



STANDARD FUNDING AGREEMENT PROFORMA

PART A – DETAILS OF GRANT

1. PROJECT

The Project commences on __/__/____ and ends on __/__/____.

Summary:

Objectives:

Outputs:

Outcomes:

2. FUNDING AND PAYMENT

The total funding for the Project is **\$xxxx plus** the Goods and Services Tax ('GST') if applicable. The Funding will be paid only on the provision of an Invoice or a completed RCTI form, as outlined in the Schedule of Key Project Dates.

3. REPORTS

Project Ref No:

Project Title:

Key Schedule of Dates

Description	Scheduled Date	Pay Amount
SCHEDULE ITEM 1	__/__/____	\$____
SCHEDULE ITEM 2	__/__/____	\$____

VicHealth's written approval must be obtained prior to any changes being made to the Key Project Dates or Budget allocations

* The Certified Financial Statement for this Project requires the signatures of both the Chairperson/Chief Executive Officer and Principal Financial Officer of your organisation (see Annexure 1).

4. ACKNOWLEDGEMENT AND PUBLICITY

Refer to Clauses 6 & 8 of the Conditions of Grant

5. SUBCONTRACTORS

6. NOTICES

The details of Your VicHealth contact is:

Name:

Position:

Department:

Phone:

Email:

The details of Our principal contact at your organisation are to be completed and returned with the signed documents.

Name:

Position:

Address:

Phone/mobile:

Email:

The details of Your CEO or equivalent are to be completed and returned with signed documents.

Name of CEO:

Phone:

Email:

7. PROJECT BUDGET

The project budget will be agreed by VicHealth and [insert organisation name]. You should notify and then negotiate with VicHealth of any changes to this budget within 12 weeks of the project commencing, and after this time as per Clause 2 in the conditions of grant. This will be referred to as **Addendum 1**.

8. PROJECT WORK PLAN

The project work plan will be agreed by VicHealth and [insert organisation name] within 12 weeks of the project commencing and will be referred to as **Addendum 2**.

PART B – CONDITIONS OF GRANT

IT IS AGREED:

1. PAYMENT

- 1.1 Subject to sufficient funds being available for the Project, and compliance by You with this Funding Agreement, We will provide You the Funding at the times and in the manner specified in Part A – Details of Grant.
- 1.2 Where funding for the Project is payable in two or more instalments, We will provide You with the additional instalments once you have complied with all the conditions of this Funding Agreement and You have made progress towards the goals of the Project.
- 1.3 If the Project is not commenced within three months of the commencement of the Project Period, You will need to formally apply for an extension of time for commencement of the Project. If an extension for commencement of the Project is not approved, this Funding Agreement will be terminated and You will need to repay Funding to Us within 30 days from the date of termination of this Funding Agreement.
- 1.4 Without limiting Our rights, We may withhold or suspend any payment in whole or in part until You (or any other funded project from Your organisation) have performed Your obligations under this or any other current Funding Agreement and until You have paid all outstanding or moneys under any arrangement between Us and You. Notwithstanding such withholding or suspension of any payments, You must continue to perform any obligations under this Funding Agreement, unless We agree otherwise in writing.

2. MANAGEMENT OF FUNDING

- 2.1 You must carry out the Project within the Project Period and in accordance with this Funding Agreement (including any applicable Principles and Guidelines), diligently, effectively and to a high professional standard.
- 2.2 The Funding must be expended by You only for the Project in accordance with this Funding Agreement and according to the budget set out in Addendum 1. Changes to any budget items of more than 10% must be approved in writing by Us before being actioned.
- 2.3 You must:
 - (a) ensure that the Funds are held in an account in Your name, and which You solely control, with an authorised deposit-taking institution authorised under the *Banking Act 1959* (Cth) to carry on banking business in Australia;
 - (b) ensure that two signatories, who have Your authority to do so, are required to operate the account; and

- (c) identify the receipt and expenditure of the Funds separately within Your accounting Records so that at all times the Funds are identifiable and ascertainable.
- 2.4 You must keep financial Records relating to the Project and receipt and expenditure of the Funding so as to enable You to comply with Your obligations under subclause 3.2.
- 2.5 If, at any time during the Term, there remains an amount of Funding that has not been expended in accordance with this Funding Agreement or not expended to Our satisfaction, We may request that You refund all or part of the Funding, as directed by Us.
- 2.6 A request from Us to You to refund all or part of the Funding pursuant to sub-clause 2.5 must be in writing and will be accompanied by a Tax Invoice. Upon receipt of such a written request by Us, You must refund the Funding as directed in the written request within 20 Business Days.
- 2.7 Any interest earned on the Funding may only be used for the purpose of carrying out the Project (unless We specifically agree to vary this in writing).
- 2.8 Except with Our prior written approval, You must not use any of the following as any form of security for the purpose of obtaining or complying with any form of commercial loan, lease agreement, credit, payment or other interest:
 - (a) the Funds;
 - (b) this Funding Agreement or any of Our obligations under this Funding Agreement; or
 - (c) any Assets or Intellectual Property Rights in Project Material.
- 2.9 You may expend the Funds on any separate category of expenditure item within the Budget, but You are to obtain prior written approval from Us for any transfer of Funds between categories of expenditure items within the Budget which exceed 10% or \$5000 of the total Budget as specified in Addendum 1.
- 2.10 We are not responsible for the provision of additional money to meet any expenditure in excess of the Funds.

