



**SUBURBAN  
RAIL LOOP**

# FUNDING AGREEMENT DRAFT TEMPLATE

**Official: Sensitive**

## Parties

**Suburban Rail Loop Authority  
(ABN 47 474 521 596)**

and

**Funding Agreement Draft Template**

**Date 10 May 2022**

**Official: Sensitive**

## Parts of this Agreement

This Agreement is made up of the following parts:

- **Part A** – Details
- **Part B** – Schedule
- **Part C** – Terms and Conditions (T&Cs)
- **Part D** – Attachments

## Background

1. The Authority was established under *Suburban Rail Loop Act 2021 (Vic)* to plan and deliver Suburban Rail Loop and development associated with Suburban Rail Loop.
2. The Authority may do all things necessary or convenient to be done for the achievement of the SRL program, including entering into agreements or arrangements such as this Agreement with the Organisation.
3. The Organisation and the Authority share a vision to improve the outcomes for people in Victoria. Through this Agreement, the Organisation and the Authority will engage with each other cooperatively and collaboratively to achieve this vision.
4. The Organisation and the Authority acknowledge their partnering approach to working together in good faith to achieve the objectives of this Agreement.
5. The Authority will provide the Funding (as approved by the Victorian Government) to the Organisation to deliver the Activity.
6. The Organisation will accept the Funding and use it for the delivery of the Activity in accordance with the terms of this Agreement.

### A. Details

- |                                 |  |
|---------------------------------|--|
| 1. Authority<br>(clause 1.1)    | Suburban Rail Loop Authority (ABN 47 474 521 596), a body corporate established under the <i>Suburban Rail Loop Act 2021 (Vic)</i> |
| 2. Organisation<br>(clause 1.1) | To be determined   |
| 3. Start Date<br>(clause 1.1)   | To be determined   |
| 4. End Date<br>(clause 1.1)     | To be determined   |

**Official: Sensitive**

**Official: Sensitive**

- |  |   |
|--|---|
| 5. Dispute Resolution Officer<br>(clause 1.1)          | To be determined                                  |
| 6. Organisation's Primary Contact<br>(clause 1.1)      | To be determined                                  |
| 7. Organisation's address                              | To be determined                                  |
| 8. Organisation's phone number                         | To be determined                                  |
| 9. Organisation's email address                        | To be determined                                  |
| 10. Registered for the Goods and<br>Services tax (GST) | To be determined                                  |
| 11. Authority's Primary Contact<br>(clause 1.1)        | To be determined                                  |
| 12. Authority's address                                | Level 44, 80 Collins Street<br>Melbourne VIC 3000 |
| 13. Authority's phone number                           | To be determined                                  |
| 14. Authority's email address                          | To be determined                                  |
| 15. Authority's facsimile                              | N/A   |

**Official: Sensitive**

## **B. Schedule**

Name of Activity:

Schedule no:

### **1. Activity details**

(Read with T&Cs clause 4 on *Funding*)

(a) **What the Funding is for:**

(b) **Why the Authority is Funding this Activity:**

(c) **Activity start date and end date:**

The Activity described in this Schedule starts on \_\_\_\_\_ and ends on \_\_\_\_\_. Projects are expected to be completed within 12 months of the receipt of Funding. If projects are impacted by COVID-19 pandemic restrictions or other unforeseen circumstances, the Authority may consider extensions and variations to these timeframes upon the applicant's request.

(d) **The people/groups who are intended to benefit most from this Activity are:**

(e) **This Activity is intended to benefit people or groups living in the following places:**

- 

(f) **Include the address(s) where the project is to be delivered:**

**Official: Sensitive**

**Official: Sensitive**

## 2. Funding

(Read with T&Cs clause 4 on *Funding*)

### (a) Funding

- i. The funding for the Activity comes from the SRL Community Projects Fund.
- ii. The total funding for the Activity is \$ . This amount is excluding GST.

### (b) Payment of Funding

- i. Funding will be paid in arrears as outlined in the Activity Deliverables and Payments Table.
- ii. Funding will be paid after any co-contributions have been exhausted.

### (c) Adjustments to the amount of Funding

- i. The Organisation shall advise the Authority if the Activity is completed for less than the original total project budget. In such an event the Funding shall be reduced on a pro rata basis which excludes the Organisation's co-contributions and such reduction in the Funding shall be deducted from the final grant payment or may be otherwise recovered from the Organisation.
- ii. The Organisation must continue to comply with its obligations under this Agreement, regardless of any payment of the Funds being deferred, reduced, or not paid at all by the Authority as a result of changes to the total project budget.

### (d) Account to manage the Funding

The Funding will be paid into a bank account which is opened or exists for the sole purpose of receiving the Funding and which is held with a registered Australian financial institution that is regulated by the Australian Prudential Regulation Authority and nominated by the Organisation in writing to the Authority.

### (e) Tax Invoice

If GST is payable and the Organisation has not entered into a recipient created tax invoice agreement (RCTI agreement) with the Authority or received an invoice containing an embedded RCTI agreement from the Authority, the Organisation must issue Tax Invoices to the Authority prior to receiving Funds.

### (f) Auspice

The Organisation is auspicing this grant for . The Organisation agrees that it is responsible for making sure that the terms and conditions of this agreement are complied with by the Organisation and by .

**Official: Sensitive**

### 3. Activity Deliverables and Funding

(Read with T&Cs clause 4 on *Funding*)

#### (a) Activity Deliverables and Funding Table

Activity Deliverables and Payments Table			
Deliverable or milestone	Demonstrating the deliverable is complete	Evidence due date	Payment amount (excluding GST)
Written acknowledgement from the Authority to the Organisation that the following have been satisfactorily completed (in the absolute discretion of the Authority): <ul style="list-style-type: none"> <li>• the Activity; and</li> <li>• the final report (as contemplated by Item 5(c)).</li> </ul>	See items 3(b) and 5(c).	The Activity must be completed by the Organisation by the "end date" specified in Item 1(c).  The final report is due by the date which is 30 days after the date on which the Authority provides written acknowledgement to the Organisation that the Activity has been satisfactorily completed.	\$

#### (b) Demonstrating the deliverable or milestone is complete

Evidence must be provided to the Authority which demonstrates the relevant Activity Deliverables and/or milestone in respect of that Activity has been completed (to the satisfaction of the Authority (in its absolute discretion)). Such evidence may include photos of the completed Activity (or progress photos related to a milestone) or purchased equipment.

#### (c) Inclusion of application

The Organisation's application and any additional information that is requested by the Authority prior to this Schedule being executed is part of this Agreement. The Activity delivered must be consistent with those documents. If there is a conflict or inconsistency between the Organisation's application and the Organisation's Agreement then the Agreement has precedence, to the extent of the conflict or inconsistency.

#### (d) Completion Requirements

- i. The Organisation must complete the Activity as agreed, meeting all actions and providing evidence as required in the Activity Deliverables and Payments Table.

**Official: Sensitive**

- ii. If any Funding remains unexpended at the completion of the Activity, then the Organisation must immediately repay that amount to the Authority.

**(e) Project Plan Requirement**

- i. The Organisation must deliver a project plan to the Authority (which is acceptable to the Authority (in its absolute discretion)).
- ii. The Authority may determine that the project plan included in the Organisation's application (**Project Plan**) satisfies the requirements of item 3(e)(i).
- iii. Where the Authority determines that the Project Plan is insufficient, the Authority may request that the Organisation provide it with a revised project plan as soon as possible, and in any event no later than thirty (30) Business Days after date of that request. This project plan must satisfy the following:
  - detail how the Activity will be delivered
  - include timeframes for action
  - any other information required by the Authority
  - be endorsed by the Authority.
- iv. The Authority may request that the Organisation provide it with progress reports on the progress of the Activity as against either the project plan (provided to the Authority under this item 3(e)) or the Activity Deliverables and Payments Table. Any progress report requested by the Authority under this item 3(e)(iv) is required to be delivered to the Authority within thirty (30) Business Days of request.

**(f) Consents**

- i. Prior to receiving Funding, the Organisation must provide to the Authority evidence of any and all acknowledgements and consents required to carry out the Activity including, but not limited to, from the following parties:
  - the owner of any land to be used or impacted upon in connection with the Activity and/or a guarantee to access where the Organisation is not the landowner;
  - the owner of any existing infrastructure to be used or impacted upon in connection with the Activity;
  - the representatives of any club or organisation involved or impacted upon in connection with the Activity;
  - representatives of any businesses, services or utility providers involved or impacted upon in connection with the Activity;
  - development approvals from local council that are required to be obtained to complete the Activity; and
- ii. State agency approvals and permits that are required to be obtained to complete the Activity including but not limited to building and planning permits, heritage permits, water authority permits, biodiversity assessments, environmental management plans, occupational health and safety management plans.

