

In reply please quote

Ref: {{OPPORTUNITY_OPPORTUNITY_CODE}}

RE:

I am pleased to advise you that VicHealth is able to offer you a contract for this project on the terms and conditions of the Services Agreement enclosed with this letter.

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

VicHealth looks forward to a successful project.

Yours sincerely

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

E 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](#)

Short Form Services

Agreement Details

Parties	
VicHealth	Victorian Health Promotion Foundation (ABN 20 734 406 352) Level 2, Spencer Street, West Melbourne 3003 Tel: (03) 9667 1333
Service Provider	Street address:
Contract Title	
Contract ID or Purchase Order Number	
Description of Services	Description of Services: Performance Requirements: <i>[Include performance requirements]</i>
Term	Commencement Date: End Date:
Option to extend	<i>[If no extension to the Term write "Not applicable"]</i> Not Applicable
VicHealth Representative	Name: Tel: Email:
Service Provider Representative	Name: Tel: Email:
Change to insurance requirement (cl 6)	<i>[Insert details if there is any change to insurance requirements under clause 6. Otherwise, write "No change"]</i>
Price	

<p>Ownership of IP</p>	<p><i>[Note: Tick to specify which party will own the IP rights.]</i></p> <p><input type="checkbox"/> Service Provider</p> <p><input type="checkbox"/> VicHealth</p> <p><i>[If VicHealth is selected include the below and, if the Service Provider is selected, delete the following:]</i></p> <p>VicHealth acknowledges First Nations Cultural and Intellectual Property rights – the rights of First Nations peoples to own and control their cultural heritage.</p> <p>Indigenous Cultural and Intellectual Property (ICIP), means specialised knowledge that Traditional Owners have acquired and passed down through generations, which includes but is not limited to:</p> <ul style="list-style-type: none"> a. traditional cultural expression such as artwork, music, dances, ceremony, stories and languages; b. traditional knowledge including ecological knowledge of biodiversity, medicinal knowledge, environmental management knowledge and cultural and spiritual knowledge and practices; c. tangible cultural property including sacred sites and burial grounds; d. intangible cultural property such as stories passed on orally; and e. documentation of Traditional Owner heritage in all forms of media including reports, films, sound recordings and photographs of Aboriginal and Torres Strait Islander peoples. <p>Traditional Owners refers to those Aboriginal and Torres Strait people who have, in accordance with their tradition, a social, ancestral, economic and/or spiritual affiliation with, and responsibilities for, all or any part of the lands or waters.</p> <p>If this Item specifies that ownership of Intellectual Property vests in VicHealth, Clause 11(b) to (g) of the Agreement is replaced with the following text:</p> <p>Ownership of Services Intellectual Property</p> <p>11 (b) All rights in any Services Intellectual Property are owned by VicHealth and You hereby unconditionally and irrevocably assign, and agree to assign, to VicHealth all rights (including all rights in Intellectual Property, title and interest in and to such Services Intellectual Property immediately on creation.</p> <p>(c) We grant You a non-exclusive, non-transferable, worldwide, royalty free licence to use, reproduce, adapt and otherwise exploit the Service Intellectual Property:</p> <ul style="list-style-type: none"> (i) solely for the purpose of conducting the Services during the Term in accordance with this Agreement; and (ii) as otherwise permitted by VicHealth in writing. <p>(d) You warrant that any Services Intellectual Property created by You or any of Your employees, officers, agents or contractors does not infringe, and its use in any way by VicHealth in accordance with this Agreement will not infringe, the IPRs of any person, and You have obtained all necessary consents from authors to acts that would but for the consent infringe moral rights.</p>
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	(e) You grant to VicHealth a worldwide, irrevocable, non-exclusive, royalty-free, perpetual licence to use and reproduce your name, logo and endorsements for the purpose of promoting and reporting the Services.]
Insurance Requirements	public and products liability insurance of \$10 million (AUD) per occurrence professional indemnity insurance of \$5 million (AUD) per claim
Special Conditions	<p><i>[if the Services involve children, the Agreement is amended by this item to include the following as a Special Condition]</i></p> <p>Indigenous Cultural and Intellectual Property</p> <p>a. You warrant to Us that You are entitled to use and deal with any Indigenous Cultural and Intellectual Property (ICIP) which may be used in connection with the Project Work Plan.</p> <p>b. Any licence of Intellectual Property to Us under this Grant Agreement will include ICIP only to the extent that permission from all relevant ICIP owners of the ICIP for Us to use such ICIP in connection with the Project Work Plan (such permission to be secured by You as necessary).</p> <p>c. To avoid doubt, ownership of ICIP will be retained by the relevant ICIP owner.</p> <p>for the Purposes of this special condition</p> <p>Safety of children</p> <p>(a) You must comply, and ensure that all Your personnel (including approved sub-contractors) comply, with the <i>Child Wellbeing and Safety Act 2005</i> (Vic) and the <i>Worker Screening Act 2020</i> (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 <i>Child Wellbeing and Safety Act 2005</i> (Vic) so that:</p> <p>(i) the safety of all relevant children is promoted;</p> <p>(ii) child abuse (as defined in the <i>Child Wellbeing and Safety Act 2005</i> (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 must 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>
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Services, Deliverables and Payment Schedule