3. FINANCIAL RECORDS AND REPORTS

- 3.1 You must make full and accurate Records of the conduct of the Project, including without limitation, progress against the Milestones, the receipt and expenditure of the Funding and Other Contributions (if any), and the creation of Intellectual Property Rights in Project Material, and retain them for a period of no less than 7 years after the end of the Project Period.
- 3.2 Within 90 days after 30 June, or any other agreed date coinciding with the end of financial year for Your organisation, in each year of the Term, and within 90 days of

the completion date of the Project, You will provide Us with a Statement of Project Income and Expenditure relating to the Project, for each financial year, or part thereof, in which the Project occurs (refer to Annexure 1 for example format). Statements of Project Income and Expenditure must identify the Funding provided to You and the balance of the Funds at the end of each financial year or upon completion of the Project.

- 3.3 The statement referred to in subclause 3.2 must be signed by Your Chairperson, Chief Executive Officer or equivalent and Principal Accounting Officer, certifying that:
- (a) the statement under subclause 3.2 is a true and fair representation of transactions relating to the Funds;
 - (b) the Funds were received and expensed solely for the purposes of the Project; and
 - (c) all the terms of this Funding Agreement have been complied with.
- 3.4 You must provide to Us reports at the times and in the manner stated in Part A – Details of Grant of receipt and expenditure of the Funding and Your progress in undertaking the Project.
- 3.5 If the amount of Funding exceeds \$100,000 in any financial year, or upon Our request, the Statement of Project Income and Expenditure must be audited, at Your cost, by a person who:
- (a) is a member of the Institute of Chartered Accountants or the Australian Society of Certified Practising Accountants; and
 - (b) is not involved in the Project.

4. TAXES, DUTIES AND GOVERNMENT CHARGES

- 4.1 Subject to this clause, all taxes, duties and government charges imposed or levied in Australia or overseas in connection with this Funding Agreement must be borne by You.
- 4.2 The provisions of this clause 4 in respect of GST apply if You are registered or are required to be registered for GST.
- 4.3 We are registered in accordance with the *GST Act* and will notify You of any change in Our GST registration status.
- 4.4 You must notify Us immediately of any change in Your GST status.
- 4.5 If You are registered or required to be registered for GST, the Funds paid by Us under this Funding Agreement include GST for supplies provided by You to Us in accordance with this Funding Agreement and which are Taxable Supplies within the meaning of the *GST Act*.

- 4.6 You must provide to Us a tax invoice in accordance with the *GST Act* in relation to any Taxable Supply by You to Us in connection with this Funding Agreement prior to payment of Funds by Us.
- 4.7 In the alternative, You may elect to sign the Recipient Created Tax Invoice Agreement (Annexure 3), which will enable Us to issue a tax invoice on Your behalf in relation to any Taxable Supply by You to Us in connection with this Funding Agreement.
- 4.8 The Funding payable by Us to You under this Funding Agreement must not include any amount which represents GST paid by You on Your own inputs and for which an input tax credit is available to You.
- 4.9 If you are registered or required to be registered for GST, any refund under subclause 2.5 must be inclusive of GST and must be accompanied by an Adjustment Note under the *GST Act* relating to Taxable Supplies for which you previously issued to Us a tax invoice.

5. PROJECT MONITORING, REPORTING AND EVALUATION

- 5.1 You must appoint a representative to liaise with and attend meetings with Us, for the purpose of monitoring the progress of the Project, as reasonably required by Us during the Term.
- 5.2 You must comply with:
- (a) the Key Schedule of Dates set out in Item 3 of Part A – Details of Grant;
 - (b) the budget as set out in Addendum 1;
 - (c) all Our reasonable requests, directions or monitoring requirements; and
 - (d) all applicable laws and regulations relating to the Project, the Funding and this Funding Agreement.
- 5.3 If requested, You must complete an evaluation report by the date set out in Item 3 of Part A – Details of Grant.
- 5.4 You must comply with any additional reporting or evaluation or review requirements set out in Item 3 of Part A – Details of Grant.
- 5.5 You agree that We may undertake an independent evaluation of the Project at any time.
- 5.6 You agree to provide to Us any information that We may reasonably require for the purpose of monitoring and evaluating Your performance under this Funding Agreement.
- 5.7 You agree to participate upon request from Us in any sector-wide, industry-specific or similar evaluation or research projects that We may undertake or commission in

the future for the purposes of improving the efficiency and/or effectiveness of Our Funding programs.

6. ACKNOWLEDGEMENTS

- 6.1 You must ensure that materials, public announcements and events and activities provided or conducted by You or on Your behalf, in relation to the Project, include an acknowledgement of Our Funding and, if appropriate, bear the VicHealth logo.
- 6.2 You must acknowledge Our Funding in Your Annual Report if the Funding exceeds \$100,000 in the year of that report.
- 6.3 You must:
- (a) ensure that any third parties directly associated with the Project also acknowledge Our support;
 - (b) advise Us, not less than 14 days in advance, of the dates of any key public events relating to the Project;
 - (c) display Our banners, posters, signage, brochures and other materials at all events/activities connected with the Project as requested by Us;
 - (d) participate in any promotion of the Project when requested to do so by Us, or in any independent promotion of the Project;
 - (e) provide to Us display materials, such as banners, posters, signage, publications, website links, brochures and other materials as requested by Us;
 - (f) display Our logo and a link to Our website on any web-based activities promoting or providing information relating to the Project.
- 6.4 We reserve the right to publicise and report on the awarding of Funding to You. We may do this by including in media releases, general announcements about the Funding and in annual reports Your name, the amount of the Funds given to You and the title and a brief description of the Project.
- 6.5 This clause 6 applies for the Term and for a period of 7 years from the date of expiration or earlier termination of the Term.