**Official: Sensitive**

**(g) Variations**

The Organisation from time to time may give written notice to the Authority proposing a variation to the Activity, the Start Date, the End Date, or any Activity deliverable or budget specified in the Schedule, but not to the amount of Funding. If the Authority, in its sole discretion, gives written notice agreeing to the proposed variation, the Schedule will be deemed to be varied accordingly.

**4. Budget**

(Read with T&Cs clause 4 on *Funding*)

**(a) Budget Forecast Table**

<b>Activity Funding</b>	<b>\$ (excluding GST)</b>
Funds from the Authority	
Funds from your Organisation	
Total Activity Funding	
<b>Activity Expenditure</b>	<b>\$ (excluding GST)</b>
Total Activity Expenditure	
<b>Activity costs met through in-kind contributions (approximate value)</b>	<b>\$ (excluding GST)</b>
Total in-kind support	

**(b) Activity forecast budget**

- i. The budget forecast for the Activity is outlined in the Budget Forecast Table.
- ii. For the avoidance of doubt, the budget detail for the Activity as set out in the Organisation's application forms part of this Agreement.

**(c) Flexibility with budget expenditure**

Up to ten (10) per cent of the total budget can be transferred between expenditure items set out in the Budget Forecast Table (or the Organisation's application) without the Authority's approval. The prior written approval of the Authority is required for higher amounts or new items not noted as expenditure items in the Budget Forecast Table (or the Organisation's application).

**5. Reporting Requirements**

(Read with T&Cs clauses 7 on *Assets* and clause 8 on *Reporting*)



## Official: Sensitive

**(a) Evidence to be submitted**

If the submitted evidence is not satisfactory, further information or updated documentation may be requested and in some cases a variation may be required.

**(b) Progress reports**

Should the Authority require progress reports in the Activity Deliverable and Payments Table, the Organisation can provide the report in any format that clearly identifies agreed actions and progress. The Authority, however, may not accept reports that are not clear, concise and in line with the Activity Deliverables and Payments Table or the attached Activity plan if there is one.

**(c) Final report**

- i. A final report must be submitted by the date specified in the Activity Deliverables and Payments Table.
- ii. The final report must include a break down between the total GST free and GST taxable amounts.
- iii. For the avoidance of doubt, costs associated with reporting and monitoring are to be borne by the Organisation.

**(d) Additional reporting**

The Organisation must provide additional information that the Authority requests in relation to the evaluation of the programs through which this Funding is provided. The Authority must make only reasonable requests and should give notice of at least twenty (20) Business Days.

## 6. Activity specific requirements

**(a) Acknowledgement and Publicity** (to be read with T&Cs clause 4.17)

- i. The Organisation will acknowledge any financial and other support from the Victorian Government according to the Acknowledgement and Publicity Guidelines as amended from time to time, available on the Department of Premier and Cabinet's website and included at **Part D, Attachment 2**. In the Guidelines, 'Department' refers to the Suburban Rail Loop Authority.
- ii. The Organisation will need to provide drafts of any publications or signage concepts featuring the Authority's logo and Victorian Government logo for approval from the Authority prior to final production.
- iii. The Authority reserves the right to publicise and report on awarding the Funding to the Organisation.
- iv. The Organisation will acknowledge the Funding it has received from the Authority as approved by Government, and will use the SRL Community Project Fund logo and the Authority's logo, in all promotional material for the Activity, including in collateral produced to promote (or as a result of) the Activity, including (but not limited to) brochures, posters, signs, invitations, event advertisements, web or other online content.
- v. The Organisation will cooperate with the Authority in relation to all publicity

## Official: Sensitive

associated with the Funding and the Activity.

- vi. The Organisation will invite representatives of the Authority to all Activity events and ensuring that any official proceedings in each event allows for an Authority representative to speak.
- vii. The Organisation will ensure that the conduct in relation to the performance of the Activity is professional, and recipients do not do anything that may damage, bring into disrepute or ridicule the SRL Project, or the Authority's or the Victorian Government's name, messages or reputation.
- viii. The Organisation will include the following statement in any media or collateral activity (including signage) associated with the relevant Activity:

*"This project received funding from the Victorian Government through the SRL Community Projects Fund."*

## 7. Activity Governance

The Authority may require the Organisation to establish a steering committee, working party or other similar group to manage the Activity. Membership of these committees or groups must be reflective of the communities that will benefit from the Activity.

## 8. Corporate governance

If the Organisation is registered under the Corporations Act 2001 (Cth), in the event that the Organisation applies to come under, receives a notice requiring the Organisation to show cause why the Organisation should not come under, receive a notice or an application from any other person for the Organisation to come under or has otherwise come under one of the forms of external administration referred to in Chapter 5 of the *Corporations Act 2001* (Cth) or an order has been made for the purpose of placing the Organisation under external administration, the Organisation must inform the Authority in writing within five (5) Business Days of the date of the making or receipt of such notice of application or the making of such an order.

## 9. Confidentiality and privacy

- (a) Authority or State material or information that is marked or notified as confidential should not be disclosed to any third party. It is only to be used for this Activity. It must be destroyed, or returned as directed to the Authority when this Activity ends.
- (b) For the avoidance of doubt, despite anything in clause 17 of this Agreement the Organisation and the Authority agree and acknowledge that the Authority is not an organisation to which the Organisation usually discloses Personal Information and Health Information. Accordingly, for the purposes of this Agreement the Organisation is not required to make individuals aware that the Authority is an organisation to which the Organisation usually discloses Personal Information and Health Information.

## 10. Insurance

- (a) In addition to clause 20.1, the Organisation shall ensure that a suitable public liability policy of insurance has been effected with an insurer described in clause 20.1(a) upon execution of this Agreement or commencement of the Activity, whichever is the earlier.

**Official: Sensitive**

Such insurance shall be maintained until the completion of the Activity, and shall provide cover for an amount mutually agreed and not less than \$10 million.

- (b) The Organisation must maintain workers compensation insurance as required by law where the Organisation carries out activities under this Agreement.
- (c) The Organisation must maintain voluntary workers insurance when carrying out the Activity under this Agreement.

**11. Specific Policies, Standards & Guidelines – Community Sports Facilities [Note: Include if Funding is for community sports facilities]**

- (a) The Authority is committed to promoting the Victorian Government's Fair Play Code (**Fair Play Code**). For the purposes of this clause:
  - i. 'Breach of the Fair Play Code' includes any conduct which the Authority, in its discretion, reasonably believes is, or may lead to, a contravention of the Fair Play Code.
  - ii. 'Facility' means any place where the Activity is performed, and includes any part of the Facility.
  - iii. 'Timely Notice' means giving notice in writing within the earlier of five (5) Business Days, or as soon as practicable.
- (b) The Organisation agrees to give the Authority timely notice of any unresolved Breach of the Fair Play Code of which the Organisation becomes aware.
- (c) The Organisation agrees to give the Authority timely notice of any investigation into an unresolved Breach of the Fair Play Code by any sporting body, club or association who are tenants or licensees of the Facility, of which the Organisation becomes aware.
- (d) The Organisation agrees that the Authority may, in its discretion, suspend or cancel payments under this Agreement in whole or in part if any sporting body, club or association who are tenants or licensees of the Facility, refuses or fails to resolve any Breach of the Fair Play Code to its satisfaction.

**12. Specific Policies, Standards & Guidelines – Community Sports Organisations [Note: Include if Funding is for community sports organisations]**

- (a) The Authority is committed to promoting the Victorian Government's Fair Play Code (**Fair Play Code**), and expects that the Fair Play Code will be actively promoted and adhered to by all sporting associations, clubs and other organisations that receive Funding from the Authority.
- (b) For the purposes of this clause:
  - i. 'Breach of the Fair Play Code' includes any conduct which the Authority, in its discretion, reasonably believes is, or may lead to, a contravention of the Fair Play Code including conduct in any way connected with the Activity.
  - ii. 'Related Entities' means the Organisation's members, affiliates, and all other persons in the Organisation's sport over whom the Organisation can influence, control, or in relation to whose conduct the Organisation sets rules, standards or

**Official: Sensitive**

guidelines.

- iii. 'Timely Notice' means giving written notice to the Authority as soon as practicable and within seven days.
  - iv. 'Unresolved Breach' means a Breach of the Fair Play Code or a complaint of a Breach of the Fair Play Code, that has not been, or is not being, investigated, assessed or resolved at the appropriate level in accordance with the Fair Play Code.
- (c) The Organisation agrees to actively promote the Fair Play Code in the Organisation's sport and to all Related Entities.
  - (d) The Organisation agrees to take all reasonable steps to ensure compliance with the Fair Play Code by the Organisation and all Related Entities.
  - (e) The Organisation agrees to provide Timely Notice of any Unresolved Breach by the Organisation or Related Entities of which the Organisation becomes aware.
  - (f) The Authority may suspend or withhold payments under this Agreement in whole or in part if the Organisation or Related Entities refuse or fail to resolve a Breach of the Fair Play Code or an Unresolved Breach to the Authority's satisfaction.

