**Sample Document**

**Implementation Agreement – Standard Terms**

|  |  |
| --- | --- |
| **What is this sample document usually called?** | Implementation Agreement. |
| **What group of documents does it belong to?** | Project Implementation Documents.  See *What other documents are closely related to it?* below. |
| **Who will sign it?** | State of Victoria (acting through a named Government Department) (the **State**).  Proponent. |
| **When is it used?** | All Partnerships Addressing Disadvantage arrangements. |
| **What does it do?** | Provides the overall framework for the Partnerships Addressing Disadvantage arrangement (**PAD Arrangement**). This is a central document for the PAD Arrangement. |
| **What areas does it cover?** | * Procurement and performance of services. * Performance measurement and outcome payments frameworks. * Conditions for engagement, conduct and termination. * Framework for the issue of bonds in connection with Partnerships Addressing Disadvantage to Bond investors and application of funds. * Intellectual property, use of information, project co-ordination and administration and dispute resolution. |
| **What drafting options does it include?** | **Standard Provisions** that are to apply generally.  **Secured Transaction Provisions** for any funding model that requires the State to take security, or where it is agreed with Bond investors that security is to be given to them, over particular assets.  **SPE Proponent Transaction Provisions** where a special purpose entity is the counterparty for the Implementation Agreement.  Drafting instructions are included in the sample document to assist in drafting for the inclusion (or removal) of these and other optional features. |
| **What other documents are closely related to it?** | **All PAD arrangements**   * Operations Manual – details the day-to-day management and operation of the PAD Arrangement.   **SPE Proponent Transactions**   * Services Subcontract – an outsourcing agreement between the Proponent and the key Service Provider(s). * Direct Deed – creates a direct legal relationship between the State and the key Service Provider(s). |
| **What should we do before we use this sample document?** | This sample document contains general provisions and other information only and does not take into account the objectives, needs or financial arrangements of any particular transaction.  Before using this sample document, you should:   * carefully consider and make your own assessment of whether it is appropriate for the PAD Arrangement or other transaction that you are considering; * perform your own independent investigation and analysis of the suitability and appropriateness of this sample document for any PAD Arrangement or other transaction that you are considering; * consult your own legal, tax, financial and other professional advisers as part of your assessment of this sample document and its suitability for your transaction; and * satisfy yourself that cross references in the sample document to other provisions of the sample document, or to any provisions or the names of other documents, are correct. |
| **Why is this sample document available?** | This sample document is intended to provide a guide for, and to streamline the development of, the documentation (and specific provisions) that is used for an PAD Arrangement.  Parties are advised that the State will be responsible for the initial preparation and any re-drafting of the Implementation Agreement in connection with any PAD Arrangement, and this sample document is intended to be used as the basis for preparing that document. The State would expect to take into account in any evaluation of a proposed PAD Arrangement any requests for material departures from the sample document and the reasons for the departures and the possible implications for time, cost and efficiency.  The acceptance of the final form of this document by the State will be a key condition for any agreement of the terms of an PAD Arrangement. However, it may not be suitable in all circumstances and the State reserves the right to require a departure from this sample document in order to address the specifics of a particular PAD Arrangement, to address then current market practice and conditions and otherwise as necessary to protect the interests of the relevant department, agency or other State body and the State. |
| **Where can I get further information?** | If you have any questions in relation to this sample document, or any specific provision or other related information, queries can be directed to pads@dtf.vic.gov.au. |

**Legal matters**

This sample document has been prepared by King & Wood Mallesons at the request of, and in consultation with, the Victorian Department of Treasury and Finance (**DTF**) and its advisers. It forms part of a suite of sample transaction documents that has been developed by DTF for use in connection with PAD arrangements.

This sample document has been derived in part from the Deed of Implementation Agreement prepared by the State of Queensland (**Reference Work**) in consultation with Trevor Danos AM and King & Wood Mallesons, the use of which for the purposes of preparing this document is gratefully acknowledged. Users of this sample document are directed to the copyright notices and acknowledgments on its cover page. No reliance may be placed for any purposes whatsoever on the provisions and other information contained in this sample document (or any other communications or materials separately provided or discussed verbally in connection with this sample document) or on its completeness, accuracy or fairness. No representation or warranty, expressed or implied, is given by, or on behalf of, the State, King & Wood Mallesons or any other person as to the provisions and other information included in this sample document being acceptable to the State in all circumstances, that it is suitable for any particular PAD arrangement or as to the accuracy or completeness of the provisions or other information contained in this sample document and no liability whatsoever is accepted by the State or King & Wood Mallesons for any loss howsoever arising, directly or indirectly, from any use of such provisions or other information or otherwise arising in connection with it. The provisions and other information in this sample document are subject to negotiation, verification, completion and change.

***Parties are advised that the State will be responsible for the initial preparation and any re-drafting of this document in connection with any PAD arrangement. Any request for a change to a provision of this document must be accompanied with suggested drafting amendments for that change and, where the change is material, by reasonable detail of the reason for the request. Whilst the intention is to use this sample document as the basis for preparing the actual Implementation Agreement for each relevant PAD arrangement, it may not be suitable in all circumstances and there is no obligation for the State to do so. The State reserves the right to amend or to depart from this sample document in order to address the specifics of a particular PAD arrangement, to address then current market practice and conditions and otherwise as necessary to protect the interests of the relevant department, agency or other State body and the State. All cross-references to provisions in this document and to provisions and names of other documents should be carefully checked.***



**Implementation Agreement**

**Standard Terms**

**[*Project name*]**

**Between**

**State of Victoria acting through**

**[*Department’s name*]**

**and**

**[*Legal name of Proponent*]**

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This document has been derived in part from the SBB Deed of Implementation Agreement (**Reference Work**) prepared by the State of Queensland in consultation with Trevor Danos AM and King & Wood Mallesons, available at https://www.treasury.qld.gov.au/projects-infrastructure/initiatives/sbb/resources.php. The Reference Work is derived in part from the Deed of Implementation Agreement of the NSW Office of Social Impact Investment, prepared by the NSW Crown Solicitor’s Office in consultation with Trevor Danos AM, available at http://www.dpc.nsw.gov.au/programs\_and\_services/social\_impact\_investment/social\_benefit\_bonds. To the extent that this work is a derivative work of those works, this work is licensed to you under clause 9 of the Licence.

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**PARTIES**

**State of Victoria acting through [*Department’s name*]** (the “**State**”)

and

**[*Insert legal name and ABN of Proponent*]** (the “**Proponent**”).

BACKGROUND

A. The State of Victoria wishes to undertake a Partnership Addressing Disadvantage arrangement (**PAD Arrangment**) in the area[s] of [*describe relevant area in which services will be provided*] (**Policy** **Area**).

B. The parties have agreed to undertake a project in the Policy Area, and the Implementation Agreement sets out the arrangements for the PAD.

IMPLEMENTATION AGREEMENT

# General provisions

## Terminology

### In the Implementation Agreement, certain words and phrases have defined meanings. They are indicated by capital letters (e.g. Services).

### Definitions of words or phrases used in the Implementation Agreement, including these Standard Terms, are in clause 36.

### Some words or phrases that are used only in the Operations Manual are defined in that document.

## Implementation Agreement terms

### The Implementation Agreement sets out the terms and conditions on which the Proponent must deliver Services and on which the State will provide Payments to the Proponent. The Implementation Agreement is comprised of:

#### these Standard Terms, which contain general terms that apply to Services, Payments and the Project; and

#### the Operations Manual.

### The Operations Manual may also specify or refer to documents, specifications, guidelines, policies or standards that the Proponent must comply with, meet or have regard to in relation to the Services, any Payments and the Project.

### The Implementation Agreement also includes any document that the parties may sign from time to time varying or extending it, including any variation instrument referred to in clause 7.

## Order of precedence

If, in relation to any Services or Payments, there is any ambiguity in or inconsistency between the documents comprising the Implementation Agreement, the following order of precedence will apply to resolve the ambiguity or inconsistency:

### these Standard Terms;

### the Project Details;

### the Payment Schedule; and

### the Operations Manual.

## Term of Implementation Agreement

The Implementation Agreement will commence on the Agreement Commencement Date and, unless terminated earlier, will continue until the Agreement Expiry Date.