7. TOBACCO PRODUCTS AND PROMOTION

- 7.1 You must ensure that Funding is spent in a manner consistent with Our objectives, and in particular you must:
- (a) encourage and support the prohibition of smoking in Your offices, projects and environs;
 - (b) ensure that none of Your officers or employees endorse tobacco or tobacco products in any way;

- (c) ensure that You do not receive sponsorship from any person or organisation involved in the production, manufacture or marketing of tobacco products;
 - (d) ensure that tobacco products are not distributed or available at any venue or any event/activity in connection with the Project; and
 - (e) ensure that tobacco or tobacco products are not advertised or promoted directly or indirectly in any publication produced or endorsed by You.
- 7.2 You must not take part in any act which is damaging to Our reputation, or inconsistent with Our objectives while You are in receipt of the Funding.

8. INTELLECTUAL PROPERTY

- 8.1 We grant Funding to recipients to carry out Projects in order to further Our objectives in health promotion. Funding is granted to recipients upon the condition that We can utilise Project Materials to further Our objectives, as set out in the *Tobacco Act (Victoria) 1987*. We do not use Project Materials for any purposes other than those connected with furthering Our objectives.
- 8.2 As between Us and You (but without affecting the position between You and a third party), the ownership of any Intellectual Property Rights in Project Material will vest immediately in VicHealth.
- 8.3 You will provide Us with copies of all the Project Materials (including data sets) as reasonably requested by Us.
- 8.4 We hereby grant to You a permanent, irrevocable, royalty-free, worldwide, non-exclusive licence (including a right of sub licence) to use, reproduce, and adapt the Intellectual Property Rights in the Project Material, and any Existing Material, for the purpose of furthering Our objectives in health promotion.
- 8.5 Ownership of all VicHealth Material, including Intellectual Property Rights in the VicHealth Material, remains vested at all times in Us but We may grant You a licence to use, copy and reproduce the VicHealth Material only for the purposes and Term of the Funding Agreement, and subject to any other conditions We may impose.
- 8.6 Both Parties acknowledge and agree that neither party will have any rights or claims over the Background Intellectual Property of the other party.

9. PUBLICATION AND MORAL RIGHTS

- 9.1 Subject to subclause 9.6, if We publish the Project Material in academic journal articles, academic conference presentations, major reports or academic case studies then We will use Our reasonable endeavours to acknowledge the authors of the Project Material in accordance with the guidelines on authorship of the Australian Vice Chancellors Committee.
- 9.2 If You wish to publish any Project Materials, or analysis of these materials you must first seek Our written permission. We will not unreasonably withhold this

permission. Where We do withhold permission, any subsequent publication or sharing of these Materials will be considered as a breach of any of Your obligations under this Funding Agreement, and We may progress termination procedures under clause 16.

- 9.3 If You publish the Project Material in academic journal articles, academic conference presentations, major reports or academic case studies then You will use Your reasonable endeavours to acknowledge the authors of the Project Material in accordance with the guidelines on authorship of the Australian Vice Chancellors Committee. This includes, upon request from Us, the inclusion of Our staff members as co-authors or collaborators where tangible contributions have been made.
- 9.4 Subject to subclause 9.6, if We publish the Project Material in summary reports, non-academic case studies, fact sheets, outlines or brief information guides then We will use Our reasonable endeavours to make a collective reference to You.
- 9.5 You must provide Your reasonable assistance in any publication of the Project Material by Us.
- 9.6 In the event that We receive a request for a speedy, aggregate or informal response concerning the Project or where We desire to produce an aggregate opinion piece for publication then We are not required to make reference to You or the authors.
- 9.7 You warrant or undertake that the authors of the Project Material have given or will give a written consent to the acts set out in this clause.
- 9.8 You will deliver to Us within 10 Business Days the written consents referred to in clause 9.7, upon Our request.

10. DISCLOSURE OF INFORMATION

- 10.1 You acknowledge that We may be required to provide information in relation to the Funding or this Funding Agreement, as required by the operation of any law, judicial or parliamentary body or governmental agency and accordingly We can give no undertakings to treat any of Your information or this Funding Agreement as confidential information.
- 10.2 You acknowledge that We are subject to the requirements under the *Freedom of Information Act 1982* (Vic). Accordingly, We are required by law to release documents held by Us, upon request, unless those documents are exempt pursuant to Part 4 of the *Freedom of Information Act 1982* (Vic).
- 10.3 You are permitted to disclose the Project Material providing that disclosure is not in conflict with clause 11.

11. PROTECTION OF PERSONAL INFORMATION

- 11.1 You agree to:

- (a) comply with the *Information Privacy Act 2000* (Vic), and particularly the Information Privacy Principles in section 14 of that Act as a contracted service provider within the meaning of section 17(3) of the *Information Privacy Act 2000* (Vic). You also agree to comply with Information Privacy Principles 7 to 10 as if You were an 'organisation'. The terms 'Information Privacy Principles' and 'organisation' are defined in section 3 of the *Information Privacy Act 2000* (Vic);
- (b) ensure that any collection notices in relation to the conduct of the Project states that Personal Information may be disclosed to Us;
- (c) to use or disclose Personal Information obtained during the course of conducting the Project under this Funding Agreement, only for the purposes of this Funding Agreement; and
- (d) to ensure that any of Your employees who are required to deal with Personal Information for the purposes of this Funding Agreement are made aware of Your obligations set out in this clause 11.