DRAFT TEMPLATE

**Official: Sensitive**

## **C. Terms & Conditions**

Refer to attached *Terms and Conditions (T&Cs)*

DRAFT TEMPLATE

**Official: Sensitive**



**SUBURBAN  
RAIL LOOP**

## **PART C – Terms and Conditions**

(based on the *Victorian Common Funding Agreement, October 2015*)

DRAFT TEMPLATE



**SUBURBAN  
RAIL LOOP  
AUTHORITY**

**Official: Sensitive**



Page 94 of 43

Authorised and published by the Victorian Government, Melbourne,  
October 2015.

#### **VERSION AND REVIEW**

Victorian Common Funding Agreement Terms and Conditions  
October 2015, Version 2.0, scheduled for review 2019.

#### **ACCESSIBILITY**

If you need this information in an accessible format, please email  
[communitysector@dhhs.vic.gov.au](mailto:communitysector@dhhs.vic.gov.au) or visit [www.dhhs.vic.gov.au](http://www.dhhs.vic.gov.au).

#### **COPYRIGHT**

The Victorian Common Funding Agreement (the Agreement) is licensed under a Creative Commons Attribution Non-Commercial No Derivatives 4.0 International licence <https://creativecommons.org/licenses/by-nc-nd/4.0>. You are free to re-use the Agreement under that licence, on the condition that you credit the State of Victoria as author, do not use it for commercial purposes, and do not make any modifications except in accordance with the Agreement business rules and user guidance. The licence does not apply to any branding, including the Victorian Coat of Arms, the State Government Victoria logo and the Brand Victoria logo, or any images or third party material.



## CONTENTS

1	<a href="#">DEFINITIONS AND INTERPRETATION</a>	17
2	<a href="#">TERM OF AGREEMENT</a>	22
3	<a href="#">ACTIVITY DELIVERY</a>	22
4	<a href="#">FUNDING</a>	22
5	<a href="#">CONFLICT OF INTEREST</a>	24
6	<a href="#">RECORDKEEPING</a>	25
7	<a href="#">ASSETS</a>	26
8	<a href="#">REPORTING</a>	27
9	<a href="#">AUDIT AND PERFORMANCE REVIEW</a>	27
10	<a href="#">ASSIGNMENT AND SUBCONTRACTING</a>	28
11	<a href="#">DISPUTE RESOLUTION</a>	28
12	<a href="#">SUSPENSION</a>	29
13	<a href="#">CESSATION</a>	30
14	<a href="#">TERMINATION OF AGREEMENT</a>	30
15	<a href="#">TRANSITION OF ACTIVITY</a>	31
16	<a href="#">INTELLECTUAL PROPERTY</a>	32
17	<a href="#">PRIVACY, DATA PROTECTION AND PROTECTED DISCLOSURES</a>	33
18	<a href="#">CONFIDENTIAL INFORMATION</a>	34
19	<a href="#">INDEMNITY</a>	34
20	<a href="#">INSURANCE AND RISK MANAGEMENT</a>	35
21	<a href="#">VARIATION</a>	36
22	<a href="#">THE AUTHORITY'S CONSENT</a>	36
23	<a href="#">STATUS OF ORGANISATION</a>	36
24	<a href="#">NOTICES</a>	37
25	<a href="#">WAIVER</a>	38
26	<a href="#">COUNTERPARTS</a>	38
27	<a href="#">SURVIVAL</a>	38



## 1. DEFINITIONS AND INTERPRETATION

### Definitions

1.1 In this Agreement:

Term	Definition and interpretation
<b>Activity</b>	means the Activity related to the services or project described in the Schedule.
<b>Agreement</b>	means these Terms and Conditions, the Details, the Schedule and the Attachments.
<b>Applicable Authority Policies</b>	means any applicable Authority policies and guidelines, as amended or replaced from time to time, including those set out in the Schedule.
<b>Asset</b>	means a non-consumable item of tangible property (including an Asset that becomes a fixture) that has a service life greater than one (1) year purchased, created or otherwise brought into existence whether wholly or in part with the use of the Funding.
<b>Asset Register</b>	means the register the Organisation will maintain under clause 7.1 [Assets].
<b>Attachments</b>	means that part of the Agreement titled "Attachments"
<b>Auditor-General</b>	has the meaning set out in section 3 of the <i>Audit Act 1994</i> (Vic).
<b>Australian Accounting Standards</b>	means the accounting standards made by the Australian Accounting Standards Board in accordance with section 227 of the <i>Australian Securities and Investments Commission Act 2001</i> (Cth).
<b>Australian Auditing Standards</b>	means the auditing standards made by the Auditing and Assurance Standards Board in accordance with section 227B of the <i>Australian Securities and Investment Commission Act 2001</i> (Cth).
<b>Authority</b>	means the entity described in item 1 of the Details.
<b>Authority's Primary Contact</b>	means the person listed in item 10 of the Details or as notified in writing from time to time by the Authority.
<b>Background Intellectual Property</b>	means the Intellectual Property of a party which was either created: (a) Before the Start Date; or (b) independently of this Agreement, and all improvements to such Intellectual Property by the party.
<b>Business Day</b>	means a day other than a Saturday, Sunday or public holiday appointed under the <i>Public Holidays Act 1993</i> (Vic).

Term	Definition and interpretation
<b>Change in Control</b>	means any change during the Term in any person(s) who directly or indirectly exercises effective control over the Organisation (including the ability to determine the outcome of decisions about the financial and operating and other policies of the Organisation) by holding the majority of voting shares, units or other interests in the Organisation or by any other means, but does not include a change in respect of a council if that change is due to an election.
<b>Confidential Information</b>	means information or data (including Personal Information and Health Information), whether or not in a material form, that is confidential to a party or should reasonably be considered confidential. Confidential Information does not include information that is already in the public domain, unless the reason it is in the public domain is as a result of a breach of this Agreement.
<b>Conflict of Interest</b>	means a situation, or a risk of a situation, where an officer, board member, employee, member, volunteer, subcontractor, representative or agent of the Organisation has duties or interests arising as a result of holding a position, possessing property, engaging in a business or occupation or from contractual obligations and those duties or interests are in conflict with or might appear to be in conflict with their duties and interest under this Agreement.
<b>Day</b>	(as opposed to "Business Day" as defined above) includes public holidays appointed under the <i>Public Holidays Act 1993</i> (Vic), and weekends.
<b>Details</b>	means the part of the Agreement titled 'Details'.
<b>Dispute</b>	means any dispute: (a) arising out of this Agreement; (b) concerning the performance or non-performance by either party of its obligations under the Agreement; or (c) concerning any decision of a party or interpretation of any clause of this Agreement.
<b>Dispute Resolution Officer</b>	means the person assigned to the position listed in item 5 of the Details or as notified in writing from time to time by the Authority.
<b>End Date</b>	means the date set out in item 4 of the Details.
<b>Funding</b>	means money the Authority (as approved by Government) provides to the Organisation under this Agreement.
<b>Health Information</b>	has the meaning set out in the <i>Health Records Act 2001</i> (Vic).

Term	Definition and interpretation
<b>Insolvency Event</b>	means where: <ul style="list-style-type: none"><li>(a) the Organisation is unable to pay its debts as and when they fall due;</li><li>(b) in the case of an individual, the individual enters into a scheme of arrangement with creditors or becomes bankrupt;</li><li>(c) in the case of a legal entity that is not an individual:<ul style="list-style-type: none"><li>(i) a receiver, receiver and manager, administrator, controller, provisional liquidator or liquidator is appointed to the Organisation other than the appointment of an administrator to a council under s 219(2) of the <i>Local Government Act 1989</i> (Vic);</li><li>(ii) the Organisation enters into a scheme of arrangement with its creditors; or</li><li>(iii) the Organisation is wound up;</li></ul></li><li>(d) the Organisation assigns any of its property for the benefit of creditors or any class of creditors; or</li><li>(e) a person with a legal right over any assets of the Organisation takes any step towards taking possession or takes possession of those assets or exercises any power of sale.</li></ul>
<b>Intellectual Property</b>	includes: <ul style="list-style-type: none"><li>(a) all copyright (including rights in relation to all documents, reports, charts, drawings, data bases, software, source codes, models, systems, slides, tapes and specifications);</li><li>(b) all copyright and all rights in relation to inventions (including registered and registrable patents), registered and unregistered trade marks, registered and unregistered designs, circuit layouts, and know-how; and</li><li>(c) all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.</li></ul>
<b>Laws</b>	includes: <ul style="list-style-type: none"><li>(a) Acts of the Commonwealth and the State(s) and Territory(ies) in which the Activity will be delivered, and any other relevant State or Territory;</li><li>(b) ordinances, regulations, by-laws, orders and proclamations or other instruments made under those Acts referred to in paragraph (a); and</li><li>(c) lawful directions by any person exercising statutory powers regarding the Activity.</li></ul>
<b>Licence</b>	means a non-exclusive, world-wide, everlasting, irrevocable, royalty free licence to the Authority to exercise all rights in relation to the Intellectual Property it applies to as if the licensee were the owner, including the right to sub-license. A Licence does not include the right to transfer or assign the Intellectual Property, or to seek or enforce remedies for infringements of the Intellectual Property against a third party.

