltd

{{{Sig_es_:signer3:signature}}} ..... Signature	{{{Sig_es_:signer4:signature}}} ..... Signature
{{{*N_es_:signer3:fullname}}} ..... Name	{{{*N_es_:signer4:fullname}}} ..... Name
{{{*Ttl_es_:signer3:title}}}  Title	{{{Em_es_:signer4:email}}}  {{{*Ttl_es_:signer4:title}}} Title
{{{Dte_es_:signer3:date}}} ..... Date	{{{Dte_es_:signer4:date}}} ..... Date

{{{\*[]\_es\_:signer4:check box}}} By ticking this box you acknowledge

- that you are an authorised signatory for {{{\*Cmpy\_es\_:signer4:company}}}      }}
- that you have read and understood the terms of this Agreement and
- that by signing this Agreement you bind {{{\*Cmpy\_es\_:signer4:company}}}      }}  
to the terms of this Agreement.

Approved by {{{Int\_es\_:signer2:initials}}}   Date {{{Dte\_es\_:signer2:date}}}

Approved by {{{Int\_es\_:signer1:initials}}}   Date {{{Dte\_es\_:signer1:date}}}

# Annexure A – Form of Statement of Work

[The Form of Statement of Work below is included as an example only, and can be adapted or replaced as required]

## STATEMENT OF WORK

issued by

The Victorian Health Promotion Foundation (ABN: 20 734 406 352) (**VicHealth**)

to

[insert service provider name] (**Service Provider**)

under the agreement for the provision of services dated [insert date of Standing Offer Agreement] (**Agreement**)

1.	<b>Reference</b>							
2.	<b>Project Title</b>							
3.	<b>Date of Statement of Work</b>							
4.	<b>Start Date</b>							
5.	<b>Completion Date</b>							
6.	<b>Services</b>							
7.	<b>Milestones and Payment Schedule</b>	<table border="1"><thead><tr><th><b>Milestone/Deliverable</b></th><th><b>Due date</b></th><th><b>Payment amount (exc. GST)</b></th></tr></thead><tbody><tr><td colspan="3"> </td></tr></tbody></table>	<b>Milestone/Deliverable</b>	<b>Due date</b>	<b>Payment amount (exc. GST)</b>			
<b>Milestone/Deliverable</b>	<b>Due date</b>	<b>Payment amount (exc. GST)</b>						
8.	<b>Workplan</b>	<p>(a) You, the Service Provider (hereon 'You'), must submit the draft Workplan to VicHealth for acceptance within 20 Business Days of the Commencement Date (or such other period agreed between the parties in writing).</p> <p>(b) Following VicHealth's receipt of the draft Workplan from You, VicHealth shall notify You in writing whether it:</p> <p>(ii) accepts the Workplan; or</p>						

		<p>(iii) rejects the Workplan, in which case VicHealth may specify the reasons for its rejection and request amendments to the Workplan which must be made before VicHealth will accept it.</p> <p>(c) Within five Business Days of VicHealth rejecting the draft Workplan under clause (b)(ii), You must submit a revised draft of the Workplan, incorporating VicHealth's requested modifications (if any), to VicHealth.</p> <p>(d) VicHealth will respond to revised Workplan submitted by You under clause (c) in accordance with clause (b) and the process will continue until the Workplan is accepted by VicHealth pursuant to clause (b)(i).</p> <p>(e) To assist with the management and successful implementation of the tasks and obligations contained in this Agreement, the parties agree to regularly review the Workplan throughout the Term.</p> <p>(f) If You are required to, or otherwise wishes to, update the Workplan following its acceptance by VicHealth, You must submit Your proposed amendments to the Workplan to VicHealth and the process in clause (b) will apply.</p> <p>(g) Until a proposed amendment to the Workplan is accepted in writing by VicHealth, the original Workplan will remain in effect.</p>								
9.	<b>Progress Reports</b>									
10.	<b>Contract Management Review Meetings</b>									
11.	<b>Pricing</b>									
12.	<b>Key Personnel</b>	<p><input type="checkbox"/> All Key Personnel listed in Item 3 of Schedule 1 of the Agreement are required for this Statement of Work.</p> <p><input type="checkbox"/> Key Personnel are not required for this Statement of Work.</p> <p><input type="checkbox"/> The following Key Personnel from the list in Item 3 of Schedule 1 of the Agreement are required for this Statement of Work:</p> <table border="1"> <thead> <tr> <th>Name:</th> <th>Role:</th> </tr> </thead> <tbody> <tr> <td></td> <td></td> </tr> <tr> <td></td> <td></td> </tr> <tr> <td></td> <td></td> </tr> </tbody> </table>	Name:	Role:						
Name:	Role:									
13.	<b>Service Level Requirements</b>	Not Used								
14.	<b>Liquidated damages</b>	<p><input type="checkbox"/> Liquidated damages apply to the Statement of Work Contract in accordance with clause 8.3 of the Agreement (and as set out in Item 2 of Schedule 1 of the Agreement).</p> <p><input type="checkbox"/> Liquidated damages do not apply to the Statement of Work Contract.</p>								
15.	<b>Invoicing requirements</b>	<p><input type="checkbox"/> The invoicing requirements set out in Item 5 of Schedule 1 of the Agreement apply to this Statement of Work.</p>								

		<input type="checkbox"/> The following invoicing requirements apply in addition to, or instead of (as applicable), the invoicing requirements set out in Item 5 of Schedule 1 of the Agreement.
16.	<b>Notice requirements</b>	<input type="checkbox"/> The notice particulars set out in Item 19 of Schedule 1 of the Agreement apply to this Statement of Work. <input type="checkbox"/> The following notice particulars apply in addition to, or instead of (as applicable), the notice particulars set out in Item 19 of Schedule 1 of the Agreement.
17.	<b>Other information</b>	

SAMPLE