

In reply please quote

[Tender no. – office use only]

[Date]

[Name]

[Trading Name]

[Address]

Dear [Name]

RE: [Tender no.]

I am pleased to advise you that VicHealth seeks to enter into a contract for the provision of services on the terms and conditions attached to this letter.

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

Please contact [Project Manager] if you have any questions.

We look forward to working with you on this project.

Yours sincerely

{{Sig_es_:signer3:signature}}

{{*N_es_:signer3:fullname }}

{{*Ttl_es_:signer3:title }}

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
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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, Spencer Street, West Melbourne 3003

AND

[Name]

[ABN; Address]

Services Agreement

Ref: [Tender no.]

SERVICES AGREEMENT

Date [...]

PARTIES

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

and

the party identified as the "Service Provider" in the Schedule ("You" "Your").

BACKGROUND

- (B) VicHealth has agreed to engage You 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.

IT IS AGREED

1 SUPPLY OF SERVICES AND DELIVERABLES

- (a) You must provide the Services and supply the Deliverables to VicHealth in accordance with this Agreement (including any Special Conditions) and any reasonable directions given by VicHealth from time to time
- (b) You must:
 - (i) complete the Services and provide the Deliverables by the Completion Date and any other date(s) for delivery of the Services specified in the Schedule;
 - (ii) promptly notify VicHealth as soon as You become aware of any delay or possible delay in the supply of the Services in accordance with this Agreement;
 - (iii) provide fit for purpose Services in a timely and efficient manner using the 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;
 - (iv) provide the Services in accordance with any performance requirements set out in the Schedule;
 - (v) use appropriately skilled and qualified Personnel to provide the Services;
 - (vi) comply with all Laws applicable to the provision of the Services or the supply of the Deliverables;
 - (vii) ensure the highest quality of work in the delivery of the Services and Deliverables and act with the utmost efficiency and in accordance with VicHealth's reasonable directions; and
 - (viii) provide any and all equipment necessary for the performance of the Services.
- (c) After performance of the Services or delivery of any Deliverable(s) provided as part of the Services, VicHealth will undertake such reviews as it considers necessary to determine whether the Services or Deliverable(s) are fit for purpose and comply with this Agreement. 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 1(d) will apply.
- (d) 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 following which VicHealth will undertake further review of the Services or Deliverable(s) under clause 1(c). 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 1(c)(i)
 - (iii) conditionally accepts the Services or Deliverable(s), subject to the 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 under clause 1(c)(i), immediately terminate this Agreement by written notice to You.

If VicHealth terminates this Agreement under this clause 1(d)(iv), VicHealth will be entitled to a full refund of all moneys paid to You in respect of the Services or Deliverables which VicHealth is unable to use following termination.

2 TERM OF AGREEMENT

- (a) This Agreement commences on the Commencement Date specified in the Schedule and continues until all Services and Deliverables have been provided to the satisfaction of VicHealth, unless terminated earlier in accordance with clause 18 or extended in accordance with clause 2(b).
- (b) A party may, by the provision of notice in writing, request this Agreement be extended beyond the Completion Date for the period or periods specified in Item 6 Schedule 1. This Agreement may only be extended for the period or periods as agreed to by the parties in writing. Any such further Terms or Terms will be on the same terms and conditions as this Agreement (excluding in respect of the further period, this clause 2(b))

3 PRICE FOR THE SERVICES

- (a) The Rates payable for the Services are fixed, and inclusive of all taxes (excluding GST), for the Term of this Agreement.
- (b) The Rates are provided on a time and materials basis.
- (c) The Fees applicable to the Services and Deliverables are fixed, and inclusive of all taxes (excluding GST), unless otherwise specified in the Schedule.
- (d) If Schedule 1 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.
- (e) After receiving notification of any expenses in accordance with clause 3(d), 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.
- (f) Where a price review mechanism is set out in Item 12 of Schedule 1:
 - (i) the parties will adopt that price review mechanism in accordance with the requirements in Item 12 of Schedule 1; and
 - (ii) any revised Rates and/or Fees resulting from the operation of the price review mechanism in Item 12 of Schedule 1 will take effect from the review dates set out in Item 12 of Schedule 1.

4 'VALUE ADDING' INITIATIVES

- (a) You agree that you will, to the extent that it is commercial 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,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 the 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 results in a change to the Services the parties must agree that change in writing.

5 APPLICATION OF THIS AGREEMENT

The terms and conditions of this Agreement will apply to the provision of all Services and the supply of all Deliverables specified in the Schedule and the terms or conditions contained on any invoice, delivery docket, engagement terms or similar document provided by You to VicHealth will not apply unless VicHealth expressly agrees in writing to the contrary.