11.2 You agree to ensure that any subcontract entered into for the purpose of fulfilling Your obligations under this Funding Agreement contains provisions to ensure that the subcontractor has the same awareness and obligations as You have under this clause, including the requirements detailed at clause 16 Subcontracting.

11.3 You agree that We may collect, store, and use the contact details that You have provided to Us in relation to your officers and employees, for the purpose of administration, marketing and correspondence associated with the Project.

12. INDEMNITY

12.1 You will indemnify (and keep indemnified) Us, Our officers, employees, and agents against all losses, damages or liabilities incurred by Us and all costs payable by Us in relation to any claim against Us, including legal costs arising from:

- (a) any breach by You of the terms of this Funding Agreement; or
- (b) any wilful or fraudulent act, or any negligent act, error or omission by You, or any of Your employees, agents, volunteers, or subcontractors in connection with this Funding Agreement.

12.2 Your liability to indemnify Us under this clause 12 will be reduced proportionally to the extent that Our negligent or unlawful act or omission or wilful misconduct on Our part contributed to the relevant loss, damage, expense, or liability.

12.3 Our right to be indemnified under this clause 12 is in addition to, and not exclusive of, any other right, power, or remedy provided by law, but We are not entitled to be compensated in excess of the amount of the relevant liability, damage, loss, or expense.

13. INSURANCE

- 13.1 Unless otherwise agreed by Us in writing, You shall for the duration of the Project Period and for 7 years following completion of the Project maintain professional indemnity insurance and public liability insurance with a reputable insurer. The insurance must be to a value that is approved by Us, if so requested.
- 13.2 Whenever requested, You must provide Us, within 10 Business Days of the request, with evidence satisfactory to Us that You have maintained Your obligation to insure.

14. CONFLICT OF INTEREST

- 14.1 You warrant to the best of Your knowledge that, at the Date of this Funding Agreement, no Conflict exists or is likely to arise in the performance of Your obligations under this Funding Agreement, and You must use best endeavours to ensure that no Conflict arises during the Term, but if a Conflict does arise You must:
- (a) immediately notify Us in writing of that Conflict and of the steps You propose to take to resolve or otherwise deal with the Conflict;
 - (b) make full disclosure to Us of all relevant information relating to the Conflict; and
 - (c) take such steps as We may, if We choose to, reasonably require to resolve or otherwise deal with that Conflict.
- 14.2 If You fail to notify Us under this clause 14, or are unable or unwilling to resolve or deal with the Conflict as required, We may by notice to You terminate this Funding Agreement and may (in our discretion) require You to repay all or part of the Funds received by You.

15. ACCESS TO PROJECT MATERIALS

- 15.1 Upon Our request, or the request of any persons authorised by Us, You must within 10 Business Days, deliver to Us or the persons authorised by Us, copies of the Project Materials including copies of the Material and Records associated with this Funding Agreement.
- 15.2 You must provide all reasonable assistance where We request the delivery of copies of the Project Materials and Records under subclause 15.1.

16. TERMINATION

- 16.1 In the case of any one or more of the following events, We may immediately terminate this Funding Agreement, or reduce the scope of this Funding Agreement, by giving You notice in writing of such termination or reduction in scope. You must comply with any requirements in Our notice.
- (a) You fail to fulfil, or are in breach of any of Your obligations under this Funding Agreement, and do not rectify the omission or breach after receiving 10 Business Days notice in writing from Us to do so;

- (b) You are unable to pay all your debts as and when they become due and payable or You fail to comply with a statutory demand within the meaning of sections 459E and 459F of *the Corporations Act 2001* (Cth);
- (c) proceedings are initiated with a view to obtaining an order for Your winding up or any shareholder, member or director convenes a meeting for the purpose of considering or passing of any resolution for Your winding up;
- (d) being a body corporate, You come under one of the forms of external administration referred to in Chapter 5 of the *Corporations Act 2001*, or an order has been made for the purpose of placing You under external administration;
- (e) in relation to this Funding Agreement, You breach any law of the Commonwealth, or of a State or Territory;
- (f) You cease to carry on business;
- (g) We are satisfied that any statement made in Your application for Funding is incorrect, incomplete, false or misleading in a way which would have affected the original decision to approve the Funding;
- (h) notice is served on You or proceedings are taken to cancel Your incorporation or registration or to dissolve You as a legal entity,
- (i) We consider it reasonably appropriate in the circumstances to do so;
- (j) You have notified Us of a delay pursuant to sub-clause 23.2 and We decide to terminate this Funding Agreement in accordance with sub-clause 23.3(d);
- (k) You fail to notify Us of any Conflict, or take steps to resolve or deal with the Conflict as required under clause 14.1; or
- (l) funding to Our organisation is significantly reduced within the period of this Funding Agreement (and any extensions to that period granted) and/or Our Board of Governance (or other similar party) requires a re-deployment of funds to meet payment of liabilities;

16.2 Subclause 16.1 does not limit or exclude any of Our other rights, including the right to recover any other amounts from You on termination of this Funding Agreement.

16.3 Where We terminate this Funding Agreement under subclause 16.1, You will be required to provide a final report in accordance with the time period for a final report and a final financial statement as outlined in Item 3 of Part A –Details of Grant.