Services	<p><i>[Insert the specification of the required services or attach relevant specification.]</i></p> <p><i>[Note: The specification should describe with as much detail as possible exactly what the Service Provider is required to deliver under the contract. This will assist to reduce the risk of arguments later regarding whether something which the Service Provider failed to deliver was within or outside of scope. If the Service Provider has been selected pursuant to a tendering process, the specification should be amended to incorporate any amendments agreed between the parties in negotiations and any 'value adds' offered by the service provider in its tender or proposal.]</i></p>																										
Deliverables	<p><i>[Insert delivery dates to be achieved - if required]</i></p> <p><i>[Note: The following is an example only]</i></p> <p>The dates for provision of the services are:</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 40%;">Deliverables</th> <th style="width: 30%;">Due Date</th> <th style="width: 30%;">Payment amount (excluding GST)</th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> <td> </td> </tr> </tbody> </table>			Deliverables	Due Date	Payment amount (excluding GST)																					
Deliverables	Due Date	Payment amount (excluding GST)																									
Price Schedule	<p><i>[Insert details of rates and fees for the Services to be provided. The Price Schedule should include the GST exclusive price, the GST payable and the total cost for the Services and any details regarding liability for expenses and disbursements incurred by the Service Provider.]</i></p> <p><i>[Note: The following is an example of an fixed fee payable]</i></p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 25%;">Fee Description</th> <th style="width: 15%;">Payment (ex GST)</th> <th style="width: 15%;">GST</th> <th style="width: 45%;">Total</th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> <td> </td> </tr> </tbody> </table>			Fee Description	Payment (ex GST)	GST	Total																				
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	<p><i>[Note: The following is an example where deliverable billing is being used]</i></p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 35%;">Deliverable</th> <th style="width: 15%;">Payment (ex GST)</th> <th style="width: 15%;">GST</th> <th style="width: 35%;">Total</th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> <td> </td> </tr> <tr> <td>Total</td> <td> </td> <td> </td> <td> </td> </tr> </tbody> </table>			Deliverable	Payment (ex GST)	GST	Total																	Total			
Deliverable	Payment (ex GST)	GST	Total																								
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	<p>Instalments will be paid on completion of the specified milestones to VicHealth's satisfaction, subject to receipt of a tax invoice.</p>															
	<p>[Note: The following is an example of a price schedule for rates]</p> <table border="1" style="width: 100%; border-collapse: collapse; margin: 10px 0;"> <thead> <tr> <th style="width: 35%;">Name/Position</th> <th style="width: 35%;">Hourly Rate (ex GST)</th> <th style="width: 30%;">GST</th> </tr> </thead> <tbody> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> </tbody> </table> <p>[If rates only are specified, it may be appropriate for them to be subject to a cap, i.e. a maximum amount.]</p> <p>[If the State is liable for additional fees and expenses, they should be set out here as well, eg consultant travel time, travel and accommodation expenses, printing expenses, etc.]</p>	Name/Position	Hourly Rate (ex GST)	GST												
Name/Position	Hourly Rate (ex GST)	GST														

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 **{{OPPORTUNITY_ACCOUNT_NAME__R}} (ABN {{TableStart:Query}}{{OPPORTUNITY_CACCOUNT_NAME_ABN__R}}{{TableEnd:Query}})**. By signing this Agreement the signatory warrants that the signatory is duly authorised to sign this Agreement on behalf of **{{OPPORTUNITY_ACCOUNT_NAME__R}}**.