Term	Definition and interpretation
<b>Material Breach</b>	means: <ul style="list-style-type: none"> <li>(a) a breach which constitutes a substantial failure in the performance of the Activity and the Agreement by the Organisation; or</li> <li>(b) a series of minor breaches which together constitute a substantial failure in the performance of the Activity and the Agreement of the Organisation.</li> </ul>
<b>Ombudsman</b>	means the person appointed under section 3 of the <i>Ombudsman Act 1973</i> (Vic).
<b>Organisation</b>	means the entity described in item 2 of the Details.
<b>Organisation's Primary Contact</b>	means the person listed in item 6 of the Details or as notified in writing from time to time by the Organisation.
<b>Personal Information</b>	has the meaning set out in the <i>Privacy and Data Protection Act 2014</i> (Vic).
<b>Project Intellectual Property</b>	means all Intellectual Property (excluding Background Intellectual Property) developed, created, discovered, brought into existence or otherwise acquired (other than from the Authority) by the Organisation under the Agreement.
<b>Public Sector Data</b>	has the meaning set out in the <i>Privacy and Data Protection Act 2014</i> (Vic).
<b>Record</b>	means any document within the meaning of the <i>Evidence Act 2008</i> (Vic), including: <ul style="list-style-type: none"> <li>(a) anything on which there is writing;</li> <li>(b) anything on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them;</li> <li>(c) anything from which sounds, images or writings can be reproduced with or without the aid of anything else; or</li> <li>(d) a map, plan, drawing or photograph;</li> </ul> created, managed, maintained, brought into existence or otherwise acquired or used by the Organisation (or subcontractor) in relation to the Funding, the Activity, or the performance of the Organisation's obligations under the Agreement.
<b>Schedule</b>	means the schedule to the Agreement.
<b>Services</b>	means the Activity described in the Schedule.
<b>Start Date</b>	means the date set out in item 3 of the Details.
<b>Subcontracting</b>	is when the Organisation engages another organisation or person (excluding employees of the Organisation), to deliver all or a material part of the Activity in accordance with clause 10 [Assignment and Subcontracting].

Term	Definition and interpretation
<b>Term</b>	means the period of this Agreement as detailed in clause 2 [Term of Agreement].
<b>Terms and Conditions</b>	means this part of this Agreement entitled 'Terms and Conditions'.

## Interpretation

- 1.2 In this Agreement, unless it specifically states differently:
- (a) words implying one gender include the other gender;
  - (b) the plural includes any singular and vice versa;
  - (c) a reference to a statute, ordinance, code or other Law includes subordinate legislation, consolidations, amendments, re-enactments, and replacements of it;
  - (d) references to the Agreement include the Details, the Terms and Conditions, the Schedule, and any annexures and attachments;
  - (e) "including" and "includes" when introducing an example, does not limit the meaning to that example or examples of that kind;
  - (f) where a term is defined, the definition includes all grammatical forms of that term;
  - (g) headings and references to headings contained in square brackets ("[]") are inserted for readability and do not affect the interpretation of this Agreement; and
  - (h) a reference to a person includes an entity recognised by Law including a body politic, and incorporated and unincorporated bodies.

## Priority of Documents

- 1.3 Inconsistencies between the terms of this Agreement will be resolved in the following order of priority:
- (a) these Terms and Conditions;
  - (b) the Details;
  - (c) the Schedule; and
  - (d) the Attachments.

## Governing Law

- 1.4 The laws of the State of Victoria apply to the Agreement. The Organisation and the Authority agree to the jurisdiction of the courts of the State of Victoria and courts entitled to hear appeals from those courts.

## 2. TERM OF AGREEMENT

- 2.1 The Agreement will start on the Start Date and will end on the End Date, unless the Agreement is terminated earlier under clause 14 [Termination of Agreement].
- 2.2 The Organisation and the Authority agree that the Authority is not obligated to continue to provide funding to the Organisation beyond the Funding set out in the Schedule [Funding] nor to renew the Agreement at the end of the Term.

## 3. ACTIVITY DELIVERY

- 3.1 The Organisation will deliver the Activity in accordance with the Agreement to the reasonable satisfaction of the Authority and will at all times:
- (a) deliver the Activity in a proper, timely and efficient manner using the standard of care, skill, diligence and foresight that would reasonably be expected from an expert and experienced provider of the Activity;
  - (b) act in accordance with the ethical standards that are generally accepted to apply in the area of professional practice relevant to the Activity;
  - (c) demonstrate a commitment to ethical practices and behaviours, and make sure that ethical practices are implemented and ethical behaviours are promoted through appropriate staff training and monitoring;
  - (d) inform the Authority about all matters the Authority should reasonably be made aware of and provide information about the delivery of the Activity that may reasonably be required by the Authority;
  - (e) obtain and maintain any accreditation or registration required for the delivery of all or part of the Activity or requested in writing by the Authority; and
  - (f) comply with:
    - (i) the standards and performance targets listed in the Schedule in respect of the Activity;
    - (ii) all Applicable Authority Policies; and
    - (iii) all applicable Laws including Laws relating to fire protection, industrial relations and employment, health, general safety and taxation.
- 3.2 The Authority will provide the Organisation with access to all Applicable Authority Policies and standards.

## 4. FUNDING

- 4.1 If the Organisation meets its obligations under this Agreement to the reasonable satisfaction of the Authority, the Authority will pay the Funding to the Organisation as set out in the Schedule.
- 4.2 The Organisation and the Authority agree that payment of all or part of the Funding is not an admission by the Authority that the Organisation has met its obligations under this Agreement to the reasonable satisfaction of the Authority.

- 4.3 If the Schedule indicates that the Funding is to be increased on a yearly basis, the Authority will increase the Funding payable each year of the Term by the rate of indexation approved by the Victorian Government and advised by the Authority.

## Use of Funding

- 4.4 The Organisation agrees to use the Funding only for the Activity and in accordance with the Agreement or as agreed by the Authority in writing.
- 4.5 The Organisation will do all things necessary to make sure that all payments made by the Organisation from the Funding (including payments to subcontractors) are correctly made and properly authorised and that the Organisation maintains proper and diligent control over the incurring of all liabilities.
- 4.6 The Organisation will not use any of the following as security for the purpose of obtaining or complying with any form of loan, credit, payment or other interest unless the Authority consents in writing:
- (a) the Funding;
  - (b) the Agreement including any right, title or interest created under it; or
  - (c) any Asset or Project Intellectual Property.
- 4.7 The Organisation will not spend the Funding on donations to members of a State or Commonwealth Parliament or political parties or independent election candidates.
- 4.8 Deleted.
- 4.9 If, in the reasonable opinion of the Authority, the Organisation:
- (a) does not comply with the Agreement;
  - (b) does not deliver all or part of the Activity to the Authority's reasonable satisfaction; or
  - (c) has used, spent or committed all or part of the Funding other than in accordance with the Agreement,

the Authority may in its absolute discretion give written notice to the Organisation requiring the Organisation to repay that part of the Funding and any GST paid to the Organisation which, in the Authority's reasonable opinion, has not been applied in accordance with the Agreement and the Organisation will repay that amount to the Authority within thirty (30) Days, or such other time period as agreed, of receiving the written notice from the Authority.

## Goods and Services Tax (GST)

- 4.10 In this clause, italicised words or expressions have the same meaning as set out in the *New Tax System (Goods and Services Tax) Act 1999* (Cth) (GST Act).
- 4.11 The Funding set out in the Schedule is exclusive of GST. If GST is payable on all or part of the Activity under clause 4.12, it will be paid to the Organisation at the same time as the Funding set out in the Schedule.
- 4.12 The Organisation and the Authority agree that if GST is payable on a *supply* of the Activity by the Organisation under this Agreement, the Authority will pay the Organisation an additional amount equal to the GST payable on or for the *taxable supply*.