17. DISPUTE RESOLUTION

17.1 Subject to subclause 17.3, neither We or You will commence any legal proceedings in respect of any dispute arising under this Funding Agreement until the procedure provided by this clause has been utilised.

17.2 Both You and We agree that any dispute arising during the course of this Funding Agreement will be dealt with as follows:

- (a) the Party claiming that there is a dispute will send the other a written notice setting out the nature of the dispute;
- (b) the Parties will try to resolve the dispute through direct negotiation by persons who they have given authority to resolve the dispute;
- (c) the Parties have 10 Business Days from the receipt of the notice to reach a resolution or to agree that the dispute is to be submitted to mediation or some alternative dispute resolution procedure; and
- (d) if:
 - (i) there is no resolution of the dispute;
 - (ii) there is no agreement on submission of the dispute to mediation or some alternative dispute resolution procedure; or
 - (iii) there is a submission to mediation or some other form of alternative dispute resolution procedure, but there is no resolution within 15 Business Days of the submission, or such extended time as the parties may agree in writing before the expiration of the 15 Business Days,

then, either You or We may commence legal proceedings.

17.3 This clause 17 does not apply to the following circumstances:

- (a) either You or We commence legal proceedings for urgent interlocutory relief;
- (b) action by Us under or purportedly under clauses 1 [Payment] or 16 [Termination];
- (c) an authority of the Commonwealth, a State or Territory is investigating a breach or suspected breach of the law by You.

17.4 Despite the existence of a dispute, both You and We must continue to perform obligations under this Funding Agreement.

18. ASSIGNMENT

18.1 You must not assign Your rights under this Funding Agreement without prior written approval from Us.

18.2 You agree not to enter into negotiations with any other person for the purposes of entering into an arrangement that will require novation of this Funding Agreement without first consulting Us.

19. APPLICABLE LAW AND JURISDICTION

19.1 The laws of the State of Victoria apply to this Funding Agreement and the courts of the State of Victoria shall have non-exclusive jurisdiction in respect to any dispute under this Funding Agreement.

20. NOTICES

20.1 Giving of notices

A Party giving notice or notifying under this Funding Agreement must do so in writing:

- (a) directed to the recipient's address, as varied by any notice; and
- (b) hand delivered or sent by pre-paid post or facsimile to that address.

The parties' address details are as specified in Part A – Details of Grant.

20.2 Receipt of notice

A notice given in accordance with subclause 20.1 is taken to be received:

- (a) if hand delivered, on delivery;
- (b) if sent by pre-paid post, 5 Business Days after the date of posting unless it has been received earlier;
- (c) if sent by facsimile, upon confirmation of satisfactory transmission of that facsimile.

21. SURVIVAL

21.1 The operation of clauses 3, 8, 9, 10, 11, 12, 13, 15, 19 and 30 will survive the expiration or earlier termination of this Funding Agreement.

22. VARIATION OF THIS FUNDING AGREEMENT

22.1 This Funding Agreement, including Part A – Details of Grant, records the entire agreement between You and Us in relation to its subject matter.

22.2 This Funding Agreement may only be varied in writing, signed and dated by both You and Us. The amended version of this Funding Agreement will be annexed to this original Funding Agreement.

22.3 You must notify Us immediately (within five Business Days) of any change in Your circumstances which may require a variation of this Funding Agreement.

23. DELAY AND SUSPENSION

23.1 You must take all reasonable steps to minimise delay in completion of the Project.

- 23.2 If You become aware that You will be delayed in progressing or completing the Project in accordance with this Funding Agreement, You must immediately notify Us in writing of the cause, nature and estimated length of the delay. You are to detail in the notice the steps You will take to contain the delay.
- 23.3 On receipt of a notice of delay, We may at Our option:
- (a) notify You in writing of a period of extension to complete the Project and vary this Funding Agreement accordingly;
 - (b) notify You in writing of reduction in the scope of the Project and any adjustment to the Funds for You to complete the reduced Project and vary this Funding Agreement accordingly;
 - (c) notify You in writing of a period of suspension of the Project and vary this Funding Agreement accordingly;
 - (d) terminate this Funding Agreement under clause 16 or take such other steps as are available under this Funding Agreement.
- 23.4 You acknowledge that in the event that this Funding Agreement is terminated then We may engage a third party to complete the Project.
- 23.5 Where We suspend the Project pursuant to subclause 23.3, We will not be liable to pay compensation for loss of any benefits that would have been conferred on You had the suspension not occurred.

24. TERM OF THIS AGREEMENT

- 24.1 This Funding Agreement commences on the Date of this Funding Agreement and will continue for the Term.

25. ASSETS

- 25.1 You must not use the Funding to acquire any Asset, apart from those detailed in the Schedule, without obtaining Our prior written approval. Approval may be given subject to any conditions We may impose.
- 25.2 Any request for approval under clause 25.1 should be accompanied by details of the proposed nature of acquisition, the cost of acquisition, the depreciation treatment, management of the Asset register, storage and insurance.

26. SUBCONTRACTING

- 26.1 You must not, without Our prior written approval, subcontract the performance of any obligations under this Funding Agreement. In giving written approval, We may impose such reasonable terms and conditions as We think fit. Any subcontractor who You propose to replace an approved subcontractor must also be approved by Us under this clause 26. The subcontractors We have approved at the Date of this Funding Agreement, and any terms and conditions relating to their use, are identified in Part A – Details of Grant.