6 FAILURE TO PERFORM

- (a) Without limiting any other available remedy, if You fail to provide any of the Services or Deliverables in accordance with this Agreement, VicHealth will not be required to pay for those Services or Deliverables (until they are provided correctly) and may require You to replace those Deliverables, remedy any default or re-perform those Services within the time specified by VicHealth (which must be reasonable).
- (b) If the default referred to in clause (a) is not capable of being remedied or the Services are not capable of being re-performed, or You fail within the time specified to satisfactorily replace or resupply the Deliverables, remedy the default or re-perform the Services, VicHealth may either have the Services and Deliverables remedied or re-performed by a third party or do so itself. In either case, You must pay the reasonable costs and expenses incurred by VicHealth in doing so.

7 WARRANTIES

You represent and warrant to VicHealth that:

- (a) **(Capacity)** You have the right to enter this Agreement and perform the Services;
- (b) **(IP)** You are entitled to use and deal with any Intellectual Property Rights incorporated in the Contract Material or otherwise used by You in connection with the provision of the Services, VicHealth's use of the Deliverables and receipt of the Services will not infringe any Intellectual Property Rights, You have all necessary third party consents to grant the rights and licences under this Agreement and You will grant VicHealth the licences contemplated by this Agreement;
- (c) **(Purpose)** 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;
- (d) **(No Conflict)** You and Your Personnel do not hold any office or possess any property, are not engaged in any business or activity and do not have any obligations whereby duties or interests are or might be created in conflict with or might appear to be created in conflict with Your obligations under this Agreement; and
- (e) **(Trust)** You have not entered into this Agreement on behalf of a trust
- (f) **(No infringement)** the receipt of the Services and the possession or use of any Deliverables by VicHealth will not infringe the Intellectual Property Rights or other rights of any person or any Laws.

8 INTELLECTUAL PROPERTY RIGHTS

- (a) Unless specified otherwise in Item 9 of the Schedule, ownership of the Contract Material will vest in VicHealth from the time of its creation.
- (b) All Pre-Existing Intellectual Property used by the parties in connection with the provision of the Services or the creation of Contract Materials remains the property of the relevant party or its licensors.
- (c) You hereby irrevocably and unconditionally grant VicHealth a perpetual, non-exclusive, royalty-free, worldwide and transferable licence (including the right to sub-license) to use any of Your Pre-Existing Intellectual Property incorporated in or otherwise required to use the Contract Materials or the Services. The licence granted to VicHealth under this clause is limited to use of the relevant Pre-Existing Intellectual Property by VicHealth for the purposes of VicHealth and for no other purpose.
- (d) VicHealth grants You a non-exclusive, non-transferable, royalty-free licence to use VicHealth's Pre-Existing Intellectual Property for the sole purpose of performing, and only to the extent required to perform, the Services and comply with Your obligations under the Agreement during the Term.
- (e) Any Intellectual Property Rights in Data will vest in VicHealth.
- (f) You undertake that the Services may be used in any way by VicHealth, without identifying any person as the individual responsible for creating any particular material comprised in it, without infringing the Moral Rights of any person.
- (g) You must, upon request by VicHealth, do all things necessary (including executing any documents) to give full effect to this clause 8.

9 DATA

- (a) Data will remain (and, if necessary, will become) the property of VicHealth. You will assign to VicHealth from the date of creation all Intellectual Property Rights in any Data created by or on behalf of You.
- (b) You must only use the Data to the extent necessary to perform Your obligations under this Agreement.

10 ACCESS

- (a) When at VicHealth's premises, You must, and must ensure that Your Personnel:
 - (i) protect people and property;
 - (ii) prevent nuisance;
 - (iii) act in a safe and lawful manner;
 - (iv) comply with the safety standards and policies (including security and access policies) of VicHealth (as notified to You); and
 - (v) comply with any lawful directions of VicHealth or its Personnel.

11 LIABILITY AND INDEMNITY

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

12 INSURANCE

- (a) You must obtain, and maintain insurance cover during the Term and, if requested by VicHealth, for a period of up to 7 years after the Services have been completed, sufficient to cover any loss or costs that may be incurred and for which You may be liable in connection with this Agreement, including professional indemnity and, if applicable, public and product liability insurance to the value specified in the Schedule or, if no value is specified, to a value sufficient to cover any loss or costs that may be incurred.
- (b) On request, You must, within 10 Business Days, provide VicHealth with evidence of the currency of any insurance You are required to obtain under this Agreement.
- (c) Where the required insurance is due to expire, on request by VicHealth, You must provide evidence of the replacement insurance prior to the expiry of the initial insurance.