- 4.13 If GST is payable on the *supply* of the Activity by the Organisation under this Agreement, unless otherwise specified in the Schedule, the Organisation and the Authority agree to a recipient created tax invoice (RCTI) arrangement under this Agreement authorised under section 29-70(3) of the GST Act and that:
- (a) the Authority at the Start Date is registered for GST and agrees that it will notify the Organisation if it ceases to be registered for GST or ceases to satisfy any of the requirements of GST Ruling GSTR 2000/10;
  - (b) the Authority will reasonably comply with its obligations under the taxation Laws;
  - (c) the Authority can issue a RCTI in respect of a *taxable supply* made to the Authority of goods or services provided by the Organisation under this Agreement;
  - (d) the Authority will issue a copy of each RCTI to the Organisation and retain the original;
  - (e) the Authority will issue a copy of each *adjustment note* to the Organisation and retain the original;
  - (f) the Authority will not issue a document that would otherwise be an RCTI, on or after the date when it or the Organisation has ceased to satisfy the requirements of GST Ruling GSTR 2000/10;
  - (g) the Organisation will not issue *tax invoices* in respect of taxable supplies of goods or services to the Authority;
  - (h) the Organisation acknowledges that as at the Start Date it is registered for GST and has an active Australian Business Number and agrees that it will notify the Authority within seven (7) Days if it ceases to be registered.
- 4.14 If, as at the Start Date the Organisation is not required by Law to be registered for GST and during the Term of the Agreement the Organisation becomes registered for GST, the Organisation will give written notice to the Authority within seven (7) Days of becoming registered for GST.
- 4.15 If for any reason the RCTI arrangement specified in clause 4.13 is unable to be implemented or ceases, the Organisation must give the Authority a tax invoice in respect of any *taxable supply* made to the Authority by the Organisation in connection with the Agreement prior to any payment of Funding to the Organisation.
- 4.16 Any repayment under clause 4.9 that includes an amount for GST must be accompanied by an *adjustment note* relating to taxable supplies for which the Authority previously issued an RCTI to the Organisation or the Organisation previously issued a *tax invoice* to the Authority.

## Funding Acknowledgement

- 4.17 The Organisation will acknowledge any Funding support provided by the Victorian Government and the Authority, as specified in any Applicable Authority Policy and any Schedule.

## 5. CONFLICT OF INTEREST

- 5.1 The Organisation:



- (a) warrants that, to the best of its knowledge after making diligent inquiry, it has no actual or potential Conflict of Interest and no actual or potential Conflict of Interest is likely to arise during the Term; and
  - (b) will take all reasonable steps to ensure that no actual or potential Conflict of Interest arises during the Term.
- 5.2 If during the Term the Organisation becomes aware of any matter that gives rise to an actual or potential Conflict of Interest, the Organisation will:
- (a) immediately give written notice to the Authority of the actual or potential Conflict of Interest and of the steps the Organisation proposes to take to resolve or manage the actual or potential Conflict of Interest;
  - (b) make full disclosure to the Authority of all relevant information relating to the actual or potential Conflict of Interest; and take such steps as the Authority may, if the Authority chooses to, reasonably require to resolve or manage the actual or potential Conflict of Interest.
- 5.3 If the Organisation fails to notify the Authority, or is unable or unwilling to resolve or deal with the Conflict of Interest as required by the Authority, the Authority may terminate this Agreement under clause 14 [Termination of Agreement].

## 6. RECORDKEEPING

### Financial Records

- 6.1 The Organisation will keep full and accurate Records so that:
- (a) all financial transactions, including receipts and payments, from the Funding are clearly and separately identifiable;
  - (b) if required by Law or the Authority, financial statements under the Australian Accounting Standards can be prepared;
  - (c) if required by Law or the Authority, the Organisation's accounts and Records can be audited in accordance with Australian Auditing Standards; and
  - (d) all of the Organisation's taxation liabilities and payments can be clearly identified.

### Recordkeeping

6.2 Subject to 6.3, the Organisation will deal with all its Records in accordance with its usual recordkeeping practices, unless agreed otherwise in writing with the Authority.

- 6.3 The Organisation will:
- (a) maintain and manage the Records:
    - (i) as specified by the Authority and in accordance with any Applicable Authority Policy; and
    - (ii) in such a way that will allow the Records to be quickly and easily accessed, retrieved, reviewed, used and kept by the Authority and Victorian Government.
  - (b) retain the Records for a period of seven (7) years after the termination or expiry of the Agreement or the completion of the Activity (whichever is the earlier).

6.4 In addition to any other obligation under clause 6 or clause 15 [Transition of Activity], the Organisation will immediately provide access to Records at the Authority's written request and in any of the following circumstances:

- (a) in accordance with the requirements of all relevant Laws;
- (b) if requested by the Auditor-General or Ombudsman in writing;
- (c) to the Authority or any third party nominated by the Authority in accordance with any written request by the Authority; or
- (d) for the purposes of audit and performance monitoring under clause 9 [Audit and Performance Review].

## Freedom of Information

6.5 The Organisation will provide access to the Records during such time as they remain in the Organisation's possession or control to the Authority and any other person authorised by the Authority exercising rights under the Freedom of Information Act 1982 (Vic), or any other Laws that apply to the Records.

## 7. ASSETS

- 7.1 The Organisation will maintain an Asset Register listing and containing the details of each Asset in accordance with any Applicable Authority Policies. The Organisation will provide the Authority with a copy of the current Asset Register at the Authority's request.
- 7.2 The Organisation will not dispose of any Asset worth over \$5,000 (exclusive of GST) at the time of disposal which is listed or that should be listed on the Asset Register without the Authority's prior consent. For the purposes of this clause 7.2, the value of an Asset at the time of disposal will be the depreciated value from the time the Asset was purchased, calculated by reference to the standard method for calculating depreciation on an Asset of that type, as determined from time to time by the Commonwealth Commissioner for Taxation unless as otherwise agreed by the Authority and the Organisation.
- 7.3 If the Organisation disposes of any Asset listed or that should be listed on the Asset Register, the Organisation will record the details of the disposal in the Asset Register and the Authority may:
  - (a) reduce the amount of Funding payable under this Agreement by the depreciated value of that Asset on giving written notice to the Organisation; or
  - (b) request the Organisation to reimburse the Authority with an amount equal to the depreciated value of the Asset and the Organisation will reimburse the Authority.
- 7.4 If the Organisation loses, damages, destroys or sells any Asset listed or that should be listed on the Asset Register the Organisation will repair or replace it at its own expense and record details of the repair or replacement in the Asset Register unless otherwise agreed by the Authority in writing.
- 7.5 All Assets purchased with the Funding will be used to support the delivery of the Activity.
- 7.6 The Organisation is responsible for and will bear all risks, expenses and running costs for all Assets, including insurance and registration costs.
- 7.7 If the Organisation ceases to deliver all or part of the Activity (for whatever reason), the Organisation agrees to comply with any request of the Authority for the Organisation to:

- (a) transfer ownership of and deliver each Asset to the Authority or to a third party as the Authority directs; or
- (b) reimburse the Authority with an amount equal to the depreciated value of that Asset.

## 8. REPORTING

- 8.1 The Organisation will provide the Authority with information about and report on the Activity in accordance with the Schedule and as and when requested by the Authority.
- 8.2 The Organisation will provide the Authority with any information or Record that relates to the delivery of the Activity or shows how the Funding has been spent by the Organisation as and when requested by the Authority.
- 8.3 The Organisation will prepare its financial Records in accordance with:
  - (a) if required by the Authority, any Applicable Authority Policies; and
  - (b) if required by Law or the Authority, the Australian Accounting Standards.
- 8.4 The Organisation will comply with the Authority's financial accountability requirements and provide the Authority with the information and documentation set out in any Applicable Authority Policies including but not limited to:
  - (a) a certification signed either in writing or electronically, in accordance with any Applicable Authority Policy, by an authorised officer from the Organisation; and
  - (b) the Organisation's annual report containing financial statements, if applicable, or completed Authority financial reporting forms.

## 9. AUDIT AND PERFORMANCE REVIEW

- 9.1 The Authority may conduct, or the Authority may engage a third party to conduct, a performance review or an audit of the Organisation at any reasonable time, at the Authority's own expense:
  - (a) for the purpose of monitoring and assessing the Organisation's performance of its obligations under this Agreement or delivery of the Activity;
  - (b) if the Authority has reasonable concerns that the Organisation may not be delivering, or may be unable to deliver, all or part of the Activity in accordance with this Agreement;
  - (c) if the Organisation's Records give the Authority reasonable concern about the Organisation's compliance, or ability to comply, with this Agreement;
  - (d) if the Authority has reasonable concerns that the Organisation is not financially stable;
  - (e) if the Authority has reasonable concerns that the Organisation has misused all or part of the Funding; or
  - (f) to confirm whether the Funding has been used for the correct purposes.
- 9.2 The Organisation will:
  - (a) cooperate with and provide assistance to the Authority or any third party engaged by the Authority to conduct an audit or performance review;

- (b) make available to the Authority or any third party engaged by the Authority all information and Records needed for the audit or performance review in accordance with any written request from the Authority or third party engaged by the Authority; and
- (c) allow the Authority or any third party engaged by the Authority access to the Organisation's premises or place of business to carry out the audit or performance review.