{{Sig_es_:signer3:signature}}

{{Sig_es_:signer4:signature}}

.....
Signature

.....
Signature

{{*N_es_:signer3:fullname}}

{{*N_es_:signer4:fullname}}

.....
Name

.....
Name

{{*Ttl_es_:signer3:title}}

{{*Ttl_es_:signer4:title}}

.....
Title

.....
Title

{{Dte_es_:signer3:date}}

{{Dte_es_:signer4:date}}

.....
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}}**

Terms and Conditions

1 DEFINITIONS

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

2 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.

3 OBLIGATIONS OF THE PARTIES

- (a) You must perform the Services to our satisfaction and in accordance with this Agreement and any reasonable directions given by Us.
- (b) If VicHealth has either expressly or by implication made known to You any particular purpose for which the Services are required, You must perform the Services in such a way as to achieve that purpose.
- (c) Provided You comply with 3(a), VicHealth will pay to You the Price as applicable.
- (d) VicHealth may extend the Expiry Date by any period set out in the Agreement details.
- (e) You must ensure that employees or contractors engaged to perform the Services are appropriately trained, qualified, experienced and competent in all Service requirements and that they perform the Services in a professional manner and in accordance with this Agreement.
- (f) If the Services involve You preparing a report, the report will be provided in accordance with our directions (if any) and in a format suitable for publication and VicHealth may notify You within 10 business days from receiving a report if VicHealth do not accept it, in which case VicHealth may require You to submit a revised report or provide additional information, or VicHealth may immediately terminate this Agreement in accordance with clause 13.
- (g) If You provide research or evaluation as part of the Services, You will provide Us with all raw data collected as part of the Services, in both identified (for our reference) and de-identified (for publication) form and ensure You obtain all permissions, consents and licences to enable this.
- (h) Data provided to Us must be provided in a machine readable format, with a data dictionary and with metadata in accordance with the DataVic Access Policy Standards and Guidelines.
- (i) During the Term and for seven years after the expiration or termination of this Agreement:
 - (i) you must keep all records relevant to this Agreement, including all Background and Service Intellectual Property and accounting records (**Service Records**);
 - (ii) we or our auditor may, at our own cost and upon reasonable notice, conduct inspections and audits of the Service Records and take copies of the Service Records.

4 COMPLIANCE WITH LAWS, POLICIES, STANDARDS AND DIRECTIONS

- (a) You must carry out the Services in a professional manner and:
 - (i) in a manner that ensures the safety of persons and property; and
 - (ii) in accordance with all laws, codes and standards, and our and the Victorian Government's lawful requirements or policies applicable to the provision of the Services, including occupational, health and safety laws and standards, the *Code of Conduct for Victorian Public Sector Employees 2015* (if relevant), environmental laws and notices from the Environment Protection Authority or any other regulatory body, and You have read and aspire to comply with the Victorian government Supplier Code of Conduct.
- (b) You must not do or fail to do anything that may damage or bring into disrepute, or attract public or media attention which may be detrimental to our, or the Victorian Government's, reputation or messages. You acknowledge and agree it would be detrimental to our reputation if You are, or could be perceived to be, directly or indirectly associated with the tobacco industry.
- (c) You must comply with our data security requirements (including our security policy), as notified to you, in relation to access and use of data. You must provide independent certificate of compliance with our data security requirements upon our request and notify Us immediately, and comply with our directions, if You become aware of any breach of those requirements.
- (d) 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 this Agreement.
- (e) You must comply with all relevant VicHealth policies, provided You are given reasonable notice of each policy.
- (f) You must immediately comply with all reasonable directions and instructions or requirements given by VicHealth in relation to safety and wellbeing connected to the Services.

5 INVOICING AND PAYMENT

Submission of invoice

- (a) You must submit to VicHealth a tax invoice:
 - (i) monthly, within 30 days from completion of Services or as VicHealth direct; and
 - (ii) in accordance with the Price amounts in the Agreement Details.
- (b) Each invoice must be accompanied by any other evidence VicHealth reasonably require to substantiate the completion of Services.
- (c) We will pay all invoiced amounts which comply with clauses 5(a) and 5(b) and are not in dispute within 30 days of receipt of the invoice.