13 ASSIGNMENT AND SUB-CONTRACTING

- (a) You must not assign or sub-contract to any person any of Your rights or obligations under this Agreement without the prior written consent of VicHealth (which may be given or withheld in its absolute discretion).
- (b) You will not, as a result of any sub-contracting arrangement, be relieved from the performance of any obligation under this Agreement and You will

be liable for all acts and omissions of a sub-contractor as though they were Your acts or omissions.

14 CONFIDENTIALITY, PRIVACY AND DATA PROTECTION

- (a) You and Your Personnel must keep the Confidential Information confidential and secure and must not disclose or otherwise make available any Confidential Information to any other person.
- (b) You consent to VicHealth publishing or otherwise making available information in relation to You (and the provision of the Services):
 - (i) as may be required to comply with the Contract Publishing System;
 - (ii) to other Victorian Public Entities or Ministers of the State in connection with the use of the Services;
 - (iii) 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;
 - (iv) to the office of the Auditor General appointed under section 94A of the *Constitution Act 1975* (Vic) or the ombudsman appointed under the *Ombudsman Act 1973* (Vic);
 - (v) to comply with Law, including the *Freedom of Information Act 1982* (Vic); or
 - (vi) to the IBAC.
- (c) You acknowledge that You will be bound by the Information Privacy Principles, Health Privacy Principles and any applicable Code of Practice (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.
- (d) You must, and must procure that your officers, employees, agents and subcontractors, comply with the Privacy Obligations and the VicHealth Privacy Policy as amended from time to time and as published on our Website at <https://www.vichealth.vic.gov.au/search/funding-partner-privacy-policy> in relation to any Personal Information or Health Information collected by, disclosed to, or accessible by You in connection with this Agreement.
- (e) You acknowledge that VicHealth is bound by the Protective Data Security Standards, and You will:
 - (i) not do any act or engage in any practice that would contravene or give rise to a breach of a Protective Data Security Standard in respect of any Data collected, held, used, managed, disclosed or transferred by You, on behalf of the State, under or in connection with this Agreement; and
 - (ii) provide VicHealth with any information it reasonably requires to assist it to comply with the Protective Data Security Standards.
- (f) You must:
 - (i) 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.
 - (ii) 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.
 - (iii) 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
 - (iv) 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.14.
- (g) Clause 14 does not prevent You from retaining securely and confidentially one copy of any records that you are required to retain in order to comply with Your legislative record keeping obligations.

15 COMPLIANCE WITH LAW AND POLICY

- (a) You must, in performing Your obligations under this Agreement, comply with:

- (i) all Laws affecting or applicable to the provision of Services by You under this Agreement, including any Laws specified in Item 16 of Schedule 1 and
 - (ii) both VicHealth and the State's policies and procedures as notified to You in writing from time to time.
- (b) Where, in the course of providing the Services, You or Your Personnel:
 - (i) supervise or work with Public Sector Employees;
 - (ii) undertake work that is of a similar nature to the work undertaken by Public Sector Employees at a premises or location generally regarded as a public sector workplace; or
 - (iii) 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.
 - (c) You acknowledge and agree that:
 - (i) 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>;
 - (ii) if requested You will complete the harmful industry relationship declaration form;
 - (iii) any harmful industry declaration made by You will become a representation and warranty under clause 7;
 - (iv) We may exercise our right under clause 18 if Your declaration is false, misleading or inaccurate.
 - (d) You acknowledge that:
 - (i) 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;
 - (ii) You have read and aspire to comply with the Supplier Code of Conduct; and
 - (iii) the expectations set out in the Supplier Code of Conduct are not intended to reduce, alter or supersede any other obligations which may be imposed on You, whether under this Agreement or at Law.
 - (e) 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.
 - (iii) 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:
 - (iv) 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
 - (v) 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.
 - (f) At VicHealth's request You must, at Your own cost, cooperate with and assist VicHealth in connection with:
 - (i) any enquiry or investigation by a government authority, including the Auditor-General; and
 - (ii) any request made to VicHealth concerning this Agreement or the Services and Deliverables supplied under this Agreement under the *Freedom of Information Act 1982* (Vic).