# Conditions Precedent

## Conditions Precedent

### Subject to clauses 2.2(a) and 2.2(b), the respective obligations of each party under the Implementation Agreement (other than under clauses 2, 4, 6.3, 7, 15, 17, 20.1(a)(iii)(B), 20.5, 20.6(d)(i), 20.6(d)(ii), 20.6(e), 23, 24, 25, 26, 27.2(a)(i), 27.2(a)(ii), 27.2(a)(iii), 27.2(a)(iv)(C), 27.2(b), 29, 31, 34 and 35 which come into effect on the Agreement Commencement Date) do not come into force until satisfaction, or waiver by the State in writing, of the following Conditions Precedent on or before the applicable Cut-Off Date:

## [*Note* – *the following list of Conditions Precedent is illustrative only and is not exhaustive. The State may require that additional or alternative conditions be included under this section (with corresponding changes to also be made to the forms of legal opinions set out in Schedule 4 and form of confirmation set out in Schedule 5). The nature of conditions to be included may vary with the transaction structure for a particular PAD (e.g., the nature of the financing raised or the presence or absence of an SPE).*

## *Regard should be had to the timings by which each condition can be reasonably expected to be satisfied (and conditions should be ordered for Cut-Off Dates accordingly (including that all conditions precedent may be required to be satisfied by reference to a single Cut-Off Date, rather than multiple, staggered dates), with the below ordering illustrative only). The below ordering also assumes that the Implementation Agreement is to be signed prior to the finalisation and execution of the other Transaction Documents, which may not necessarily or always be the case.*]

### within 1 month (or such other period as may be agreed between the parties in writing) after the Agreement Commencement Date:

#### the State having received a legal opinion from the Proponent’s lawyers substantially in the form set out in part A of Schedule 4;

#### both parties are satisfied with the arrangements for the establishment and operation of the PAD Arrangement (including, without limitation, as to tax matters); and

#### both parties have agreed the terms of reference for the Independent Certifier;

### within 2 months (or such other period as may be agreed between the parties in writing) after the Agreement Commencement Date:

#### both parties have agreed and finalised the Operations Manual in accordance with clause 4;

#### both parties have agreed the terms of:

##### all Transaction Documents (other than the Implementation Agreement);

##### the legal disclaimers to be included in any information memorandum, term sheets, issue confirmation or other marketing materials relating to the offer and issue of the Bonds (the State is expressly not responsible for any of those materials); and

##### any other legal agreement in connection with the Project, not otherwise dealt with in these Conditions Precedent, to which the Proponent will be a party;

### within 3 months (or such other period as may be agreed between the parties in writing) after the Agreement Commencement Date, the State having received:

#### a certified copy of each Bond Issue Document;

#### a legal opinion from the Proponent’s lawyers substantially in the form set out in part B of Schedule 4;

#### a copy of each duly executed document (other than the Bond Issue Documents) agreed under clause 2.1 (b)(ii);

#### evidence of insurances as required by the Implementation Agreement; and

#### evidence of the appointment of the Independent Certifier on terms acceptable to the State; and

### within 6 months (or such other period as may be agreed between the parties in writing) after the Agreement Commencement Date, the State having received written confirmation from the Proponent that the Bonds have been fully subscribed in the Bond Issue Amount.

## Satisfaction or waiver of Conditions Precedent

### The Proponent must use all reasonable endeavours to satisfy each Condition Precedent by the applicable Cut-Off Date. For the purposes of clause 2.1(b)(ii), the Proponent must provide the State with drafts of the relevant documents for agreement by no later than 1 month prior to the relevant Cut-Off Date.

### Both parties agree to act in good faith and provide the other with reasonable assistance, including reviewing all documentation provided to it in relation to any Condition Precedent, on a timely basis during the period from the Agreement Commencement Date until the earlier of:

#### waiver or satisfaction of the Conditions Precedent; or

#### termination of the Implementation Agreement under clause 2.3.

### The Proponent must promptly notify the State in writing if the Proponent considers that any Condition Precedent cannot be satisfied. At or around each Cut-Off Date, the Proponent shall provide the State with a confirmation in the form set out in Schedule 5 that confirms which Conditions Precedent have been confirmed by the State in writing as being satisfied as at that Cut-Off Date.

### Only the State may waive or confirm satisfaction of a Condition Precedent. The State may, in its absolute discretion, extend any Cut-Off Date for a Condition Precedent (including where the Proponent has requested an extension and the State is satisfied that there are reasonable grounds for the request) provided that any new Cut-Off Date must not extend beyond a date occurring 9 months after the Agreement Commencement Date.

### This clause 2.2 does not impose any obligation on the State to exercise any discretion, or give any approval, in any way.

## Termination for non-fulfilment of Conditions Precedent

### If any Condition Precedent is not waived or satisfied on or before the applicable Cut-Off Date, either the Proponent or the State may terminate the Implementation Agreement without liability, provided, in the case of the Proponent, it has complied with its obligations under clauses 2.2(a), 2.2(b) and 2.2(c). This termination shall be effected by giving written notice to the other within 15 Business Days following the relevant Cut-Off Date.

### If either of the Proponent or the State terminates the Implementation Agreement under clause 2.3(a), the Implementation Agreement has no further effect and neither party is liable to the other for any loss or damage arising from or in connection with such termination provided that nothing in this clause shall affect the right of either the Proponent or the State to recover loss or damage suffered upon a breach of the Implementation Agreement by the other prior to that termination.

THE PROJECT

# Project Parameters

## Objectives

### Both parties acknowledge and agree that the predominant objectives of the parties in entering the Implementation Agreement are:

## [*include a description of the objectives of the Project.*

## *A sample provision, drawn from an Australian Social Impact Investment (SII) in the area of out-of-home-care, is as follows:*

#### *through the trial of a pilot SII, to raise funds for, and otherwise assist and support, children and families in communities in Victoria who are disadvantaged, in need or vulnerable;*

#### *for the Outcomes to further an improvement of the economic, personal and social circumstances of children and families in communities in Victoria who are disadvantaged, in need or vulnerable; and*

#### *to provide the Services as an appropriate means for the Proponent to act as, and support and assist others to be, leaders in the provision of relief for children and families in communities in Victoria who are disadvantaged, in need or vulnerable.*]

### The Proponent acknowledges that the State intends that:

#### the Implementation Agreement supports a successful Project and PAD Arrangement;

#### the Outcomes are delivered or achieved to the benefit of the community and the State of Victoria; and

#### the Services are evaluated to further the evidence base and focus on measurement for social programs and Partnerships Addressing Disadvantage.

## Adherence to objectives

### Both parties must, in accordance with and subject to the provisions of the Implementation Agreement, perform their respective obligations under the Implementation Agreement having regard to and with the aim of satisfying the objectives referred to in clause 3.1.

### Provided that the Proponent has otherwise complied with the terms of, and has performed its obligations under, the Implementation Agreement, each of the following events will not of itself constitute a breach by the Proponent of the Implementation Agreement:

#### any failure by the Proponent to deliver or achieve any Outcomes, or to satisfy or achieve the objectives set out in clause 3.1 or 3.2(a); or

#### any finding made in connection with an [Annual Review] that any Outcomes have not been delivered or achieved, or that the objectives set out in clause 3.1 or 3.2(a) have not been satisfied or achieved.

### Clause 3.2(b) does not restrict any such failure or finding from being considered along with any other matter or timing to determine whether any such breach has occurred or may occur.

# Operations Manual

### [***Standard Provision.*** *Insert:*[Both parties will act in good faith to agree the Operations Manual by the applicable Cut-Off Date. *End of Standard Provision* *(delete if the following optional provision is inserted)*]

### [***Option 2 Provision (SPE Proponent Transactions).*** *Insert:* [Both parties will act in good faith to agree the Operations Manual, in consultation with the Service Provider, by the applicable Cut-Off Date.]*End of Option 2 Provision* *(delete if transaction structure does not involve an SPE Proponent)*]

### The Operations Manual will cover at least the matters outlined in Schedule 3 and will be consistent with these Standard Terms.

### Once agreed, the Operations Manual is incorporated into the Implementation Agreement by reference and forms part of the Implementation Agreement.