Entitlement to payment and obligation to reimburse

- (d) You are not entitled to payment for any Services or for tasks undertaken in respect of any Services if:
 - (i) You have not invoiced Us within 90 days after completion of the relevant Services;
 - (ii) such payment would exceed the Price to the extent of such excess; or
 - (iii) in our opinion:
 - (A) this Agreement has not been complied with; or
 - (B) you are not making satisfactory progress to provide the Services.
- (e) You must reimburse Us for any amount already paid by Us that, in our opinion, was:
 - (i) not used for, or applied to, the Services in accordance with this Agreement;
 - (ii) paid in circumstances where VicHealth is not satisfied that the Services was or is making satisfactory progress; or
 - (iii) paid in circumstances where You have not complied, or subsequent to the payment do not comply, with this Agreement.

Right of set-off

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

Interest on overdue amounts

- (g) We will, on demand by you, pay simple interest on a daily basis on any overdue amount, at the rate for the time being fixed under section 2 of the *Penalty Interest Rates Act 1983* (Vic).
- (h) For the purpose of clause 5(g) **overdue amount** means an amount (or part) not in dispute, due and owing under a valid tax invoice and outstanding for more than 30 days from the date of receipt of the invoice or the date the amount was no longer disputed, as the case may be.

6 GST

- (a) In this clause 6, additional defined terms have the meanings given to them in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- (b) Unless otherwise specified, the consideration specified in this Agreement excludes any amount for GST.
- (c) If a Supply under this Agreement is subject to GST, the Party paying for the supply must pay to the Party making the Supply (**supplier**) an additional amount equal to the amount payable multiplied by the applicable GST rate (**additional amount**).
- (d) The additional amount is payable at the same time as the consideration for the supply is payable or to be provided, subject to receipt of a Tax Invoice from the supplier in relation to the Supply.
- (e) If the additional amount differs from the amount of GST payable by the supplier, the Parties must adjust the additional amount.
- (f) If a Party is entitled to be reimbursed or indemnified under this Agreement, the amount to be reimbursed or indemnified excludes any amount for GST for which the Party is entitled to an Input Tax Credit.

7 INSURANCE

- (a) Subject to any insurance requirements set out in the Details, You must, at your own cost, throughout the Term or longer if required by law, maintain all relevant insurances (as detailed in the Details) required to appropriately insure the completion of the Services and if requested provide Us with satisfactory evidence that You have complied with your obligations to insure under this clause 7 .
- (b) Any indemnity proceeds or other payment made to or recoverable by You under any insurance policy for any damage to, loss (including loss of use) or destruction of any property associated with the Services must be promptly applied by You to ensure that such is repaired and reinstated.

8 LIABILITY AND INDEMNITIES**Your liability and indemnity to Us**

- (a) You indemnify Us, our employees, agents and officers (**Indemnified Parties**) and hold Us and each of them harmless against any liability and any other loss, damage, claim, action or expense (including legal expense) (**Loss**) incurred or suffered by any of them in connection with the Agreement or the Services which arises directly or indirectly as a result of any failure to provide the Services in accordance with this Agreement
- (b) Your liability under clause 8(a) to an Indemnified Party will be reduced to the extent that any negligent act or omission or wilful misconduct by that Indemnified Party directly caused the relevant Loss.

Our liability to you

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

9 CONFIDENTIALITY

- (a) Subject to this clause 9, each Party must keep information of the other Party which, by its nature is confidential or which is described by the other Party to be confidential (**Confidential Information**) confidential at all times, and must not, without the other Party's written consent:
 - (i) disclose any Confidential Information to any person; or
 - (ii) use or allow any person to use any of the Confidential Information for any purpose other than the performance of this Agreement.
- (b) A Party may disclose confidential information of the other Party to:
 - (i) the extent required by law or in connection with legal proceedings; and
 - (ii) to its professional advisers for purposes connected to this Agreement.
- (c) We may disclose your Confidential Information for public accountability purposes or to enable Us to comply with any reporting obligation.
- (d) Each Party consents to the other Party publishing or making available information in relation to the Parties or the Services as may be required by the Auditor-General, to comply with the *Freedom of Information Act 1982* (Vic) or otherwise by law.

10 PRIVACY AND DATA PROTECTION

- (a) For the purposes of this clause 10, **Personal Information** and **public sector data** have the meanings given to them in the *Privacy and Data Protection Act 2014* (Vic) (**Privacy Act**).
- (b) You must, and must procure that your employees, agents, officers and subcontractors comply with:
 - (i) the Information Privacy Principles set out in the Privacy Act;

- (ii) any privacy statement issued by Us from time to time (as published on our website);
- (iii) and assist Us to comply with, the Victorian Protective Data Security Standards established under Part 4 of the Privacy Act; and
- (iv) any other applicable laws, principles, policies and codes dealing with the collection, holding, use, disclosure, storage, management, transfer or granting of access rights to Personal Information and public sector data,

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

- (c) Your obligations under this clause 10 survive the expiry or termination of this Agreement.