16 INVOICING AND PAYMENT

- (a) Upon completion of the Services or supply of Deliverables or as otherwise specified in the Schedule, VicHealth will issue You a recipient created tax invoice (or invoices) in respect of the Services and Deliverables following the provision of Services or supply of Deliverables. You are not required to issue VicHealth with any invoices under this Agreement unless expressly stated otherwise in the Schedule. You must provide such other information as VicHealth may reasonably require, including an accurate description of the Deliverables supplied and the Services provided.
- (b) If specified in the Schedule, You must submit tax invoices to VicHealth in respect of the Services and Deliverables. Each invoice submitted by You must be in the form and contain the information required for a tax invoice

- under the GST Act. You must provide such other information as VicHealth may reasonably require, including an accurate description of the Deliverables supplied and the Services provided. The tax invoice must be sent to VicHealth at the address specified in the Schedule.
- (c) VicHealth will pay the invoiced amount no later than 30 days after the end of the relevant month in which it issues the invoice under clause 16(a) or receives an accurate and properly rendered invoice from You under clause 16(b). If VicHealth disputes the amount of an invoice issued under clause 16(b) it must pay the undisputed amount (if any) and notify You of the amount in dispute. Any disputes will be handled in accordance with clause 19.
- (d) Payment of an invoice is not to be taken as evidence that the Deliverables have been supplied or the Services provided in accordance with this Agreement, and does not diminish Your responsibility for any of the Deliverables or any part of the Services that are subsequently found not to comply with the relevant standards, but must be taken only as payment on account.
- (e) VicHealth is entitled to set off against any amount which it owes You under this Agreement any amount which You owe to VicHealth from time to time whether under this Agreement or otherwise.
- 17 TAXES**
- (a) Terms used in this clause 17 have the same meanings given to them in the GST Act.
- (b) 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.
- (c) 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 supplier an additional amount equal to the GST payable on or for the taxable supply subject to the recipient receiving a valid tax invoice before the time of payment. Payment of the additional amount will be made at the same time as payment for the taxable supply is required to be made.
- (d) You are liable for all taxes, duties, levies, customs and imposts in connection with the provision of the Services, the Deliverables, this Agreement or any transaction contemplated by this Agreement, excluding GST.
- 18 TERMINATION**
- (a) VicHealth may terminate this Agreement with immediate effect (or with effect from a specified date) by giving notice in writing to You if You:
- fail to provide the Services in accordance with this Agreement;
 - breach any provision of this Agreement and, where that breach is capable of remedy, fail 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);
 - breaches any provision of the Agreement that is not capable of remedy;
 - or any of its Personnel involved in the provision of the Services commits fraud, dishonesty or any other serious misconduct;
 - commits any act or does anything that may be prejudicial or otherwise detrimental to the reputation of the State;
 - suffers from an Insolvency Event; or
 - You or any of Your Personnel commit any act which brings Your reputation into disrepute and as a consequence VicHealth believes that its continued association with You may be detrimental to its reputation.
- (b) A notice of termination under clause 18(a) may be given:
- in the case of termination under clause 18(a)(vi), and where a stay period applies under Chapter 5 of the *Corporations Act 2001* (Cth), at the expiry or lifting of that stay period; or
 - otherwise at any time.
- (c) VicHealth may terminate this Agreement without cause on notice to You.
- (d) If this Agreement is terminated pursuant to clauses 18(a)(i), (a) or (b) VicHealth will pay You:
- for the Services performed and Deliverables supplied in accordance with this Agreement up to the date of the termination; and
 - the unavoidable and substantiated costs incurred by the You as a direct result of the termination, excluding any loss of profit,
- (e) When VicHealth issues a notice under 18(b), You will immediately comply with any directions given in the notice and do all that is possible to mitigate its losses arising from the termination of this Agreement.
- (f) You may terminate this Agreement by giving at least 20 Business Days written notice to VicHealth if VicHealth fails to pay amounts due under this Agreement.
- (g) The termination of this Agreement will not prejudice any right of action or remedy which may have accrued to either party prior to termination.
- (h) On termination or expiry You must immediately, following instructions by VicHealth, cease using all materials that contain any Data or Confidential Information by either destroying the materials or returning the materials at no additional cost to VicHealth.
- (i) The parties may terminate this Agreement at any time by mutual agreement.
- (j) The obligations which by their nature survive, or which are expressed to survive, the termination or expiry of this Agreement will survive, including without limitation this clause 18 and clauses 8, 11, 12 and 14.
- 19 DISPUTE RESOLUTION**
- (a) Subject to clause 19(c) neither party will commence any legal proceedings in respect of any dispute arising under or in connection with this Agreement until the procedure provided by this clause has been fully utilised.
- (b) Any dispute arising during the course of this Agreement will be dealt with as follows:
- the party claiming that there is a dispute will send the other a written notice setting out the nature of the dispute;
 - the parties will try to resolve the dispute through direct negotiations in good faith between persons who have authority to resolve the dispute;
 - if the dispute is not resolved within 14 days (or such longer period as may be agreed by the parties) the parties may refer the dispute to mediation. The parties agree to attempt in good faith to settle the dispute by mediation before commencing litigation. The mediator will be chosen by the parties or, if the parties cannot agree as to whom to appoint as mediator, the mediation will be administered by the Australian Disputes Centre (**ADC**) and conducted in accordance with the ADC Guidelines for Commercial Mediation in force at the date of this Agreement; and
 - if the dispute remains unresolved following mediation either party may commence litigation or take other action as it sees fit.
- (c) This clause 19 does not prevent a party from commencing legal proceedings for urgent interlocutory relief.
- 20 GENERAL**
- (a) This Agreement is governed by and is to be construed in accordance with the Laws. Each party irrevocably and unconditionally submits to the 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.
- (b) Time is of the essence in relation to the provision of the Services and supply of the Deliverables.
- (c) This Agreement may only be varied or replaced by a written document executed by the parties.
- (d) 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.
- (e) Any provision of the Agreement 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.
- (f) VicHealth may set off against any sum owing to You under this Agreement any amount then owing by You to VicHealth.
- (g) Nothing in this Agreement prevents VicHealth from obtaining any goods or services which are similar to the Services or Deliverables from any person other than You.
- (h) This Agreement contains everything the parties have agreed in relation to the Services and supply of the Deliverables. 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, unless VicHealth expressly agrees in writing to the contrary.