## 10. ASSIGNMENT AND SUBCONTRACTING

- 10.1 The Organisation may not assign its rights or obligations under this Agreement without the Authority's prior written consent.
- 10.2 The Organisation may only Subcontract all or part of the Activity with the Authority's prior written consent.
- 10.3 Without limiting clause 22 [The Authority's Consent], the Authority will only provide consent to a proposed subcontract if:
  - (a) the Organisation satisfies the Authority that the subcontractor can deliver the Activity to be Subcontracted on the same terms and conditions as this Agreement;
  - (b) the contract between the Organisation and the subcontractor is made on the same terms and conditions as this Agreement, including a term that expressly allows the Authority to access the subcontractor's premises or place of business to conduct a performance review or audit of the subcontractor on the same terms and conditions as clause 9 [Audit and Performance Review]; and
  - (c) the Organisation agrees to comply with any conditions imposed by the Authority as a condition of granting its consent.
- 10.4 The Organisation agrees that it is:
  - (a) responsible for the delivery of the Activity including any part of the Activity that is Subcontracted; and
  - (b) accountable for any acts, omissions and mistakes of any subcontractor in performing all or part of the Activity as though they were the Organisation's own acts, omissions and mistakes.

## 11. DISPUTE RESOLUTION

- 11.1 The Organisation and the Authority will enter into good faith discussions to resolve any Dispute.
- 11.2 If a Dispute cannot be resolved under clause 11.1, it will be resolved in good faith as follows:
  - (a) the party claiming that the Dispute has arisen will give written notice to the other party describing in full the details of the Dispute (the "First Notice");
  - (b) within fourteen (14) Days of receipt of the First Notice, the parties will meet to discuss and try to resolve the Dispute;
  - (c) if the Dispute remains unresolved twenty one (21) Days after receipt of the First Notice, then either party may give written notice (the "Second Notice") to the other party requesting that the Dispute be referred to the Dispute Resolution Officer for resolution;

- (d) within fourteen (14) Days of receipt of the Second Notice, the parties will either meet with the Dispute Resolution Officer to discuss the Dispute or provide written submissions regarding the Dispute; and
  - (e) within twenty-eight (28) Days of receipt of the Second Notice, the Dispute Resolution Officer will provide their decision to the parties in writing. The parties agree that any decision of the Dispute Resolution Officer will be final and binding on the parties.
- 11.3 The parties will continue to perform their obligations under this Agreement despite the existence of any Dispute. Nothing in clause 11 affects the parties' abilities to exercise their rights under clauses 12 [Suspension], 13 [Cessation] and 14 [Termination of Agreement].

## 12. SUSPENSION

### Suspension of Activity

- 12.1 At any time during the Term, the Authority may by written notice, require the Organisation to immediately suspend delivery of the Activity, or part of the Activity if:
- (a) the Organisation has failed, or in the Authority's reasonable opinion, is likely to fail, to deliver the Activity in accordance with this Agreement;
  - (b) the Organisation has misused or is reasonably suspected to have misused Funding, or has shown an inability to properly manage its Assets;
  - (c) the Organisation has breached this Agreement and notice has been given to the Organisation by the Authority under clause 14.1 [Termination of Agreement]; or
  - (d) the Organisation or its officer, board member, employee, member, volunteer, subcontractor, representative or agent has breached, or is reasonably suspected to have breached, any Law material to the Activity or the operation of the Organisation.
- 12.2 The Organisation will suspend delivery of all or part of the Activity at the request of the Authority under clause 12.1.
- 12.3 The Authority may, by giving written notice to the Organisation, reduce the Activity to be delivered under this Agreement to reflect any suspension of all or part of the Activity under clause 12.2.
- 12.4 The Organisation agrees that the Authority may fund a third party to deliver all or part of the Activity that have been suspended under clause 12.2.

### Suspension of Funding

- 12.5 The Authority may immediately suspend payment of all or part of the Funding if any of the following occurs:
- (a) the Organisation has failed, or in the Authority's reasonable opinion is likely to fail, to deliver the Activity in accordance with this Agreement;
  - (b) the Organisation has misused or is reasonably suspected to have misused Funding, or has shown an inability to properly manage its Assets;
  - (c) the Organisation has breached the Agreement and notice has been given to the Organisation by the Authority under clause 14.1 [Termination of Agreement];

- (d) the Authority has concerns on reasonable grounds that the Organisation is not financially stable; or
  - (e) the Authority has requested the Organisation to suspend all or part of the Activity under clause 12.1.
- 12.6 The Authority may, by giving written notice to the Organisation, reduce the Funding to be paid by the Authority under this Agreement to reflect any suspension of all or part of the Funding under clause 12.5.

### **Authority may vary Schedule**

- 12.7 The Organisation acknowledges that the Authority may vary the Schedule to reflect any reduction of the Activity under clause 12.3 or reduction of Funding under clause 12.6.

### **Parties may exercise rights**

- 12.8 The Organisation and the Authority may exercise any of their rights under clauses 12 [Suspension], 13 [Cessation] and 14 [Termination of Agreement] at any time during a suspension of the Activity or the Funding under this clause 12.

## **13. CESSATION**

- 13.1 The Organisation and the Authority agree that Activity will not be ceased other than in accordance with this Agreement.

## **14. TERMINATION OF AGREEMENT**

### **Termination for Breach**

- 14.1 If the Organisation or the Authority is in breach of this Agreement, the party in breach will remedy the breach within thirty (30) Days of that party receiving written notice requiring it to fix the breach.
- 14.2 If notice has been given under clause 14.1 and the breach is not satisfactorily remedied within thirty (30) Days, the party who gave notice may immediately terminate this Agreement by giving written notice.

### **Termination by the Authority**

- 14.3 The Authority may terminate this Agreement immediately by giving written notice to the Organisation:
- (a) if an Insolvency Event occurs in relation to the Organisation;
  - (b) if the Organisation is a natural person and becomes:
    - (i) mentally incapacitated;
    - (ii) dies;
    - (iii) is incapacitated through illness for more than thirty (30) Days; or

- (iv) is convicted of a crime punishable by a term of imprisonment;
  - (c) if the Organisation has a Change in Control which the Authority reasonably believes would negatively affect the Organisation's ability to comply with this Agreement;
  - (d) if, in the reasonable opinion of the Authority, the Organisation commits a Material Breach of this Agreement which is not capable of remedy;
  - (e) if the Organisation behaves in a way that the Authority believes that its continued association with the Organisation may be detrimental to the reputation of the Authority;
  - or
  - (f) if the Organisation breaches an essential term of this Agreement as described in clause 14.4. The breach of an essential term is a repudiation of this Agreement.
- 14.4 The essential terms of this Agreement are clauses 4.4, 4.5, 4.6 and 4.7 [Funding].
- 14.5 If the Authority does not receive sufficient funds from either the Victorian Parliament or the Commonwealth Government to finance the program or the Activity, the Authority will give written notice to the Organisation as soon as possible and may terminate this Agreement by giving reasonable notice.
- 14.6 If there is a change in Victorian Government policy which affects the program or the Activity, the Authority may terminate this Agreement by giving the Organisation at least three (3) months' written notice.
- 14.7 The Organisation will immediately comply with any directions in a notice given under clauses 14.3, 14.5 or 14.6.

## Termination without Fault

- 14.8 Either the Organisation or the Authority may terminate this Agreement at any time by giving the non-terminating party at least three (3) months' written notice.
- 14.9 The party electing to terminate this Agreement under clause 14.8 will pay the reasonable costs (other than loss of profit or income) necessarily incurred and substantiated by the non-terminating party that arise directly from the termination. The non-terminating party will use its best efforts to minimise any such costs arising from termination.
- 14.10 The total amount payable by the Authority to the Organisation, if any, on termination of this Agreement under clause 14.9 will not exceed the total amount of Funding that would have been payable under the Agreement had it not been terminated, less any amount already paid under the Agreement.

## 15. TRANSITION OF ACTIVITY

- 15.1 On expiry or termination of this Agreement for any reason or if the Organisation ceases to deliver the Activity, the Organisation will, unless otherwise stated in the Schedule:
- (a) hand over all material and Records held by the Organisation or any subcontractor engaged by the Organisation necessary for the delivery of the Activity, regardless of the manner of storage, to the Authority and/or to any third party nominated by the Authority.
  - (b) provide (and require any subcontractor engaged by the Organisation to provide) all reasonable assistance, advice and information to the Authority to transfer all or part of the Activity, functions and operations provided by the Organisation under this

Agreement to the Authority or any third party nominated by the Authority in a smooth and orderly way.