- 26.2 Despite any approval given by Us under subclause 26.1, You are fully responsible for the performance of Your obligations under this Funding Agreement, even though You may have subcontracted any of them, and you are responsible for ensuring the suitability of a subcontractor for the work proposed to be carried out and for ensuring that such work meets the requirements of this Funding Agreement.
- 26.3 We may revoke Our approval of a subcontractor on any reasonable ground.
- 26.4 Upon receipt of a written notice from Us revoking Our approval of a subcontractor, You must, as soon as practicable (or as We may direct in the notice), cease using that subcontractor to perform any of Your obligations unless We direct that the subcontractor be replaced immediately with another subcontractor reasonably acceptable to both parties, in which case You must comply with the direction.
- 26.5 If We withdraw Our approval of a subcontractor, You remain liable under this Funding Agreement for the past acts or omissions of Your subcontractors as if they were current subcontractors.
- 26.6 You must, in any subcontract placed with a subcontractor, reserve a right of termination to take account of Our right of termination under clause 16 [Termination] and Our right of revocation of approval under subclause 26.5, and You must, where appropriate, make use of that right in the event of a termination or revocation by Us.

27. SPECIFIED PERSONNEL

- 27.1 You must ensure that the Specified Personnel, if any, listed in this Funding Agreement undertake activities in respect of the Project in accordance with the terms of this Funding Agreement.
- 27.2 Where Specified Personnel are unable to undertake activities in respect of the Project, You must notify Us immediately. You must, if so requested by Us, provide replacement personnel acceptable to Us without additional payment and at the earliest opportunity. Where possible you should allow Us the opportunity to participate in the selection of the replacement Specified Personnel.
- 27.3 We may give notice on reasonable grounds related to performance of the Project requiring You to remove personnel (including Specified Personnel) from work in respect of the Project. You must, at Your own cost, promptly arrange for the removal of such personnel from work in respect of the Project and their replacement with personnel reasonably acceptable to Us.
- 27.4 If You are unable to provide acceptable replacement personnel We may terminate this Funding Agreement in accordance with the provisions of clause 16 [Termination].

28. NEGATION OF LEGAL RELATIONSHIP OF EMPLOYMENT, PARTNERSHIP AND AGENCY

- 28.1 You, Your employees, partners and agents will not, by virtue of this Funding Agreement, be or for any purpose be deemed to be Our legal employees, partners or agents.
- 28.2 You must not, and must ensure that Your employees, partners and agents do not, represent Yourself or themselves as being Our employees, partners or agents.

29. WAIVER

- 29.1 If either You or We do not exercise (or delay in exercising) any of Your or Our rights, that failure or delay does not operate as a waiver of those rights.

Supplementary Conditions: Public Health Research Grants

Clauses 30-37 apply to Public Health Research grants. These Clauses are supplementary to, and are not intended to replace, Clauses 1-29.

30. CHIEF INVESTIGATOR

Continuation of funding for a grant is dependent on the continuing tenure of the Chief Investigator/s. In the event that the Chief Investigator ceases to hold that position, the Grantee shall have the right to seek the approval of VicHealth for the appointment of a replacement Chief Investigator.

31. OWNERSHIP OF EQUIPMENT

Property and equipment, under a grant shall be vested in the Grantee, except:

- (i) where the grant specifically states that ownership remains with VicHealth, or;
- (ii) where VicHealth terminates the grant or, in lieu of termination, transfers the grant to another institution or person;

provided always that:

- (iii) an item of equipment purchased under a grant shall be used for the purposes of the specified research and to that end shall be subject to the control and supervision of the Chief Investigator;
- (iv) as far as possible, other research workers within the administering institution shall have reasonable access to such equipment and in any case shall be given such access as VicHealth directs (the endorsement of VicHealth is necessary if the equipment is to be used by other research workers or others from outside the institution);
- (v) if the Chief Investigator moves to another administering institution before completion of the research and VicHealth approves the transfer of the project, property will be transferred to that administering institution on request of the Chief Investigator, subject to acceptance by the other institution;

- (vi) and provided further that:
- (vii) nothing in this section shall be interpreted to confer upon the Chief Investigator or any other person, power to override the directions of the Grantee or the Head of Department in relation to any matter pertaining to the administration and functioning of the Grantee or the department;
- (viii) in the case in which property is vested in VicHealth, the Grantee shall, during the currency of the grant, retain the equipment under its control, maintain it in good condition, and return it at the completion of the research in the same condition in which it was received, fair wear and tear and normal depreciation excepted.

32. CAPITAL EQUIPMENT

- (i) Capital equipment should be shown as a separate item in financial reports and the Grantee is to keep a register of capital equipment.
- (ii) At the conclusion of the funded research, the Grantee must recommend to VicHealth how capital purchases and stocks are to be utilised or disposed. In normal circumstances, VicHealth will permit a group to continue to use equipment purchased under a grant provided it is for the same general purposes.
- (iii) In the event of the Grantee ceasing to operate, the Grantee shall promptly notify VicHealth so that arrangements may be made as to the disposal of any capital equipment that has been purchased with grant funds.

33. DISCRETIONARY INCOME

The Grantee has discretion to augment the funds available for expenditure on the research, by applying to that purpose other financial resources not directly related to the research (e.g. donations, proceeds of fund-raising, etc) and these shall be fully described in the financial statements referred to in Clause 2.