- (i) 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.
- (j) The failure by a party to insist upon a strict performance by the other party of any of the terms or provisions of this Agreement will not be deemed a waiver of any subsequent breach or default.
- (k) Subject to clause 20(l), a party may not assign any right under this Agreement without the prior written consent of the other party. You will be responsible for acts and omissions of any assignee.
- (l) VicHealth may, by notice in writing to You, assign its rights, transfer its obligations or novate this Agreement to any Victorian Public Entity in the event of any State government restructure or other re-organisation or change in policy.
- (m) This Agreement is not intended to create a partnership, joint venture or agency relationship between the parties.

21 NOTICES

- (a) Any notice or other communication under this Agreement must be given in writing and may be delivered by hand or sent by pre-paid post, facsimile or email to the authorised representative of the other party.
- (b) The particulars for delivery of notices are initially as set out in the Schedule which a party may change from time to time by written notice to the other party.
- (c) Subject to clause 21(d), a communication is taken to be received:
 - (i) if delivered by hand, on that day;
 - (ii) if posted, ten days after posting;
 - (iii) if sent by email, when confirmation of delivery is received by the sender which records the time that the email was delivered to the addressee's last notified email address unless the sender receives a delivery failure notification indicating that the email has not been delivered to the addressee.
- (d) If a communication is given:
 - (i) after 5.00 pm in the place of receipt; or
 - (ii) on a day which is a Saturday, Sunday or bank or public holiday in the place of receipt,it is taken as having been given at 9.00 am on the next day which is not a Saturday, Sunday or bank or public holiday in that place.
- (e) Notices sent by email must include the words "NOTICE UNDER SERVICES AGREEMENT" in the subject line.

22 INTERPRETATION

- (a) A reference to:
 - (i) 'You', 'Your' and 'Service Provider' are references to the same party;
 - (ii) "includes" means includes without limitation;
 - (iii) "a party" means VicHealth or You, as the context requires, and a reference to "the parties" means both of them;
 - (iv) a person includes a partnership, a joint venture, an unincorporated association, a corporation and a government or statutory body or authority;
 - (v) a person includes the person's legal personal representatives, successors, assigns and persons substituted by novation;
 - (vi) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced; and
 - (vii) an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation.
 - (viii)
- (b) In this Agreement:

Agreement means this agreement for the provision of the Services consisting of this 'Services Agreement (General conditions for the provision of Services to VicHealth)' and the Schedule.

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.

Code of Practice means a code of practice as defined in, and approved under, the *Privacy and Data Protection Act 2014* (Vic).

Commencement Date means the date on which the provision of the Services will commence, as specified in the Schedule.

Completion Date means the date by which the provision of the Services must be completed by You, as specified in the Schedule.

Confidential Information means any 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 (or any of Your Personnel), but excludes information which:

- (a) is in or which subsequently enters the public domain, other than as a result of a breach of an obligation of confidentiality;
- (b) You can demonstrate was in Your possession prior to the date of the Agreement;
- (c) You can demonstrate was developed by You independently of any disclosures previously made by VicHealth;
- (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; or
- (e) is required to be disclosed pursuant to Law, court order or other legal process.

Contract Material means any materials (including any Intellectual Property) which You create (whether alone or jointly with any other person) in performing the Services or supplying the Deliverables.

Contract Publishing System means the system of the Victorian Government requiring publication of details of contracts entered into by Victorian Government departments, bodies and agencies, including any replacement or amended system.

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, 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.