## 16. INTELLECTUAL PROPERTY

- 16.1 The Background Intellectual Property of each party remains the property of that party.
- 16.2 The Organisation will own all Project Intellectual Property unless clause 16.3(a) applies.
- 16.3 The Authority will give written notice to the Organisation prior to the delivery of all the Activity if the Authority considers that:
- (a) all or part of the Project Intellectual Property arising from the delivery of the Activity should be owned by the Authority; or
  - (b) the Authority requires a Licence to use all or part of the Project Intellectual Property for any purpose, including publication on the internet.
- 16.4 If the Authority gives written notice to the Organisation under clause 16.3(a), the Project Intellectual Property specified in the notice is owned by the Authority.
- 16.5 The Organisation grants, and the Authority accepts:
- (a) a Licence over:
    - (i) the Project Intellectual Property not owned by the Authority;
    - (ii) the Background Intellectual Property, if any; and
    - (iii) any Intellectual Property of a third party, if any,only to the extent needed to allow the Authority to enjoy the full benefit of the Activity and this Agreement; and
  - (b) if the Authority gives written notice to the Organisation in accordance with 16.3(b) a Licence to use the Project Intellectual Property specified in the notice for the Authority's purposes, including publication on the internet.
- 16.6 At the request of the Authority, the Organisation will provide the Authority with copies of all Licensed materials and Intellectual Property and in a way that allows the Authority to exercise the Authority's rights under the Licence.
- 16.7 The Organisation warrants that it has the right to grant the Licences referred to in clause 16.5.
- 16.8 The Organisation will obtain all consents needed for any Licence, including in relation to any Moral Right. For the purposes of clause 16.8, 'Moral Right' has the meaning set out in section 189 of the *Copyright Act 1968* (Cth).
- 16.9 The Organisation will properly manage the Project Intellectual Property to allow the Authority to enjoy the full benefit of the Activity and this Agreement, which may include taking any necessary action to:
- (a) register, maintain the registration of, protect, manage, exploit and (as appropriate) commercialise the Project Intellectual Property for the benefit of the Victorian public;
  - (b) maintain, improve, enhance and develop the Project Intellectual Property to the fullest extent reasonably necessary to maintain its usefulness and appropriateness to the Organisation and the Authority for the delivery of the Activity;
  - (c) use, reproduce, publish, adapt, disseminate, communicate to the public, broadcast, and perform the Project Intellectual Property for the benefit of the Victorian public; and
  - (d) comply with all applicable Authority or other Victorian government policies in respect of the Project Intellectual Property.



- 16.10 The Organisation will not accept co-funding, or involve any person in the delivery of the Activity, on terms that would jeopardise or limit any Licence to be granted to the Authority without obtaining the Authority's prior agreement and consent in writing.

## 17. PRIVACY, DATA PROTECTION AND PROTECTED DISCLOSURES

### Privacy

17.1 The Organisation is bound by the Information Privacy Principles contained in the *Privacy and Data Protection Act 2014* (Vic) (PDP Act) and any applicable code of practice made under the PDP Act when performing its obligations under this Agreement in the same way and to the same extent that the Authority would be bound if the Authority were to perform the Organisation's obligations under this Agreement.

17.2 In performing this Agreement, the Organisation must:

- (a) collect, hold, use, manage, disclose and transfer Personal Information and Health Information obtained while delivering the Activity, only for the purposes of providing the Activity in accordance with this Agreement and in accordance with the PDP Act and the *Health Records Act* (HR Act) (as applicable);
- (b) not to do anything that would breach a Health Privacy Principle contained in the HR Act or an Information Privacy Principle contained in the PDP Act;
- (c) comply with the HR Act and any applicable code of practice made under the HR Act;
- (d) comply with the PDP Act and any applicable code of practice made under Division 3 of Part 3 of the PDP Act;
- (e) comply with any applicable direction, guideline, determination or recommendation made by the Victorian Commissioner for Privacy and Data Protection or the Victorian Health Services Commissioner; and
- (f) unless the Organisation is excluded from the operation of the PDP Act by s 84(2) of that Act:
  - (i) not act or engage in any practice that contravenes a protective data security standard issued by the Victorian Commissioner for Privacy and Data Protection under s 86 of the PDP Act in respect of Public Sector Data collected, held, used, managed, disclosed or transferred by the Organisation for the Authority; and
  - (ii) comply with any provision of a protective data security plan developed by the Authority under the PDP Act that applied to the Organisation.

17.3 The Organisation must also:

- (a) make sure that any person (including any subcontractor) who may deal with Personal Information, Health Information or Public Sector Data on behalf of the Organisation in relation to the Activity or this Agreement is made aware of the obligations in this clause 17;
- (b) immediately notify the Authority if the Organisation becomes aware of a breach, or possible breach, of any of the obligations in clause 17.2, by the Organisation, or any person acting for or on behalf of the Organisation (including any subcontractor) in relation to all or part of the Activity or this Agreement; and

- (c) make sure that any Subcontract it enters into imposes the obligations in this clause 17 on the subcontractor.

## Protected Disclosure Act

- 17.4 If the *Protected Disclosure Act 2012 (Vic)* applies to the Organisation, the Organisation agrees to comply with and be bound by the provisions of that Act.

## 18. CONFIDENTIAL INFORMATION

- 18.1 The Organisation and the Authority may disclose information (including on the internet) about the content of this Agreement unless the information is Confidential Information.
- 18.2 Each party agrees to treat all Confidential Information as confidential and not to disclose it to any third party without the prior written consent of the other party, except in the following circumstances:
  - (a) where the disclosure is required by Law or by this Agreement;
  - (b) where the disclosure is reasonably required by any persons performing their obligations under this Agreement;
  - (c) any disclosure to that party's own professional advisers, or its insurer; or
  - (d) if requested by the Auditor-General, the Ombudsman, or the Minister responsible for the portfolio under which the Activity operates.
- 18.3 Subject to clause 18.2, each party will ensure that any third party to which it discloses Confidential Information is made aware of the confidential nature of the Confidential Information.

## 19. INDEMNITY

- 19.1 The Organisation indemnifies the Authority against all Liability the Authority may incur in respect of any Claim including Claims relating to:
  - (a) loss of or damage to property;
  - (b) death or personal injury;
  - (c) a breach of any third party's Intellectual Property rights;
  - (d) a breach of privacy Law; and
  - (e) a breach of its obligations under clause 6 [Recordkeeping],arising in any way from:
  - (i) the Organisation's breach of this Agreement or any Law; or
  - (ii) an unlawful or negligent act or omission of the Organisation or its officers, board members, employees, agents, volunteers or subcontractors in connection with the Activity or this Agreement.
- 19.2 The Organisation's Liability will be reduced to the extent that Liability is caused or contributed to by an unlawful or negligent act or omission of the Authority or its officers or employees.

19.3 For the purposes of clause 19:

- (a) 'Liability' includes all costs, damages, expenses and losses of any kind;
- (b) 'Claim' includes all demand, rights, actions, suits or proceedings of any kind; and
- (c) 'Authority' includes all its officers and employees.

## 20. INSURANCE AND RISK MANAGEMENT

### Insurance

20.1 The Organisation will:

- (a) on and from the Start Date have appropriate insurance coverage for its operational and business risks with one or more of the following:
  - (i) the Victorian Managed Insurance Authority or Liability Mutual Insurance
  - (ii) an insurer authorised under the *Insurance Act 1973* (Cth); or
  - (iii) an insurer approved in writing by the Authority;
- (b) provide the Authority with proof of the Organisation's insurance cover on request;
- (c) maintain appropriate insurance coverage for the Term, and, if those insurance policies are underwritten on a 'claims made' basis, for no less than six (6) years after the completion of the Activity; and
- (d) undertake periodic reviews to make sure the Organisation's operational and business risks are adequately insured, particularly in regard to public and products liability and professional indemnity risks.

### Risk Management

20.2 The Organisation will:

- (a) manage risk in accordance with Australian/New Zealand Risk Management Standard: AS/NZS ISO 31000:2009 (Australian Standard) as amended from time to time or as otherwise specified in any Applicable Authority Policies.
- (b) arrange for its chief executive officer or a board member of the Organisation to attest that:
  - (i) the Organisation's risk management processes (Processes) are consistent with the Australian Standard or any Applicable Authority Policies;
  - (ii) during the Term, the Organisation has managed risk in accordance with the Australian Standard or any Applicable Authority Policies;
  - (iii) within the twelve (12) months prior to attestation, the Organisation has undertaken a review of the Processes to ensure compliance with the Standard or any Applicable Authority Policies;
  - (iv) the Processes satisfactorily and effectively manage the Organisation's risks; and
  - (v) the Organisation's board, committee of management or audit or risk committee has verified that the Processes satisfactorily and effectively manage the Organisation's risks.

## 21. VARIATION

- 21.1 The Organisation and the Authority agree that this Agreement may only be varied if:
- (a) both parties agree in writing to the variation; or
  - (b) the Authority notifies the Organisation in writing of a proposed variation to this Agreement and the date the proposed variation will take effect from ("the Effective Date"), and the Organisation continues to deliver all or part of the Activity or delivers new activity as described in the proposed variation after the Effective Date.

## 22. THE AUTHORITY'S CONSENT

- 22.1 Where the Authority's consent or approval is required under this Agreement:
- (a) the Organisation will:
    - (i) make its request in writing a reasonable time before the date on which the consent or approval is required by the Organisation; and
    - (ii) provide any information or documentation required or requested by the Authority;
  - (b) the Authority may:
    - (i) provide its consent or approval subject to any terms or conditions it considers appropriate; or
    - (ii) withhold its consent or approval;
- and
- (c) the Authority's consent will not be valid unless provided in writing.
- 22.2 Any consent provided under this Agreement is not deemed to be consent in the context of any other Agreement.
- 22.3 The Organisation will comply with the terms and conditions of any consent.
- 22.4 Where the Authority's consent or approval is requested by the Organisation under this clause, the Authority will provide its response to the Organisation under clause 22.1(b) within a reasonable time.