### The Operations Manual [***Standard Provision.*** *Insert:*[will be subject to regular review, [including as part of the Annual Review,] and may be amended or varied from time to time by agreement of the parties in writing.]*End of Standard Provision (delete if optional provision is inserted). Review process for each specific transaction to be discussed between Proponent and State*]

### [***Option 2 Provision (SPE Proponent Transactions).*** *Insert:* [will be subject to regular review, [including as part of the Annual Review,] and may be amended or varied from time to time by agreement of the parties from time to time in writing, following consultation with the Service Provider.]*End of Option 2 Provision* *(delete if transaction structure does not involve an SPE Proponent) Review process for each specific transaction to be discussed between Proponent/Services Provider and State*]

# Referrals

[***Note*** *– the provisions in this section are drafted at a very high level of generality, and are to be carefully considered and revised (including the addition of further specifics around the agreed referral processes) as necessary for the terms of the Project and the definitions set out in clause 36. If any of these concepts are not used in connection with any Project, alternative arrangements will need to be carefully considered and consequential changes made throughout the document.*]

## Timeframe and process for Referrals

### Subject to this clause 5, the timeframe and process for Referrals will be as set out in the Operations Manual.

## Anticipated size of Cohort

### The anticipated size of the Cohort is [*specify the relevant number*] individuals, comprising [*outline generally the composition of the Cohort*].

### [***Note*** *— “Cohort” concept may be modified to encompass multiple intakes, with a reference to ‘Cohort’ being a reference to each intake — make relevant changes to the definition of ‘Cohort’*]

### The State does not guarantee the size [*or composition/other particulars*] of the Cohort.

## [*The State/Proponent/other relevant party*] to make Referrals

### The [*State/Proponent/relevant party*] shall make Referrals [*in accordance with the Operations Manual/by [insert further particulars of referral process]*].

## Acceptance of individuals

### The Proponent must accept all individuals the subject of Referrals (up to the Target Referral Number of Referrals) for the Referral Period into the Project [*on a “first come first served” basis/include details of such other basis which is to be used if a particular composition of the Cohort is required*], unless:

#### the Proponent believes on reasonable grounds that an individual does not meet the Eligibility Criteria;

#### the anticipated size of the Cohort (as set out in clause 5.2(a)) of the Project has been reached; or

#### the parties otherwise agree in accordance with the Operations Manual.

### Where the Proponent does not intend to accept a Referral for participation in the Project pursuant to clause 5.4(a), the Proponent will notify the State in accordance with procedures in the Operations Manual and the procedure set out in the Operations Manual shall apply.

# Project oversight, co-ordination and communication framework

## Roles and responsibilities

### The respective roles and responsibilities of both parties and any subcontractors and lines of communication and consultation in relation to the Project and delivery or achievement of the Outcomes by the Proponent, including the respective responsibilities of these persons in relation to Services delivery, case management [and court processes], are set out in the Operations Manual.

## Joint Working Group

## [*Note — this is an example only. The final PAD governance approach will be developed during the course of the RFP and will be subject to the final PAD governance approach adopted by the State.*]

### A Joint Working Group will be established in accordance with the Operations Manual to review and discuss Operational Matters, monitor Outcomes that are to be delivered or achieved and seek to resolve any disputes arising under the Implementation Agreement.

### The frequency of, and procedure for, Joint Working Group meetings will be in accordance with the Operations Manual, which may also establish more detailed terms of reference for the Joint Working Group.

## Contact Officers

### Subject to this clause 6.3, the Contact Officers are the primary contact for their respective parties.

### [***Standard Provision.*** *Insert:*[The Contact Officer of each party has authority to deal with all matters relating to the administration of the Implementation Agreement on behalf of the relevant party and otherwise as described in the Implementation Agreement.]*End of Standard Provision* *(delete if the following optional provision is inserted)*]

### [***Option 2 Provision (SPE Proponent Transactions).*** *Insert:* [The Contact Officer of each party has authority to deal with all matters relating to the administration of the Implementation Agreement on behalf of the relevant party and otherwise as described in the Implementation Agreement. The Contact Officer of the Service Provider will act on the Proponent’s behalf as the Proponent’s primary contact in relation to all Operational Matters, and the State may rely upon any communication by or from the Contact Officer of the Service Provider with regard to such matters as a communication made on the Proponent’s behalf and which is binding on the Proponent.]*End of Option 2 Provision* *(delete if transaction structure does not involve an SPE Proponent)*]

### [***Standard Provision.*** *Insert:*[The Contact Officer of a party may not agree to vary or terminate the Implementation Agreement except on the basis of satisfactory written evidence of authority from that party.]*End of Standard Provision* *(delete if the following optional provision is inserted)*]

### [***Option 2 Provision (SPE Proponent Transactions).*** *Insert:* [The Contact Officer of a party may not agree to vary or terminate the Implementation Agreement except on the basis of satisfactory written evidence of authority from that party. To avoid doubt, the Contact Officer of the Service Provider has no authority to amend or terminate the Implementation Agreement on the Proponent’s behalf.]*End of Option 2 Provision* *(delete if transaction structure does not involve an SPE Proponent)*]

## The Proponent and the Proponent’s subcontractors to co-operate

### The Proponent agrees to, and shall ensure that its subcontractors will, work collaboratively and co-operatively with all other agencies and any other stakeholders involved in the Policy Area regardless of the differences in size, individual philosophies, structures and funding sources to create an integrated system across government and non-government agencies [*if applicable, describe any Victorian Inter-Agency / Inter-Departmental Guidelines*].

# Variations under the Project

## Varying the Implementation Agreement, Services or Outcomes

The parties acknowledge that:

### the Implementation Agreement, or any part of it, may be varied by written agreement between the parties; and

### a variation which modifies the scope of the Services and/or the Outcomes may result in a reduction of or increase in (as the case may be) the amount of, or any future instalment of, the Payments.

## Varying the other Transaction Documents

### The Proponent may not vary, or agree or acquiesce to a variation of, any Transaction Document other than the Implementation Agreement without the State’s prior written consent (such consent not to be unreasonably withheld or delayed by the State, but without limiting the State’s rights under any other provision of the Implementation Agreement (including, without limitation, clause 14.2)).

ABOUT PAYMENTS AND THE PROJECT FUNDS

# Payments made to the Proponent

## Mechanism for payment

### The State will provide the Payments to the Proponent in accordance with the Payment Schedule or as otherwise provided in the Implementation Agreement.

### All payments made by the State to the Proponent under the Implementation Agreement will be paid into the Project Account.

## Late payments

### Subject to clause 8.3, if any payment due under the Implementation Agreement is not paid by its due date, then interest (calculated on a daily basis) will be payable on that unpaid amount at the Prescribed Rate (converted to a daily rate of interest) from (and including) the date on which payment was due to (but excluding) the date of payment.

## Disputed Amounts

### The State may, in good faith, dispute any amount set out in an invoice from the Proponent. Where the State does so, it will be entitled to withhold payment of the Disputed Amount. A Disputed Amount will be resolved in accordance with clause 33. Until the dispute is resolved, and subject to the outcome of that dispute, the Disputed Amount will be held in suspense for the duration of the dispute. Any Disputed Amount found to be payable by the State to the Proponent shall be paid promptly upon resolution of the dispute together with interest (calculated on a daily basis) at the Prescribed Rate (converted to a daily rate of interest) from (and including) the original due date for payment of the Disputed Amount to (but excluding) the date that the actual payment is made to the Proponent.

## Cap on amounts payable under the Implementation Agreement

### The Proponent agrees that the total aggregate amount payable by the State to the Proponent during the Term (to avoid doubt, exclusive of GST but inclusive of any stamp or mortgage duty arising in connection with the Implementation Agreement and the other Transaction Documents) shall not exceed the Cap on Payments.

## Right of set-off

### Without limiting any of the State’s other rights under the Implementation Agreement, the State may deduct, from amounts which may be payable to the Proponent, any amount due from the Proponent to the State in connection with the Implementation Agreement (including any amounts owing by the Proponent to the State in consequence of the early termination of the Implementation Agreement). If that amount deducted is insufficient for that purpose, the balance remaining unpaid will be a debt due by the Proponent to the State.

# Use of Project Funds

### Unless and to the extent otherwise agreed, the Proponent must only use the Project Funds:

### [***Standard Provision.*** *Insert:*

### to deliver the Services;

### for making required Bond Payments;

### for making Authorised Investments;

### to make other payments or and for other purposes that are permitted under the Transaction Documents; and

### for such other payments as agreed by the State in writing.]

#### *End of Standard Provision* *(delete if the following optional provision is inserted)*]

#### [***Option 2 Provision (SPE Proponent Transactions).*** *Insert:*

### to deliver the Services (including under the Services Subcontract);

### for making required Bond Payments;

### for making Authorised Investments;

### to make other payments or and for other purposes that are permitted under the Transaction Documents (including under the Services Subcontract); and

### for such other payments as agreed by the State in writing.]

#### *End of Option 2 Provision* *(delete if transaction structure does not involve an SPE Proponent)*]

# GST

## Amounts specified exclusive of GST

### The amount of the Payments as set out in the Payment Schedule is exclusive of GST.

### The State will pay the Proponent the GST Amount at the same time as paying the Proponent the Payments if the Proponent is registered for GST.