Deliverables means the deliverables described in the Schedule and any items that are reasonably necessary or incidental to any of those deliverables.

Fees means the fees payable to You for the provision of the Services and supply of the Deliverables as set out in the Schedule.

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

Health Information has the meaning set out 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.

Information Privacy Principles means the information privacy principles set out in the *Privacy and Data Protection Act 2014* (Vic).

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 cease, or indicate that You are about to cease, carrying on business.

VPSC Code of Conduct means the Code of Conduct for Victorian Public Sector Employees 2015 issued by the Victorian Public Sector Commission pursuant to section 61 of the *Public Administration Act 2004* (Vic).

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.

Laws means:

- (a) all laws (as may be amended from time to time), including rules of common law and equity, any statute, regulation or subordinate legislation of the Commonwealth of Australia, the State 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.

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.

Material includes documents, equipment, software (including source code and object code), goods, information and data stored by any means including all copies and extracts of the same.

Personal Information has the meaning given in the *Privacy and Data Protection Act 2014* (Vic).

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

Pre-Existing Intellectual Property means all materials owned by or licensed to a party as at the date of this Agreement or developed by or on behalf of a party independently of this Agreement.

Protective Data Security Standards means any standard issued under Part 4 of the *Privacy and Data Protection Act 2014* (Vic) and any policies or protocols issued by VicHealth to ensure compliance with those standards.

Public Sector Employee has the same meaning as in section 4(1) of the *Public Administration Act 2004* (Vic)

Rates means the monetary amount (whether charged on an hourly, daily, weekly or other time related basis) payable to You for the provision of the Services and supply of the Deliverables, as specified in the Schedule.

Services means the services, and includes any Deliverables provided as part of the services, specified in the Schedule and as provided under this Agreement.

Special Conditions means any conditions listed Item 19 of Schedule 1 (if any)

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

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

Term means the duration of this Agreement from the Commencement Date to the Completion Date or otherwise as extended in accordance with clause 2(b).

VicHealth Privacy Policy means VicHealth's privacy policy available at <https://www.vichealth.vic.gov.au/search/funding-partner-privacy-policy> as updated and amended from time to time.

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).

Executed as an Agreement

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 **[Name] (ABN XX XXX XXX XXX)**. By signing this Agreement the signatory warrants that the signatory is duly authorised to sign this Agreement on behalf of **[Trading Name]**:

Signature

Signature

Signature

Signature

Name

Name

Name

Name

Title

Title

Title

Title

Date

Date

Date

Date

By ticking this box you acknowledge

- that you are an authorised signatory for
 - that you have read and understood the terms of this Agreement and
 - that by signing this Agreement you bind
- to the terms of this Agreement.