34. EXTENSION OF GRANTING PERIOD

If the research project/program cannot be completed by the date specified, a written request for an extension must be submitted to VicHealth indicating reasons, mechanisms, and justification for continuation at least one month before the specified completion date or such other time as agreed.

Written notification must be provided to VicHealth of any leave taken (eg maternity leave, extended recreation or sick leave) that will require changes to the schedule of key dates

Before approving any such request for a variation to key dates VicHealth may request a progress report on the research.

35. CLEARANCE REQUIREMENTS

Any human experimentation shall be conducted in accordance with the current requirement of the NHMRC Statement of Human Experimentation and Supplementary Notes. Applications submitted for support should bear evidence of being acceptable to the Ethics Committee of the particular institution, as should intended variations, with ethical implications, to any already approved research protocol.

36. TERMINATION OF GRANT

In addition to the conditions set out in Clause 16, a grant may be terminated if:

- (i) the research is not being carried out with competence and diligence or if satisfactory progress is not being made or if reporting on the projects is unsatisfactory;
- (ii) the Chief Investigator (or any member of the professional staff whose personal participation in the funded research is deemed to be necessary) ceases to be engaged on the project or is absent from the project for more than two months without prior approval;
- (iii) the funded research, in the opinion of VicHealth, ceases to pursue the approved objectives.
- (iv) If the Grantee fails to carry out any obligation imposed by these conditions or special condition(s) or fails to provide information concerning administrative or financial aspects of the funded research in response to a reasonable request from VicHealth.

37. PATENTS

The Responsible Officer and/or the Chief Investigator must immediately notify VicHealth of any patentable discoveries inventions, processes or improvements arising from VicHealth supported research.

38. INTERPRETATION

38.1 In this Funding Agreement, unless the contrary intention appears:

'Adjustment Note' has the same meaning as it has in section 195-1 of the *GST Act*;

'Asset' means any item of tangible property, purchased, leased, created or otherwise brought into existence either wholly or in part with use of the Funds, which has a value of over \$1,000 inclusive of GST, but does not include Project Material;

‘Australian Accounting Standards’ refers to the standards of that name maintained by the Australian Accounting Standards Board created by section 226 of the *Australian Securities and Investments Commission Act 2001* (Cth);

‘Background Intellectual Property’ means Intellectual Property Rights owned or controlled by a party, including but not limited to Intellectual Property developed prior to or independently of this Funding Agreement and any improvements, advancement, modification or adaptation thereof, which the party determines, in its sole discretion, to make available for the carrying out of the Project under this Funding Agreement;

‘Budget’ refers to a budget for expenditure of the Funding for the purposes of conducting the Project or performing obligations under this Funding Agreement, stipulated in Part A – Details of Grant;

‘Business Day’ in relation to the doing of any action in a place, means any day other than a Saturday, Sunday, or public holiday in the state of Victoria, Australia;

‘Completion Date’ means, unless a date is specified in this Funding Agreement, the day after You have done all that You are required to do under this Funding Agreement to Our satisfaction;

‘Conflict’ refers to a conflict of interest, or risk of a conflict of interest, or an apparent conflict of interest arising through You engaging in any project or obtaining any interest that is likely to conflict with or restrict You in providing the Project to Us fairly and independently, including but not limited to

- (a) receipt of funding by any tobacco company or a direct associate of any tobacco company, or
- (b) receipt of funding from any company or organisation which has purposes or objectives that are inconsistent with the purpose of the Project, or
- (c) receipt of funding from any company or organisation which has purposes or objectives that are inconsistent with Our objectives;

‘Date of this Funding Agreement’ Means the date stated in Item 1, Part A Details of Grant.

‘Existing Material’ means all Material described in this Funding Agreement and which is in existence prior to the Date of this Funding Agreement:

- (a) incorporated in;
- (b) supplied with, or as part of; or
- (c) required to be supplied with, or as part of;

the Project Material;

‘Funding Agreement’ refers to the terms and conditions of this agreement, including Part A – Details of Grant;

‘Funding’ or **‘Funds’** means the amount or amounts (in cash or kind) payable under this Funding Agreement, including interest earned on that amount;

‘GST’ has the meaning as given in section 195-1 of the *GST Act*;

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

‘Intellectual Property Rights’ includes all copyright (including rights in relation to phonograms and broadcasts), all rights in relation to inventions (including patent rights), plant varieties, registered and unregistered trademarks (including service marks), registered designs, circuit layouts, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields;

‘Key Schedule of Dates’ are the dates set out for reporting in Item 3 of Part A – Details of Grant;

‘Letter of Offer’ refers to the letter We sent You offering You the Funding;

‘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;

‘Milestone’ means a stage of completion of the Project set out in the Schedule;

‘Other Contributions’ means financial or in-kind resources (with in-kind resources valued at market rates) used by You for the Project, other than the Funding;

‘Party’ means a party (or parties) to this Funding Agreement;

‘Personal Information’ has the same meaning as under the *Information Privacy Act 2000* (Vic), which currently is information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion;

‘Principles’ refers to the principles of the Project, if any, as described in Part A – Details of Grant;

‘Project’ means the Project described in Part A – Details of Grant, which aims to fulfil one or more of the goals of the Project, and includes the provision of Project Material;

‘Project Material’ means all Material:

(a) brought into existence for the purpose of performing the Project;

(b) incorporated in, supplied or required to be supplied along with the Material referred to in paragraph (a); or

(c) copied or derived from Material referred to in paragraphs (a) or (b);