## Adjustment

If, for any reason, including:

### any amendment to the GST Legislation;

### the issue of a ruling or advice by the Commissioner of Taxation;

### a refund in respect of a supply made under the Implementation Agreement; or

### a decision of any tribunal or court,

the amount of GST paid by the State differs from the amount of GST paid or payable by the Proponent to the Commissioner of Taxation, then the State must issue an appropriate adjustment note and any difference must be paid to or by the State as the case may be.

## Exchange of information

The parties agree to exchange such information as is reasonably necessary to enable each party to accurately assess its rights and obligations under this clause.

## Recipient Created Tax Invoice

If the Proponent is registered for GST, the Proponent agrees that the State may issue the Proponent with RCTIs in respect of GST applicable to any payments of the Payments. The following requirements will apply for the duration of the Implementation Agreement:

### the State may issue the Proponent with an RCTI in respect of any Taxable Supply;

### the Proponent must not issue a tax invoice in respect of a Taxable Supply for which the State issues an RCTI;

### the Proponent acknowledges that it is registered for GST and agrees to notify the State if it ceases to be registered or if it ceases to satisfy any of the requirements relating to RCTIs; and

### the State acknowledges that it is registered for GST and agrees to notify the Proponent if it ceases to be registered or if it ceases to satisfy any of the requirements relating to RCTIs.

The State will issue an RCTI upon each payment of the Payments made to the Proponent during the Term.

## Remittance

The Proponent must remit any GST Amounts that the State pays to it to the Australian Taxation Office as required by the GST Legislation.

PERFORMANCE REVIEW AND AUDIT

# Independent Certifier

## Appointment

### The Proponent must, at its own cost, appoint an Independent Certifier to verify and report on performance data, any Payment due to it and whether the Outcomes have been delivered or achieved (in accordance with the methodology and process set out in the Operations Manual), to the State and to Bond Investors on or after the Measurement Date within [3 months (or such other period as may be agreed between the parties in writing) after the Establishment Date].

### The appointment of the Independent Certifier must be made by way of a competitive tender process and be approved by the State (such approval not to be unreasonably withheld).

### The:

#### terms and conditions of:

##### the Proponent’s tender including the services to be provided by the Independent Certifier; and

##### the contract for services between the Proponent and the Independent Certifier; and

#### the Proponent’s tender process,

### must be agreed by the State and the Proponent, acting reasonably. Without limiting this clause 11.1(c), the contract for service must include a term giving the State direct access to and contact with the Independent Certifier for the purposes of the Implementation Agreement and the Project[***Note*** *— the following may be included depending on provisions of clause 13:* and the right to directly request independent certification of annual performance data in the circumstances specified in clause 13].

### Subject to clause 11.1(e), if the contract between the Proponent and the Independent Certifier is terminated or the Independent Certifier is otherwise unable to perform its obligations under that contract, the Proponent must replace the Independent Certifier with another suitably qualified body on substantially the same terms and conditions as the previous certifier and clauses 11.1(b) and 11.1(c) will apply to that appointment.

### The Proponent must not terminate its contract with the Independent Certifier without obtaining the State’s prior written consent (such consent not to be unreasonably withheld).

### Subject to compliance with any legal requirements including, without limitation, in relation to privacy, each party must provide, on a confidential basis, all necessary information and documents within its possession or control to the Independent Certifier to enable the Independent Certifier to perform the services required of the Independent Certifier by this clause 11.

## Independent Certifier’s reports

### The Proponent must (or must procure that the Independent Certifier does), within the timeframes specified within the Payment Schedule, submit to the State, together with any invoice submitted by the Proponent for the Payments payable, a report from the Independent Certifier addressing the matters set out in the Payment Schedule.

# Measurement of Outcomes

### The Proponent’s success in delivering or achieving the Outcomes [for the Intervention Group] in a period will be measured as at the applicable Measurement Date [against results for the Control Group], in accordance with the methodology and process described in the Operations Manual.

### [***Note*** *— it is envisaged that provision of data for determining Outcome Payments will be described in the Operations Manual*]

### The State will, at the Measurement Date, undertake a reconciliation of the Payments payable [in respect of that Measurement Date] and the aggregate of all amounts identified in the Payment Schedule as payable by the Proponent.

# Reviews

## [*Note — the requirement for annual/periodic reviews should be considered in light of project-specific requirements. Provisions for periodic and/or ad-hoc reviews should be considered based on timing of measurement of outcomes, availability certification of data (including timing, responsibility, form etc.), reporting requirements of bondholders etc.*

## *Note that clause 14.2(a)(xiii) (standard provision)/clause 14.2(a)(xviii) (SPE Proponent Transactions) and clause 14.3(a)(ii) presuppose that reviews will be conducted (whether periodically or on an ad-hoc basis), and the timing/frequency of reviews will impact the ability of parties to exercise rights under those clauses.*

## *This clause should then provide detail on when reviews are required/can be triggered, responsibility for provision of data, review process and content of reports. Some of this detail could be included in the Operations Manual*]

TERMINATION AND OTHER SPECIAL EVENTS

# Terminating the Project

## Termination by the State for convenience

### The State can terminate the Implementation Agreement at its convenience and without cause at any time by giving the Proponent at least 20 Business Days’ notice in writing.

### Upon the State’s request, the Proponent must execute a deed of release on terms acceptable to both parties as a condition precedent to the Payments to be made in connection with any such termination.

### The Proponent must do everything reasonably possible to prevent or otherwise mitigate any losses resulting to the Proponent from any termination under this clause 14.1.

## Termination by the State for cause

### [***Note*** *– the following set of default events is not exhaustive and the State may require that additional or alternative events of default be included under this clause*:]

### 

## [*Standard Provision.* *Insert:*

##### [*Drafting note: Termination provisions in clause 14.2 should be linked to Schedule 2 (Part C: Termination Payments) for financial consequences of Termination*]

### The State can immediately terminate the Implementation Agreement by giving the Proponent notice if:

#### the Proponent commits a material breach of any provision of the Implementation Agreement that is not, in the State’s reasonable opinion, capable of being remedied, and the parties have not agreed in writing a basis upon which the Implementation Agreement can continue within 20 Business Days of the Proponent receiving notice of that breach;

#### the Proponent commits a material breach of the Implementation Agreement that is capable of remedy and the Proponent fails to remedy that breach within 20 Business Days of receiving notice requiring it to do so;

#### the Proponent commits a breach of:

##### any term of the Implementation Agreement on a recurring basis in any rolling 3 month period, being a breach in respect of which at least 3 notices requiring remedy have been issued under clause 14.2(a)(ii) during that period and those breaches, taken together, will have or, if not remedied, would be reasonably likely to have, a material adverse impact on the performance of the Services or the delivery or achievements of the Outcomes; or

##### clause 20.4(a) and the Proponent fails to remedy that breach within 20 Business Days of receiving notice to do so;

#### an amendment to the Proponent’s Constitution or operations means that the Proponent is no longer:

##### eligible for the Payments; or

##### able, in the State’s reasonable opinion, to comply with the Implementation Agreement;

#### an actual Conflict of Interest arises and the Conflict of Interest cannot be satisfactorily resolved or otherwise dealt with in accordance with clause 20.8 within 20 Business Days of the Conflict of Interest arising;

#### the Proponent suffers a Change in Control which the State reasonably considers will have an adverse impact on the performance of the Services or the delivery or achievement of the Outcomes;

#### any Transaction Document is varied (other than to correct minor or typographical errors) without the State’s prior written consent;

#### the Proponent suffers or is the subject of an Insolvency Event;

#### the Proponent abandons the Services or expresses or demonstrates an intention to cease or substantially cease performance of the Implementation Agreement;

#### the repayment of principal under the Bonds is accelerated upon an event of default under their terms and conditions;

#### subject to clause 35.9, any Transaction Document is declared invalid or unenforceable by a court, other than as a result of a change in Relevant Law;

#### the Proponent suffers a Cybersecurity Incident (such as a breach of data) which the State reasonably considers will have an adverse impact on the performance of the Services or the delivery or achievement of the Outcomes; or

#### following review of the performance of the Intervention Group and the Control Group by the Joint Working Group in accordance with clause 13: [***Note*** *— if this termination right is included, the ability to trigger an ad-hoc review should be included in clause 13*]

##### the State, acting reasonably, gives notice to the Proponent that it is of the opinion that [*measure X*] [*and/or*] [*measure Y*] will reflect a level of performance below or equal to that defined as success rate level “[*refer to relevant success rate level*]” for the relevant look-up table in Schedule 2 for [two] consecutive Measurement Dates; and

##### the parties have, after a consultation period of 30 days (or such longer date as may be agreed between them), failed to agree on changes satisfactory to them with a view to ensuring that the relevant Intervention Group[s] achieve[s] a level of performance equal to or better than that defined as success rate level “[*refer to relevant success rate level*]” for the relevant look-up table in Schedule 2.