Approved by Date

Approved by Date

Item 1.	Contract number	OPP-24750												
Item 2.	VicHealth	The Victorian Health Promotion Foundation (ABN: 20 734 406 352) Address: Level 2, Spencer Street, West Melbourne 3003 Telephone: 03 9667 1333 Email:												
Item 3.	Service Provider	<i>[Note: legal names should include Pty Ltd or Ltd. Identify where a business is trading under another name.]</i> Legal Name: (ABN) Trading Name: Address: Telephone: Email:												
Item 4.	Commencement Date (Clause 2(a))	Services Commencement Date is: <i>[Note: The date the Service Provider must commence supplying the Services may be a different date to the date this Agreement is signed]</i>												
Item 5.	Completion Date (Clause 2(b))	The Completion Date for the Services is:												
Item 6.	Extension period(s) (Clause 2(b))	<i>[Note: If applicable, include the length of any additional periods by which the VicHealth may extend the term of this Agreement following the Completion Date. E.g. Two(2) x 12 month options to extend]]</i>												
Item 7.	Services (Clause 1(a))	<p>Project title:</p> <p>Services:</p> <p>Performance Measure notes</p> <p><i>[Note: Describe any Service Levels Requirement required. Service Levels are not essential for inclusion but if used they should be realistic, measurable (without being overly administratively cumbersome) and drive the right behaviours. For any impact to be enforceable, it's important that it is not punitive but rather a pre-agreed assessment of VicHealth's loss if not met where this is possible. Below are some basic examples of some common performance measures for simple procurements.]</i></p> <table border="1"> <thead> <tr> <th>Deliverable</th> <th>Performance Measure</th> <th>Measurement Frequency</th> <th>Impact</th> </tr> </thead> <tbody> <tr> <td><i>E.g. quality/ accuracy of service delivery [specify which aspects are being measured]</i></td> <td><i>Customer satisfaction survey rating of 70% or higher or Certain reports indicating a particular measurable result</i></td> <td><i>Monthly/ Quarterly</i></td> <td><i>Reduction of 1% of quarterly invoice value if target not met</i></td> </tr> <tr> <td><i>E.g. Timeliness of provision of services</i></td> <td><i>Meeting times for delivery of services as specified 95% of the time</i></td> <td><i>Quarterly</i></td> <td><i>Pay VicHealth a specified amount covering certain identifiable costs</i></td> </tr> </tbody> </table>	Deliverable	Performance Measure	Measurement Frequency	Impact	<i>E.g. quality/ accuracy of service delivery [specify which aspects are being measured]</i>	<i>Customer satisfaction survey rating of 70% or higher or Certain reports indicating a particular measurable result</i>	<i>Monthly/ Quarterly</i>	<i>Reduction of 1% of quarterly invoice value if target not met</i>	<i>E.g. Timeliness of provision of services</i>	<i>Meeting times for delivery of services as specified 95% of the time</i>	<i>Quarterly</i>	<i>Pay VicHealth a specified amount covering certain identifiable costs</i>
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					caused by the delay						
Item 8.	Work program (Clause 1(a))	<p><i>[Note: Specify any other milestones or deliverables, and corresponding milestone dates/Deliverable dates, that need to be achieved by the Service Provider.]</i></p> <table border="1"> <thead> <tr> <th>Deliverable</th> <th>Due date</th> <th>Payment amount (exc. GST)</th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> <td> </td> </tr> </tbody> </table>				Deliverable	Due date	Payment amount (exc. GST)			
Deliverable	Due date	Payment amount (exc. GST)									
Item 9.	Ownership of Contract Material (Clause 8)	<p><i>[Note: Tick to specify which party will own the IP in any Contract Materials developed by Service Provider.]</i></p> <p><input type="checkbox"/> Service Provider</p> <p><input type="checkbox"/> VicHealth</p> <p>If this Item 9 specifies that ownership of the Contract Materials vests in the Service Provider, the following provisions apply:</p> <p>(a) VicHealth hereby assign and agree to assign to You all right, title and interest (including all Intellectual Property Rights) in the Contract Materials. To avoid doubt, nothing in this Item 9 requires VicHealth to assign VicHealth's Intellectual Property Rights in VicHealth's Pre-Existing Intellectual Property.</p> <p>(b) Where para (a) in this Item 9 applies, VicHealth warrants that VicHealth will be entitled to own and assign to You any and all Contract Materials in accordance with para (a) in this Item 9.</p> <p>(c) You irrevocably and unconditionally grant VicHealth a perpetual, non-exclusive, royalty-free, worldwide and transferable licence (including the right to sub-license) to exercise all Intellectual Property Rights in the Contract Materials to the extent necessary to allow VicHealth the full use and enjoyment of the Services.</p>									
Item 10.	Rates/Fees (Clause 3)	<p>The Fees payable for the provision of Services and Deliverables under this Agreement are as follows:</p> <p><i>[Note: Specify the agreed Rates and/or Fees which will be payable for the Services and any Deliverables. This should be based on the information set out in the Invitation and the Service Provider's Offer, which may be negotiated. The Service Provider's time and materials for variations and additional services should be included (even where the Services are to be provided on a fixed-price basis). Include: the GST exclusive price; the GST payable; and the total cost for the Services.]</i></p> <p><i>[Note: Payments Contingent on VicHealth satisfaction of Contract Milestones and requirements].</i></p> <p>The expenses (if any) that the Service Provider may seek to have reimbursed, subject to providing appropriate documentation to VicHealth to substantiate the expense, are as follows:</p> <p><i>[Note: Include details of any expenses for which the Service Provider can seek reimbursement. If there are no expenses insert N/A]</i></p> <p>Rates Card:</p> <p><i>[Note: Insert rates card for services performed on a time and materials basis. If no rates card applies insert N/A]</i></p>									
Item 11.	Price Review Mechanism	If required									
Item 12.	Invoice requirements (Clause 16)	<p><input 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><i>[Note: Specify whether Service Provider can issue invoices or whether VicHealth</i></p>									