‘Project Period’ means the period specified in Part A – Details of Grant during which the Project must be completed;

‘Public Health Research Grants’ are grants at Universities for the purposes of research

‘Records’ includes documents, information and data stored by any means, including records of accounts, and all copies and extracts of the same;

‘Schedule’ refers to the schedule to this Funding Agreement;

‘Specified Personnel’ means the personnel (whether Your employees or subcontractors), or people with specific skills, specified in the Schedule as personnel required to undertake the Project or any part of the work constituting the Project;

‘Taxable Supply’ has the same meaning as it has in the *GST Act*;

‘Term’ refers to the period between the Date of this Funding Agreement and the Completion Date, unless this Funding Agreement is terminated prior to the Completion Date, in which case it is the period between the Date of this Funding Agreement and the date of termination;

‘VicHealth Material’ means any Material provided by Us to You for the purposes of this Funding Agreement or which is copied or derived from Material so provided, except for Project Material;

‘Us’, ‘We’ and ‘Our’ includes Our officers, delegates, employees and agents, and Our successors and means the Victorian Health Promotion Foundation;

‘You’ and ‘Your’ includes, where the context admits, Your officers, employees, agents and subcontractors, and Your successors and means [insert organisation name].

38.2 In this Funding Agreement, unless the contrary intention appears:

(a) words in the singular include the plural and words in the plural include the singular;

(b) words importing a gender include any other gender;

(c) words importing persons include a partnership and a body whether corporate or otherwise;

- (d) all references to dollars are to Australian dollars and this Funding Agreement uses Australian currency;
- (e) reference to any statute or other legislation (whether primary or subordinate) is to a statute or other legislation of the Commonwealth and, if it has been or is amended, is a reference to that statute or other legislation as amended;
- (f) an obligation or warranty on the part of 2 or more persons binds them jointly and severally and an obligation or warranty in favour of 2 or more persons benefits them jointly and severally
- (g) an uncertainty or ambiguity in the meaning of a provision of this Funding Agreement will not be interpreted against a Party just because that Party prepared the provision; and
- (h) where any word or phrase is given a defined meaning, any other part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.

38.3 Part A – Details of Grant (and any documents incorporated by reference) forms part of this Funding Agreement. In the event of any conflict or inconsistency between any part of:

- (a) the terms and conditions contained in the clauses of this Funding Agreement;
- (b) Part A – Details of Grant;
- (c) documents incorporated by reference, if any;

then the material first mentioned has precedence over later mentioned material to the extent of any conflict or inconsistency.

EXECUTED BY THE PARTIES

SIGNED ON BEHALF OF [insert organisation name]

I agree to comply with the terms and conditions of this Funding Agreement, including Conditions of Grant, and warrant that I have the authority to bind the ([insert organisation name]).

Signature

Name

Position

Date

Witness

Signature

Name

Position

SIGNED ON BEHALF OF THE VICTORIAN HEALTH PROMOTION FOUNDATION	
(VicHealth Use Only)	
Signature
Name	
Position	
Date
Witness	
Signature
Name
Position

ANNEXURE 1

Statement of Project Income and Expenditure

Grantee's Letterhead – A4 Paper

VicHealth Project: (Title & Project Number)

Year ending 30 June 20[] (please specify, if for other period)

	Actual	Budget
INCOME	\$	\$
VicHealth grant		
Other income		
Total income		
Less: EXPENDITURE		
Total expenditure		
SURPLUS / (DEFICIT)		
BALANCE as at		

CERTIFICATION

We hereby certify:

- (i) that the Statement of Project Income and Expenditure, and balance, presents a true and fair view of the transactions relating to the grant for the period indicated;
- (ii) that the grant was received and expended solely for the purposes of the Project; and
- (iii) that all terms and conditions contained in the Funding Agreement (which includes the Conditions of Grant) have been complied with.

Signed (Name) (Title) (eg Chairperson, Chief Executive Officer or Delegate)	Signed (Name) Principal Accounting Officer or Delegate
Date	Date

ANNEXURE 2
INDEPENDENT AUDITORS' REPORT¹

Grantee

Project No.

Funding Period From To

We have conducted an independent audit of the attached Income and Expenditure Statement and the Statement of Compliance by the Grantee for the year ended 30 June 20[] as required by VicHealth.

The Grantee's directors/management are responsible for the preparation and presentation of the financial statement and the information it contains. The statement has been prepared for VicHealth to show accountability for the funding received and not for any other purpose.

Our audit has been conducted in accordance with Australian Accounting Standards to provide reasonable assurance as to whether the financial statement is free of material misstatement. Our procedures included an examination, on a test basis, of evidence supporting the amounts disclosed in the financial statement. These procedures have been undertaken to form an opinion as to whether, in all material respects, the statement is presented fairly in accordance with the requirements of VicHealth.

The audit opinion expressed in this report has been formed on the above basis.

Audit Opinion

In our opinion,

1. the attached Statement of Income and Expenditure of the Grant:
 - presents fairly the transactions for the year ended 30 June 20[];
 - has been extracted from the financial records of the Grantee, which have been prepared on the basis of accounting policies consistent with applicable Australian Accounting Standards; and
2. the Grant was expended for the purpose for which it was intended, as described in the Agreement.

Signature

Name (please print)

Member of CPA/ICA (please circle relevant organisation)

Name of firm

Date

¹ Required if the Grant exceeds \$100,000 in a financial year. Where applicable, audit reports may be issued by internal auditors who are independent of the project.