##### [*Note — consider whether termination pursuant to this clause (xiv) will result in particular financial consequences to be set out in Schedule 2 (Part C: Termination Payments)*]

### The State’s rights under this clause 14.2 are in addition to any other rights or remedies available to the State.

### For the purposes of this clause 14.2, a material breach of the Implementation Agreement includes:

#### a substantial failure in performance of the Implementation Agreement by the Proponent;

#### a series of minor breaches of the Implementation Agreement that, taken together, will have a material adverse impact on the performance of the Services or the delivery or achievement of the Outcomes; or

#### where the Proponent’s conduct:

##### is inconsistent with prevailing community standards; or

##### may be regarded by the public as unacceptable; or

##### may bring the Proponent’s reputation into disrepute,

##### and the State believes that its continued association with the Proponent may be detrimental to the State’s reputation.

### *End of Standard Provision* *(delete if the following optional provision is inserted)*]

#### [***Option 2 Provision (SPE Proponent Transactions).*** *Insert:*

### The State can immediately terminate the Implementation Agreement by giving the Proponent notice if:

#### the Proponent commits a material breach of any provision of the Implementation Agreement that is not, in the State’s reasonable opinion, capable of being remedied, and the parties have not agreed in writing a basis upon which the Implementation Agreement can continue within 20 Business Days of the Proponent receiving notice of that breach;

#### the Proponent commits a material breach of the Implementation Agreement that is capable of remedy and the Proponent fails to remedy this breach within 20 Business Days of receiving notice requiring it to do so;

#### the Proponent commits a breach of:

##### any term of the Implementation Agreement on a recurring basis in any rolling 3 month period being a breach in respect of which at least 3 notices requiring remedy have been issued under clause 14.2(a)(ii) during that period and those breaches, taken together, will have or, if not remedied, would be expected to be reasonably likely to have, a material adverse impact on the performance of the Services or the delivery or achievements of the Outcomes; or

##### clause 20.4(a) and the Proponent fails to remedy that breach within 20 Business Days of receiving notice to do so;

#### the Services Provider commits a material breach of the Services Subcontract that is not, in the State’s reasonable opinion, capable of being remedied, and the parties to the Services Subcontract have not agreed in writing, with the State’s concurrence, a basis upon which the Services Subcontract can continue within 20 Business Days of the Services Subcontractor receiving notice of that breach;

#### the Services Subcontractor commits a material breach of the Services Subcontract that is capable of remedy and the Services Subcontractor fails to remedy that breach within 20 Business Days following receipt of a notice requiring it to do so;

#### the Service Provider breaches any term of the Services Subcontract in any rolling 3 month period being a breach in respect of which at least 3 notices requiring remedy have been issued under clause 14.2(a)(v) during that period and those breaches, taken together, will have or, if not remedied, would be expected to be reasonably likely to have, a material adverse impact on the performance of the Services or the delivery or achievements of the Outcomes;

#### an amendment to the Proponent’s Constitution or operations means that the Proponent is no longer:

##### eligible for the Payments; or

##### able, in the State’s reasonable opinion, to comply with the Implementation Agreement;

#### an amendment to the Service Provider’s Constitution or operations means that it is no longer able, in the State’s reasonable opinion, to comply with the Services Subcontract;

#### an actual Conflict of Interest arises and the Conflict of Interest cannot be satisfactorily resolved or otherwise dealt with in accordance with clause 20.8 within 20 Business Days of the Conflict of Interest arising;

#### the Proponent or the Service Provider suffers a Change in Control which the State reasonably considers will have an adverse impact on the performance of the Services or the delivery or achievement of the Outcomes;

#### without the State’s prior written consent, the Proponent ceases to be the trustee or the only trustee of the Trust or any action is taken (other than by the State) to the Proponent as trustee of the Trust or to appoint another person as trustee in addition to the Proponent;

#### any Transaction Document is amended (other than to correct minor or typographical errors) without the State’s prior written consent;

#### the Proponent or the Service Provider suffers or is the subject of an Insolvency Event;

#### the Proponent or the Service Provider abandons the Services or expresses or demonstrates an intention to cease or substantially cease performance of the Implementation Agreement or the Services Subcontract (as applicable);

#### the repayment of principal under the Bonds is accelerated upon an event of default under their terms and conditions;

#### subject to clause 35.9, any Transaction Document is declared invalid or unenforceable by a court or is terminated for material breach by the Service Provider, other than as a result of a change in Relevant Law;

#### the Proponent or the Service Provider suffers a Cybersecurity Incident (such as a breach of data) which the State reasonably considers will have an adverse impact on the performance of the Services or the delivery or achievement of the Outcomes; or

#### following review of the performance of the Intervention Group and the Control Group by the Joint Working Group in accordance with clause 13: [***Note*** *— if this termination right is included, the ability to trigger an ad-hoc review should be included in clause 13*]

##### the State, acting reasonably, gives notice to the Proponent that it is of the opinion that [*measure X*] [*and/or*] [*measure Y*] will reflect a level of performance below or equal to that defined as success rate level “[*refer to relevant success rate level*]” for the relevant look-up table in Schedule 2 for [two] consecutive Measurement Dates; and

##### the parties have, after a consultation period of 30 days (or such longer date as may be agreed between them), failed to agree on changes satisfactory to them with a view to ensuring that the relevant Intervention Group[s] achieve[s] a level of performance equal to or better than that defined as success rate level “[*refer to relevant success rate level*]” for the relevant look-up table in Schedule 2.

##### [*Note — consider whether termination pursuant to this clause (xiv) will result in particular financial consequences to be set out in Schedule 2 (Part C: Termination Payments)*]

### The State’s rights under this clause 14.2 are in addition to any other rights or remedies available to the State.

### For the purposes of this clause 14.2, a material breach of the Implementation Agreement includes:

#### a substantial failure in performance of the Implementation Agreement by the Proponent;

#### a series of minor breaches of the Implementation Agreement that, taken together, will have a material adverse impact on the performance of the Services or the delivery or achievement of the Outcomes; or

#### where the Proponent’s conduct:

##### is inconsistent with prevailing community standards; or

##### may be regarded by the public as unacceptable; or

##### may bring the Proponent’s reputation into disrepute,

##### and the State believes that its continued association with the Proponent may be detrimental to the State’s reputation.

### *End of Option 2 Provision* *(delete if transaction structure does not involve an SPE Proponent)*]

## Termination by the Proponent

### The Proponent may terminate the Implementation Agreement at any time by notice to the State if:

#### the State has committed a material breach of any provision of the Implementation Agreement and:

##### the breach is not capable of being remedied and the parties have not agreed in writing the basis upon which the Implementation Agreement can continue within 20 Business Days of the State receiving notice of that breach; or

##### the breach is capable of remedy and the State fails to remedy that breach within 20 Business Days following its receipt of a notice requiring it to do so; or

#### following review of the performance of the Intervention Group and the Control Group by the Joint Working Group in accordance with clause 13: [***Note*** *— if this termination right is included, the ability to trigger an ad-hoc review should be included in clause 13*]

##### the Proponent, acting reasonably, gives notice to the State that it is of the opinion that [*measure X*] [*and/or*] [*measure Y*] will reflect a level of performance below or equal to that defined as success rate level “[*refer to relevant success rate level*]” for the relevant look-up table in Schedule 2 for [two] consecutive Measurement Dates; and

##### the parties have, after a consultation period of 30 days (or such longer date as may be agreed between them), failed to agree on changes satisfactory to them with a view to ensuring that the relevant Intervention Group[s] achieve[s] a level of performance equal to or better than that defined as success rate level “[*refer to relevant success rate level*]” for the relevant look-up table in Schedule 2.