11 INTELLECTUAL PROPERTY

Definitions

- (a) In this clause 11:

- (i) **Intellectual Property** includes patents, know how, copyright, designs, semiconductor or circuit layout rights, trade marks, trade secrets, data, Confidential Information, business or company names and other proprietary rights or any right to registration of such rights, whether created before or after the date of this Agreement and whether protected under common law or statute; and
- (ii) **Services Intellectual Property** means all Intellectual Property created by You for the purpose of performing the Services.

Your warranty

- (b) You warrant to Us that You have all necessary rights and consents (including any necessary consents to infringe moral rights) in relation to Intellectual Property in any materials, thing or process required or used to perform the Services and to otherwise fulfil your obligations under this Agreement.

Ownership of Intellectual Property

- (c) The Parties acknowledge and agree that:

- (i) all Services Intellectual Property vests in and remains your property;
- (ii) our Intellectual Property remains our property at all times; and
- (iii) subject to clause 11(c)(i), your Intellectual Property remains your property at all times.

Our rights to use Services Intellectual Property

- (d) We may use or exploit the Services Intellectual Property and all modifications to be made by You (**Modifications**) for any purpose consistent with our general objectives and You grant to VicHealth a worldwide, irrevocable, non-exclusive, royalty free, perpetual licence to use, reproduce, disclose, make public, modify or otherwise exploit, as well as to sub-license:
 - (i) the Services Intellectual Property;
 - (ii) any Modifications; and
 - (iii) any Intellectual Property that is incorporated into any outputs of the Services whether owned by You or a third party (**Background Intellectual Property**), to the extent such Background Intellectual Property is so incorporated or otherwise required to enable the Services Intellectual Property to be exploited for those purposes.
- (e) For the avoidance of doubt, our right to sub-license (under clause 11(b)) includes the right to do so under any form of creative commons licence (available at creativecommons.org.au).
- (f) Without limiting clause 11(d), You grant to VicHealth a worldwide, irrevocable, non-exclusive, royalty free, perpetual license to use and reproduce your name, logo and organisational summary for promotion and reporting of the Services.

Indemnity by you

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

12 CONFLICT OF INTEREST

- (a) You must not, and must ensure your employees, agents and contractors do not, hold any office or possess any property, be involved in any business, trade or calling, or have any obligations under any contract whereby, directly or indirectly, duties or interests are or might be created (or appear to be created) in conflict with your duties and interests under this Agreement.
- (b) You must promptly notify VicHealth of any matter which may give rise to a breach of clause 12(a).

13 TERMINATION

Grounds for termination

- (a) Without disadvantage to any other rights VicHealth may have, VicHealth may terminate this Agreement immediately or on a specified date by issuing a notice to You if:
 - (i) you become insolvent, go into liquidation, are wound up, dissolved, commit an act of bankruptcy or enter into a scheme of arrangement with any creditor;
 - (ii) you appoint, or are appointed, an administrator or receiver;
 - (iii) any of your officers is found guilty of breaking any law;
 - (iv) you provide any false or misleading information to us;
 - (v) you are found to have misused any amounts provided to You by us;
 - (vi) you commit a material breach of any of your obligations under this Agreement (for the avoidance of doubt, a breach of clause 2(f), 3(a) or 12 constitutes a material breach); or
 - (vii) you do any thing which brings your, our or the Victorian Government's reputation into disrepute and as a consequence, in our opinion, our continued association with You will or may be detrimental to our or the Victorian Government's reputation or messages, including offering VicHealth or our employees or Board members a gift, benefit or hospitality.

Termination for convenience

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

Payments on termination

- (c) If this Agreement is terminated under clause 13(b), VicHealth will pay You only for that part of the Services already performed, and for the unavoidable and substantiated costs incurred by You as a direct result of the termination of this Agreement, excluding any loss of profit, and VicHealth has no other liability to You in relation to that termination.
- (d) We are not liable to compensate or otherwise pay to You or any subcontractor any money that may have been incurred due to

termination of this Agreement for any reason.

14 ASSIGNMENT AND SUBCONTRACTING

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

15 GENERAL

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