		<i>will issue recipient created tax invoices (see clause 16. Specify any requirements with which the Service Provider must comply when invoicing the VicHealth]</i>															
Item 13.	Notice particulars (Clause 21)	<p><i>[Note: Where possible, the addressee should specify a role (e.g. Project Manager) rather than an individual. If the VicHealth does not wish to receive notices via email, this should be specified and no email address should be provided. Critical communications (e.g. a notice of termination) should be delivered by alternative methods in addition to email.]</i></p> <p>VicHealth: Addressee: Support User Address: Level 2, Spencer Street, West Melbourne 3003 Email:</p> <p>Service Provider: Addressee: Address: Level 4, 45 Exhibition Street, Melbourne VIC 3000 Email:</p>															
Item 14.	Insurance (Clause 12)	<table border="1"> <thead> <tr> <th></th> <th>Type of coverage</th> <th>Amount (AUD)</th> </tr> </thead> <tbody> <tr> <td><input type="checkbox"/></td> <td>Public liability insurance</td> <td><i>[insert] [per event OR in the aggregate]</i></td> </tr> <tr> <td><input type="checkbox"/></td> <td>Product liability insurance</td> <td><i>[insert] [per event OR in the aggregate]</i></td> </tr> <tr> <td><input type="checkbox"/></td> <td>Professional indemnity insurance</td> <td><i>[insert] [per event OR in the aggregate]</i></td> </tr> <tr> <td><input type="checkbox"/></td> <td>Other (please specify):</td> <td><i>[insert] [per event OR in the aggregate]</i></td> </tr> </tbody> </table>		Type of coverage	Amount (AUD)	<input type="checkbox"/>	Public liability insurance	<i>[insert] [per event OR in the aggregate]</i>	<input type="checkbox"/>	Product liability insurance	<i>[insert] [per event OR in the aggregate]</i>	<input type="checkbox"/>	Professional indemnity insurance	<i>[insert] [per event OR in the aggregate]</i>	<input type="checkbox"/>	Other (please specify):	<i>[insert] [per event OR in the aggregate]</i>
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<input type="checkbox"/>	Other (please specify):	<i>[insert] [per event OR in the aggregate]</i>															
Item 15.	Laws (Clause 15)	<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><i>[Specify any Laws of particular relevance with which the Service Provider must comply as part of this Agreement.]</i></p> <p><i>Each Agreement will be different and we recommend you obtain advice at the time.</i></p> <p><i>Some common examples are:</i></p> <ul style="list-style-type: none"> • <i>Local Jobs First Act 2003 (Vic)</i> • <i>Federal anti-discrimination laws;</i> • <i>Equal Opportunity Act 2010 (Vic)</i> • <i>Data and Privacy Protection Act 2014 (Vic) and associated Protective Data Security Standards and Information Privacy Principles</i> • <i>Public Records Act 1973 (Vic) and standards issued under this Act</i> • <i>Occupational Health and Safety Act 2004 (Vic)</i> • <i>Competition and Consumer Act 2010 (Cth) incorporating Australian Consumer Law</i> 															

		<ul style="list-style-type: none"> • Where the Services are provided to youth, consider: • Worker Screening Act 2020 (Vic); • Child Wellbeing and Safety Act 2005 (Vic); Child Safety Standards]
Item 16.	Documentation	[Note: Specify whether any additional documents form part of this Agreement. If they do, include details of the documents which form part of this Agreement and, without limiting the operation of clause 19, specify the order of precedence should an inconsistency arise between these additional documents, this Agreement and this Schedule.]
Item 17.	Other information	<p>[Note: Describe any other information relevant to the provision of the Services under this Agreement. Note that this information will not over-ride the terms and conditions of the of the General conditions.]</p> <p>[Note: If you wish for any other contractual requirements (e.g. reporting obligations or meeting requirements etc) to contractually apply, they will need to be drafted into this Agreement or within the Specifications or Deliverables.]</p> <p>[Note: If there is no additional information insert N/A]</p>
Item 18.	Special Conditions	<p>Safety of children</p> <p>(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).</p> <p>(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:</p> <p>(i) each relevant individual passes a Working With Children Check (WWCC); and</p> <p>(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</p> <p>(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.</p> <p>(c) You must retain copies of all WWCC assessment notices You receive.</p> <p>(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:</p> <p>(i) the safety of all relevant children is promoted;</p> <p>(ii) child abuse (as defined in the Child Wellbeing and Safety Act 2005 (Vic)) is prevented; and</p> <p>(iii) allegations of child abuse are properly responded to.</p> <p>(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.</p> <p>(f) If You are in breach of this clause, You immediately on becoming aware of the breach:</p> <p>(i) notify VicHealth in writing; and</p> <p>(ii) take steps to rectify the breach.</p> <p>Social Procurement Framework (SPF)</p>

		<i>[Note: Specify whether the SPF applies to this Agreement and the terms and conditions set out in Schedule 2 are incorporated into this Agreement.]</i>
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Schedule 2 – Social Procurement Framework

[If the Social Procurement Framework applies to this agreement, refer to the model clauses” available at <https://www.buyingfor.vic.gov.au/goods-and-services-contract-templates> for the appropriate content for this schedule.]

Any attachments as set out in the Social Procurement Framework “Model clauses” document should immediately follow the Schedule ahead of the Signing page.]