##### [*Note — consider whether termination pursuant to this clause (xiv) will result in particular financial consequences to be set out in Schedule 2 (Part C: Termination Payments)*]

### For the purposes of this clause 14.3, a material breach of the Implementation Agreement includes:

#### a substantial failure in performance of the Implementation Agreement by the State; or

#### a series of minor breaches of the Implementation Agreement, that taken together, will have an adverse impact on the performance of the Services or the delivery of achievement of the Outcomes.

#### [***Note —*** *consider whether termination clause should be added for changes to the Control Group which result in that group ceasing to be an accurate counterfactual.*]

# Intervening Events

## Consequences and response to an Intervening Event

### A party must notify the other party as soon as practicable of any anticipated delay due to an Intervening Event. The performance of a party’s obligations under the Implementation Agreement will be suspended for the period of delay due to the Intervening Event.

### Subject to clause 15.1(c), neither party will be liable for any delay or failure to perform or discharge its obligations (other than payment of monetary sums owing to the other party) under the Implementation Agreement if such failure or delay is due an Intervening Event.

### On the occurrence of an Intervening Event, the non-performing party must use its reasonable endeavours to continue to resume performance or observance whenever and to whatever extent possible without delay, including by means of alternate sources, work-arounds or other means.

## Extended Intervening Event

### If a delay or failure to perform or discharge obligations under the Implementation Agreement due to an Intervening Event exceeds 3 months, either party may terminate the Implementation Agreement immediately on providing notice to the other party, provided that the terminating party has followed the consultation process in clause 17.

### Where an Intervening Event prevents either party from carrying out all or substantially all of its obligations under the Implementation Agreement [in respect of some but not all of the Agreed Locations] (and provided that the effects of such occurrence are subsisting), either party may, 3 months after the occurrence of the relevant Intervening Event, require that [the location no longer be designated an Agreed Location] and the parties will agree [any consequent adjustment to the target number of Referrals].

# Other Taxes, future changes in law

### Subject to clause 10 and this clause 16, the Proponent must pay, and must keep the State indemnified against, any Taxes payable upon, or in respect of the Implementation Agreement or the supply of the Services and delivery or achievement of the Outcomes wherever and however such Taxes arise.

### On the Proponent’s application, the State will consider (but shall not be obliged to) reimburse the Proponent for any stamp duty paid by it on:

#### the Implementation Agreement;

#### the Bonds; and/or

#### any additional tax paid by the Proponent as a direct result of changes to Commonwealth tax legislation specifically directed at social impact investment or other arrangements comparable to Partnerships Addressing Disadvantage.

### In the event that any future change:

#### to Commonwealth tax legislation has a materially adverse impact on the tax that the Proponent is required to pay as a direct consequence of the Implementation Agreement; or

#### to any law or government policy has or is likely to have a materially adverse impact on the Proponent’s reasonably expected financial return from its performance of the Implementation Agreement in accordance with its terms (and to avoid doubt excluding any adverse impact referable to an Intervening Event, lack of Referrals or breach of the Implementation Agreement),

### and in either case the parties are unable to reach agreement on how to manage that impact, the Proponent may terminate the Implementation Agreement giving 1 month’s notice.

### The Proponent may only do this after following the consultation process in clause 17 with a consultation period of at least 1 month.

### The parties acknowledge and agree that if any reimbursement or additional payment is agreed pursuant to clause 16(c), then the Cap on Payments will be increased by an amount equivalent to the amount of that reimbursement or additional payment.

# Pre-termination discussions

### Where reasonable, neither party will seek to exercise its right to terminate the Implementation Agreement without first giving the other party 1 months’ notice of its intention to do so and, if requested by the other party, will, to the extent reasonable and appropriate, engage in “without prejudice” discussions with the other party at a senior level over a period of at least 10 Business Days (unless otherwise specified), to explore possible options for the Implementation Agreement to continue.

### The parties are obliged to engage in the discussions referred to in clause 17(a) only to the extent that such discussions did not occur or could not reasonably have occurred during any period of notice, grace or remedy contained in the relevant clause dealing with the existence or exercise of rights to terminate.

# Consequences of termination

### If the Implementation Agreement is terminated for any reason:

### each party shall make the relevant payments or repayments required in connection with such termination as detailed or referenced in the Payment Schedule;

### each party must:

#### do everything reasonably possible to mitigate all losses, costs and expenses that they may incur as a result of the termination; and

#### comply with clause 22;

### The State will not be liable to pay to the Proponent compensation for any loss of profit or benefits that the Proponent would have received had the termination not occurred; and

### the termination will not limit, or adversely affect, any other right or remedy that may be available to either party or accrued as at the date of termination.

WHAT THE STATE MUST DO

# The State’s obligations to the Proponent

### In addition to the State’s express obligations under the Transaction Documents, the State will:

### liaise and work collaboratively with the Proponent to improve the State’s knowledge base of service delivery practice and outcomes relating to the Services; and

### use reasonable endeavours to provide the Proponent with current information, including relevant government policies, procedures and guidelines, applicable to the delivery of the Services.

WHAT THE PROPONENT MUST DO

# Use of Payments and delivery of Services

## General

### The Proponent must:

#### use the Project Funds and deliver the Services in accordance with the Implementation Agreement with the objective of delivering or achieving the Outcomes;

#### to the extent that the Proponent receives Project Funds directly from the State, comply with [*insert title of relevant departmental policies and funding guidelines, for example, the Department of Health and Human Services Policy and Funding Guidelines, July 2016, and any other applicable policies*] (as amended or replaced from time to time), other than where compliance with such policies would conflict with an express obligation under the Implementation Agreement, in which case the Implementation Agreement shall prevail (provided that, where an applicable policy specifies (in relation to a performance standard or quality contained in the Implementation Agreement) a higher standard of performance or quality, the higher standard shall prevail);

#### promptly notify the State:

##### of any relevant matters that the Proponent reasonably thinks might affect the Proponent or its subcontractors’ ability to deliver any of the Services or deliver or achieve any of the Outcomes or to meet the Proponent’s obligations under the Implementation Agreement;

##### if the Proponent becomes aware of any third party claim, or likely claim, against the Proponent and/or its subcontractors in connection with the Implementation Agreement; and

##### of any matter relating to the delivery of the Services where significant media attention has occurred or is likely to occur;

#### comply with any legislation and requirements of any Commonwealth, State, Territory or local authority in relation to the Project Funds, the Project, the Services, the Outcomes and the Implementation Agreement, including a Relevant Law; and

#### obtain and maintain all permits, registrations and licences required to be taken out in connection with the Proponent’s performance of the Services, [including ensuring that employees of the Proponent and Service Provider obtain a Working with Children Check as required under the *Working with Children Act 2005* (Vic), where relevant].

### The Proponent must not, and must procure that its subcontractors do not, through any wilful, negligent or unlawful act or omission of the Proponent, its subcontractors or its personnel, or through any breach of the Implementation Agreement, cause the State to breach any Relevant Law.

### The Proponent must, and must procure that all subcontractors, comply with all government policies and guidelines relevant to the Implementation Agreement and applicable to the performance of the Services and delivery or achievement of the Outcomes as advised by the State from time to time and set out in the Operations Manual including any changes to those policies and guidelines.

### The Proponent is responsible for ensuring compliance with its obligations under the Implementation Agreement, despite:

#### any arrangement under which any of the Services are delivered under the Proponent’s auspices; or

#### any subcontracting of the Services.

## Victorian Industry Participation Policy

### The Proponent must, in performing its obligations under the Implementation Agreement, consider engaging competitive Australian, New Zealand and Victorian suppliers, subject to value for money criteria, wherever reasonably possible.

### The Proponent must, in performing its obligations under this document, undertake to achieve [*insert numerical percentage estimate of local content provided during the RFP stage*] of Local Content, wherever reasonably possible.

### The Proponent acknowledges and agrees to provide the State, at the State’s request, with an estimate of the Local Content achieved under this Agreement, which may be:

#### included in the relevant department’s report of operations under Part 7 of the *Financial Management Act 1994*,in respect of the agency’s compliance with the Victorian Industry Participation Policy in the financial year to which the report of operations relates; and

#### provided to the Responsible Minister for inclusion in the Responsible Minister’s report to the Parliament for each financial year on the implementation of the Victorian Industry Participation Policy during that year; and

#### may be disclosed by the State as required by law.

## Service commencement and delivery

### The Proponent must:

#### start delivering the Services by no later than the Establishment Date, except where otherwise agreed or notified by the State;

#### continue delivering the Services until the first to occur of the following:

##### the Agreement Expiry Date;

##### the date the Implementation Agreement is terminated; and

##### the last date on which Services are scheduled to be provided in accordance with the Operations Manual;

#### comply with the Service Delivery Requirements; and

#### perform the Services with a view to delivering or achieving the Outcomes and achieving the objectives referred to in clause 3.1 and in accordance with the Implementation Agreement.