## 23. STATUS OF ORGANISATION

- 23.1 The Organisation and the Authority agree and acknowledge that:
- (a) nothing in this Agreement creates any joint venture, partnership, employment or agency relationship between the Organisation and the Authority; and
  - (b) neither party has authority to incur any liability or make any representation on behalf of the other.
- 23.2 The Organisation is solely responsible and liable for paying superannuation, payroll or any other tax, WorkCover levy or any similar payments or entitlements in relation to its employees.

- 23.3 The Organisation warrants that it is a legal entity capable of entering into this Agreement and that it complies with all Laws under which it is incorporated.
- 23.4 The Organisation will provide the Authority with evidence of the Organisation's legal status if requested by the Authority and will give written notice to the Authority within five (5) Business Days of any changes to the Organisation's legal status coming into effect.
- 23.5 Prior to any proposed Change in Control, the Organisation will:
- (a) give written notice to the Authority with reasonable time for the Authority to consider the impact of the proposed Change in Control; and
  - (b) provide any information or documentation required or requested by the Authority about the proposed Change in Control.
- 23.6 If the Organisation is a partnership, joint venture or consortium of two (2) or more persons, all such persons are liable both individually and as a group to the Authority for the full performance of this Agreement.
- 23.7 Where the Organisation or any part of it is a partnership, this Agreement will not terminate automatically on the death, retirement or resignation of one or more members of such partnership.

## 24. NOTICES

- 24.1 Any notice, approval or consent from one party to another must be in writing and be signed by an officer who is authorised to sign and legally bind that party. This clause 24 does not apply to variations to this Agreement made in accordance with clause 21 [Variation].
- 24.2 Any notice, approval or consent must be addressed to the Authority's Primary Contact or the Organisation's Primary Contact and will be properly given or served by a party if that party:
- (a) delivers it by hand;
  - (b) posts it by mail to the address listed in the Details or to another address as notified in writing by the relevant party;
  - (c) transmits it by facsimile to the facsimile number listed in the Details or to another facsimile number as notified in writing by the relevant party; or
  - (d) transmits it by electronic mail to the email address listed in the Details or to another email address as notified in writing by the relevant party.
- 24.3 A notice will be taken to be received:
- (a) if delivered by hand, on the day of delivery if the party giving the notice has a receipt for the delivery of the notice signed by a person employed by the party receiving the notice, unless delivery is made:
    - (i) on a non-Business Day; or
    - (ii) after 5:00 pm on a Business Day,in which case the notice will be taken to be received on the next Business Day;
  - (b) in the case of a posted letter, on the third Business Day after the date of posting if posted in Australia;

- (c) in the case of a facsimile transmission, on the day of transmission if the party giving the notice has a transmission confirmation report showing an error-free facsimile transmission, unless the transmission is made:
  - (i) on a non-Business Day; or
  - (ii) after 5:00 pm on a Business Day,in which case the notice will be taken to be received on the next Business Day;
- (d) in the case of an email, on the day the email is sent if the party giving the notice has a confirmation report or any other written evidence that the email has reached the recipient's mailbox, unless the email is sent:
  - (i) on a non-Business Day; or
  - (ii) after 5:00 pm on a Business Day;in which case the notice will be taken to be received on the next Business Day.

## 25. WAIVER

- 25.1 No waiver of any right of a party to this Agreement will be effective unless it is in writing and signed by that party.
- 25.2 A single or partial exercise or waiver of a right under this Agreement does not prevent any other exercise of that right or the exercise of any other right.

## 26. COUNTERPARTS

- 26.1 This Agreement may consist of a number of counterparts and, if so, the counterparts taken together constitute one document.

## 27. SURVIVAL

- 26.1 The following clauses will continue to apply after the end of this Agreement: 4.8 to 4.9 [Funding], 6 [Recordkeeping], 7.2, 7.3 and 7.7 [Assets], 8 [Reporting], 11 [Dispute Resolution], 15 [Transition of Activity], 16 [Intellectual Property], 17 [Privacy Data Protection and Protected Disclosures], 18 [Confidential Information], 19 [Indemnity], 20 [Insurance and Risk Management] 24 [Notices], 26 [Counterparts] and 27.1 [Survival].

## D. Attachments

1. Organisation Application Summary
2. Department of Premier and Cabinet, *Acknowledgement and Publicity Guidelines*

DRAFT TEMPLATE

# Execution Page

## Executed as an agreement.

**SIGNED** for and on behalf of the **Suburban Rail Loop Authority** by its duly authorised signatory:

.....  
Signature of authorised signatory

.....  
Name of authorised signatory (print)

.....  
Date

This document was electronically signed in accordance with the *Electronic Transactions (Victoria) Act 2000*.  
[Delete this statement if this document is not signed electronically]

## Organisation execution block – by authorised representative

**Note:** Where the Supplier's duly authorised representative executes this agreement (please request that they produce a signed letter of authority or written confirmation that they can enter into agreements on behalf of the Supplier).

**EXECUTED** by a duly authorised representative for and on behalf of (ACN ) in the presence of:

.....  
Signature of authorised representative

.....  
Signature of witness

.....  
Name of authorised representative (print)

.....  
Name of witness (print)

.....  
Date

This document was electronically signed in accordance with the *Electronic Transactions (Victoria) Act 2000*.  
[Delete or strike through this statement if this document is not signed electronically]

This document was witnessed by audio-visual link in accordance with the *Electronic Transactions (Victoria) Act 2000*. [Delete or strike through this statement if this document is not witnessed by audio-visual link]

## Organisation execution block – by sole director



**EXECUTED** by  
(ACN ) in accordance with s 127 of  
the *Corporations Act 2001* (Cth):

Signature of Sole Director and Company Secretary

Signature of witness

Name of Sole Director and Company Secretary (print)

Name of witness (print)

Date

This document was electronically signed in accordance with the *Electronic Transactions (Victoria) Act 2000*.  
[Delete or strike through this statement if this document is not signed electronically]

This document was witnessed by audio-visual link in accordance with the *Electronic Transactions (Victoria) Act 2000*. [Delete or strike through this statement if this document is not witnessed by audio-visual link]

## Organisation execution block – by more than one director

**EXECUTED** by  
(ACN ) in accordance with s 127 of  
the *Corporations Act 2001* (Cth):

Signature of Company Secretary/Director

Signature of Director

Name of Company Secretary/Director (print)

Name of Director (print)

Date

This document was electronically signed in accordance with the *Electronic Transactions (Victoria) Act 2000*.  
[Delete or strike through this statement if this document is not signed electronically]

This document was witnessed by audio-visual link in accordance with the *Electronic Transactions (Victoria) Act 2000*. [Delete or strike through this statement if this document is not signed electronically]

## Organisation execution block – by power of attorney

**EXECUTED** for  
(ACN ) by its attorney under  
power of attorney dated \_\_\_\_\_ who  
has no notice of revocation of that power of  
attorney in the presence of:

.....  
Signature of attorney

.....  
Signature of witness

.....  
Name of attorney (print)

.....  
Name of witness (print)

.....  
Date

This document was electronically signed in accordance  
with the *Electronic Transactions (Victoria) Act 2000*.  
[Delete this statement if this document is not signed  
electronically]

This document was witnessed by audio-visual link in  
accordance with the *Electronic Transactions (Victoria) Act  
2000*. [Delete statement if this document is not witnessed  
by audio-visual link]

## Organisation execution block – where corporate trustee with more than one director:

**EXECUTED** by

.....  
Company entity name

.....  
ACN  
as trustee for

.....  
Trust name  
in accordance with s 127 of the *Corporations  
Act 2001* (Cth):

.....  
Signature of Company Secretary/Director

.....  
Signature of Director

.....  
Name of Company Secretary/Director (print)

.....  
Name of Director (print)

.....  
Date

This document was electronically signed in accordance  
with the *Electronic Transactions (Victoria) Act 2000*.  
[Delete or strike through this statement if this document is  
not signed electronically]

This document was electronically signed in accordance with  
the *Electronic Transactions (Victoria) Act 2000*. [Delete or  
strike through this statement if this document is not signed  
electronically]

## Organisation execution block – where corporate trustee with sole director:

**EXECUTED** by

.....  
Company entity name

.....  
ACN  
as trustee for

.....  
Trust name  
in accordance with s 127 of the *Corporations Act 2001* (Cth):

.....  
Signature of Sole Director and Company Secretary

.....  
Signature of witness

.....  
Name of Sole Director and Company Secretary  
(print)

.....  
Name of witness (print)

.....  
Date

This document was electronically signed in accordance with the *Electronic Transactions (Victoria) Act 2000*.  
[Delete this statement if this document is not signed electronically]

This document was witnessed by audio-visual link in accordance with the *Electronic Transactions (Victoria) Act 2000*. [Delete statement if this document is not witnessed by audio-visual link]