### If any of the Services are to cease to be delivered, including because the Implementation Agreement is terminated or the performance of the Proponent’s obligations under it are suspended, the Proponent must cooperate with the State, if the State requires, in relation to:

#### the process that the Proponent will employ to cease those Services;

#### the continuity of those Services to the Service Users; and

#### handling of records and information in relation to those Services,

#### in accordance with the clause 22.

### Except as expressly provided in the Operations Manual, the Proponent must not cease or substantially change any of the Services without the State’s prior written approval (such approval not to be unreasonably withheld or delayed).

## Proponent’s conduct

### The Proponent must conduct all activities that comprise the Services in accordance with department standards [*insert title of the relevant standard, for example, the Human Services Standards*] as amended or replaced from time to time to the extent they are not inconsistent with this document.

### The Proponent, without limitation, in complying with department standards [*insert title of the relevant standard, for example, the Human Services Standards*], agrees to conduct all activities that comprise the Services:

#### diligently, effectively and in a professional manner (with all necessary skill, diligence and care expected in the provision of such services), including by:

##### delivering the Services without coercion and in a manner that promotes the privacy, dignity, self-esteem, individuality, well-being and independence of Service Users; and

##### providing Service Users with access to and assistance with the Services on the basis of need, but otherwise on a non-discriminatory basis, except where the Services are delivered to meet the needs of specific Service Users; and

##### delivering the Services, and treating all Service Users in a manner that recognises the vulnerability of each Service User and their needs; and

#### in accordance with all representations and warranties as to the Proponent’s and any subcontractors’ experience and ability expressly made by reference to the Implementation Agreement.

### The Proponent must collaborate and coordinate with other community organisations and government agencies within the service system in which the Proponent’s organisation is operating with a view to delivering the most effective Services for the overall benefit of Service Users.

### The Proponent agrees to conduct all activities that comprise the Services in accordance with any other departmental policy of which the Department notifies the Proponent in writing from time to time.

## Proponent’s general warranties to the State

### The Proponent represents and warrants to the State:

### that the Proponent has the power and the authority to enter into and observe its obligations under the Implementation Agreement; and

### on the Agreement Commencement Date, that no circumstances (including of a commercial, technical or financial nature), proceedings or obligations exist or are threatened which have had or may have a material adverse effect on the Proponent or its ability to perform any of its obligations under the Implementation Agreement.

## Proponent’s warranties to the State relating to the Services and the Outcomes

### The Proponent represents, warrants and undertakes to the State that:

### the Proponent will use all reasonable endeavours to deliver or achieve the Outcomes;

### the Proponent will deliver, or procure provision of, the Services:

#### in accordance with the Implementation Agreement with due care, skill and diligence and in a professional manner, using appropriately trained, knowledgeable and experienced personnel; and

#### in accordance with all Relevant Laws and the Proponent will conduct itself in a manner that will not cause the State to breach any such Relevant Laws;

### the Proponent’s Material and any Existing Material supplied in connection with the Services (including all documentation and reports) will be fit for the purpose for which they are supplied;

### to the best of the Proponent’s knowledge and belief, each of:

#### the Services;

#### the Proponent’s Material and any Existing Material; and

#### any other materials (including the State’s Material) used by the Proponent or on the Proponent’s behalf in the course of performing the Implementation Agreement,

#### will not infringe Intellectual Property Rights of any person or where there may be an infringement appropriate prior approval has been obtained from the holder of the Intellectual Property Rights;

### The Proponent has, or will obtain prior to the Establishment Date, all licences, permits, authorisations, consents or approvals required in connection with the provision of the Services and delivery or achievement of the Outcomes; and

### [***Standard Provision.*** *Insert:*[no Insolvency Event which remains current has occurred to the Proponent, and there are no circumstances which could give rise to an Insolvency Event occurring to the Proponent or (to the best of its knowledge and belief) to any subcontractor.]*End of Standard Provision* *(delete if the following optional provision is inserted)*]

### [***Option 2 Provision (SPE Proponent Transactions).*** *Insert:* [no Insolvency Event which remains current has occurred to the Proponent nor (to the best of its knowledge and belief) to the Service Provider, and there are no circumstances which could give rise to an Insolvency Event occurring to the Proponent or (to the best of its knowledge and belief) to the Service Provider.]*End of Option 2 Provision* *(delete if transaction structure does not involve an SPE Proponent)*]

### The representations, warranties and undertakings in:

#### clauses 20.6(a) to 20.6(d) (inclusive) are made on a continuing basis, throughout the Term and otherwise for so long as any Services are being provided by the Proponent (including where clause 20.3(b) applies); and

#### clauses 20.6(e) and 20.6(f) are made on the Agreement Commencement Date and are taken to be repeated on the Bond Settlement Date and on each anniversary of the Agreement Commencement Date, with reference to the facts and circumstances then subsisting.

## Conflict of interest

The Proponent represents and warrants to the State that, to the best of its knowledge and belief, after making diligent inquiries at the date of signing the Implementation Agreement, no Conflict of Interest exists in the performance of the Proponent’s obligations under the Implementation Agreement.

## Resolution of Conflict of Interest

If, during the Term, a Conflict of Interest arises, or appears likely to arise, the Proponent undertakes to notify the State immediately and to take such steps to resolve or otherwise deal with the conflict to the State’s satisfaction.

## Policy

The Proponent must keep and implement a policy about Conflicts of Interest of its executive officers, employees and volunteers. The policy must include guiding principles and procedures for identifying, declaring and dealing with Conflicts of Interest.

## Record

The Proponent must keep a record of each instance of a Conflict of Interest arising in the delivery of the Services and how the matter was dealt with.

[*Option 2a Provision (SPE Proponent Transactions).* *Where the SPE Proponent is established as a trust, insert:*

## [The Proponent’s additional representations and warranties to the State as a trustee

### The Proponent represents and warrants to the State that:

### the Proponent has power to enter into the Trust Deed and the Transaction Documents to which the Proponent is a party and comply with its obligations under them;

### except as expressly provided in the Trust Deed or under any statute or at law, the Proponent has a right to be fully indemnified out of the Trust Assets in relation to any of its liabilities arising under any Transaction Document to which it is a party;

### the Trust Deed and the Transaction Documents to which the Proponent is a party and the transactions under them which involve the Proponent do not contravene:

#### the Proponent’s Constitution, or cause a limitation on its powers or, if applicable, the powers of its directors to be exceeded; or

#### any law or obligation by which the Proponent is bound or to which any of its assets are subject;

### the Proponent has in full force and effect the authorisations necessary for it to enter into the Trust Deed and the Transaction Documents to which it is a party, to exercise its rights and comply with its obligations under them and to allow them to be enforced;

### the Proponent’s obligations under the Trust Deed and the Transaction Documents are valid and binding, and are enforceable against the Proponent in accordance with their terms subject to any necessary stamping and registration requirements, applicable equitable principles and laws relating to insolvency and affecting creditors’ rights generally;

### the Proponent is the only trustee of the Trust;

### no action has been taken or proposed to remove the Proponent as trustee of the Trust;

### the Proponent has no notice that action has been taken or proposed to terminate the Trust;

### the Proponent is not in default under the Trust Deed; and

### the Proponent has been incorporated in accordance with the laws of its place of incorporation, is validly existing under those laws and has power and authority to carry on its business as it is now being conducted.

## Proponent’s additional obligations as a trustee

### The Proponent must:

### not commingle the Trust Assets with any of its other assets (including the trust assets of any other trust) or the assets of any other person;

### comply with its obligations under the Trust Deed and the Transaction Documents to which it is a party;

### not, without the State’s consent, amend the Trust Deed or any Transaction Documents to which it is a party;

### obtain, renew on time and comply with the terms of each authorisation necessary for it to enter into the Transaction Documents to which it is a party, comply with its obligations under them and allow them to be enforced; or

### not take any action (other than a Permitted Dealing) to prejudice its right of indemnity against, and equitable lien over, the Trust Assets.]*End of Option 2a Provision* *(delete if transaction structure does not involve an SPE Proponent which is established as a trust)*]

[*Option 2b Provision (SPE Proponent Transactions).* *Where the SPE Proponent is established as a company, insert:*

## [The Proponent’s additional representations and warranties to the State

### The Proponent represents and warrants to the State that:

### the Proponent has power to enter into the Transaction Documents to which the Proponent is a party and comply with its obligations under them;

### the Transaction Documents to which the Proponent is a party and the transactions under them which involve the Proponent do not contravene:

#### the Proponent’s Constitution, or cause a limitation on its powers or, if applicable, the powers of its directors to be exceeded; or

#### any law or obligation by which the Proponent is bound or to which any of its assets are subject;

### the Proponent has in full force and effect the authorisations necessary for it to enter into the Transaction Documents to which it is a party, to exercise its rights and comply with its obligations under them and to allow them to be enforced;

### the Proponent’s obligations under the Transaction Documents are valid and binding, and are enforceable against the Proponent in accordance with their terms subject to any necessary stamping and registration requirements, applicable equitable principles and laws relating to insolvency and affecting creditors’ rights generally;

### the Proponent has been incorporated in accordance with the laws of its place of incorporation, is validly existing under those laws and has power and authority to carry on its business as it is now being conducted.

## Proponent’s additional obligations

### The Proponent must:

### comply with its obligations under the Transaction Documents to which it is a party;

### not, without the State’s consent, amend any Transaction Documents to which it is a party; or

### obtain, renew on time and comply with the terms of each authorisation necessary for it to enter into the Transaction Documents to which it is a party, comply with its obligations under them and allow them to be enforced.]

### [*End of Option 2a Provision* *(delete if transaction structure does not involve an SPE Proponent which is established as a company)*]

## Proponent’s employees

### All personnel that the Proponent employs in any capacity are the Proponent’s responsibility. The Proponent will be responsible for payment of all wages and entitlements to its employees.

TRANSITION-IN AND TRANSITION-OUT

# Transition-In

### The transition-in plan (if any) for the provision of the Services will be set out in the Operations Manual.

# Transition-Out

# [*Note — the following is indicative drafting only, and should be considered in light of transaction-specific details and requirements*]

### This clause 22 applies in the event the Implementation Agreement is terminated, during the period commencing on the date of termination and ending on a date to be determined by the State after consultation with the Proponent, being a period of no less than [*insert number of days*] (“**Transition-Out Period**”).

### The content and process (including timing) for the finalisation of the Transition-Out Plan will be as set out in the Operations Manual.

### In the event of termination of the Implementation Agreement prior to the Agreement Expiry Date, the parties agree to transition out in accordance with the Transition-Out Plan and any other arrangements and timeframes set out in the Operations Manual for transition-out on early termination of the Implementation Agreement.

MATERIAL AND INFORMATION

# Intellectual Property Rights

## Ownership of Intellectual Property Rights

As between the parties:

### Intellectual Property Rights in the Proponent’s Material vests in the Proponent;

### Intellectual Property Rights in the State’s Material vests in the State; and

### Intellectual Property Rights in the Joint Material vests jointly in the State and the Proponent as tenants in common in equal shares.

## Licence of Intellectual Property Rights

### The Proponent grants to the State a perpetual, irrevocable, royalty-free, world-wide and non-exclusive licence (including a right to sub-license) to use, communicate, reproduce, publish, adapt and modify the Proponent’s Material and the Joint Material to the extent required by the State to perform its obligations under the Implementation Agreement or to pursue the objectives referred to in clause 3.1. For the avoidance of doubt, the State’s licence under this clause 23.2(a) entitles the State to use, communicate, reproduce, publish, sub-licence, adapt or modify the Proponent’s Material for any purpose, including purposes that are not connected to the Implementation Agreement.

### The State grants to the Proponent a royalty-free, world-wide, non-transferable, non-exclusive licence (including a right to sub-license) to use, reproduce, adapt, modify and communicate:

#### the State’s Material to the extent required by the Proponent to perform its obligations under, and pursue the objectives referred to in clause 3.1 in accordance with, the Implementation Agreement; and

#### the Joint Material for any purpose that the Proponent sees fit (including purposes that are not connected to the Implementation Agreement). The licence for the Joint Material is perpetual and irrevocable.

## Documentation

If requested by the other party, a party will sign, execute, or otherwise complete any document that may be necessary or desirable to give effect to this clause 23.

## Use of Intellectual Property Rights

### The Proponent represents and warrants that it is entitled, or will be entitled at the required time, to deal with the Intellectual Property Rights in the Proponent’s Material in the manner provided for in this clause 23 and that the exercise by the State of its rights in the Proponent’s Material will not infringe any person’s Intellectual Property Rights or an individual’s Moral Rights (and, to the extent necessary, the Proponent agrees to obtain the consent of any holder of Moral Rights to ensure no such infringement).

### The State represents and warrants that it is entitled, or will be entitled at the required time, to deal with the Intellectual Property Rights in the State’s Material in the manner provided for in this clause 23 and that the exercise by the Proponent of its rights in the State’s Material will not infringe any person’s Intellectual Property Rights.

### Each party represents and warrants that any contribution that it makes to the Joint Materials is an original contribution that has not been copied from any other person, and that the exercise by the other party of its rights in that contribution as part of the Joint Material will not infringe any person’s Intellectual Property Rights or an individual’s Moral Rights (and, to the extent necessary, the contributing party agrees to obtain the consent of any holder of Moral Rights to ensure no such infringement).

## Protection of Intellectual Property and Moral Rights

### The Proponent agrees to take all reasonable steps to protect the Intellectual Property Rights in the Proponent’s Material and the Joint Material and to comply with the warranties in clause 23.4(a).

### The Proponent will ensure that, in delivering the Services and performing its obligations under the Implementation Agreement, the Proponent (including its employees, agents, volunteers and subcontractors) do not:

#### infringe any person’s Intellectual Property Rights or an individual’s Moral Rights; or

#### authorise the infringement of any such rights.

# Disclosure of Confidential Information

## Approval to disclose

### Subject, in the case of the State only, to clauses 24.1(b) and 24.1(c), neither party may disclose Confidential Information belonging to the other party (or the Service Provider) except where the party has obtained the other party’s (or, in the case of Confidential Information belonging to the Service Provider, the Proponent’s) prior written approval (which may be subject to conditions) or where required by law.

### The State reserves the right, without any liability to account to the Proponent or any third person, to make available, disclose, and allow the disclosure of, to the extent that it is not prohibited or regulated by any legislation, any information received from the Proponent or otherwise relating to the Implementation Agreement to:

#### any department, agency, authority, or Minister of the Victorian or Commonwealth governments, and their officers, employees or professional advisors;

#### the Victorian Parliament or any committee of the Victorian Parliament; or

#### any third person, including any court, tribunal, government committee or other person within government, where such disclosure would be permitted or required by law, or otherwise would be consistent with established government policies, procedures or protocols or for public accountability purposes to the extent required in those circumstances.

### The State may give information about the Proponent to:

#### an entity that provides other funding or other assistance to the Proponent; or

#### another entity if the State considers the entity has an interest in the proper and efficient delivery of any of the Services by the Proponent.

## Proponent’s undertaking

### The Proponent must make every reasonable effort to ensure that its employees, volunteers, agents and subcontractors are aware of and comply with the obligations of confidentiality and privacy in these clauses 24 and 25.

### The State may, at any time, require the Proponent to give, and the Proponent to arrange for its subcontractors, employees, and volunteers engaged in the performance of any Services to give, written undertakings in a form reasonably required by the State relating to the non-disclosure of Confidential Information under this clause 24 and Personal Information or Health Information under clause 25.

### The Proponent must notify the State immediately if it knows or suspects that Confidential Information has been disclosed without the State’s authorisation.

# Protection of Personal Information and Health Information

## Proponent’s privacy obligations

If the Proponent collects or has access to Personal Information or Health Information for the purposes of the Implementation Agreement, the Proponent must:

### comply with the Information Privacy Principles (contained in Schedule 1 of the *Privacy and Data Protection Act 2014* (Vic)) with respect to Personal Information, and the Health Privacy Principles (contained in Schedule 1 of the *Health Records Act 2001* (Vic)) with respect to Health Information, as if the Proponent were the State;

### not use Personal Information or Health Information other than for the purposes of the Implementation Agreement, unless required or authorised by law;

### not disclose Personal Information or Health Information without the State’s prior written consent, unless required or authorised by law;

### not transfer Personal Information or Health Information outside of Australia without the State’s prior written consent;

### ensure that access to Personal Information and Health Information is restricted to those of the Proponent’s employees, volunteer workers and officers who require access in order to perform their duties in connection with the Implementation Agreement;

### ensure that the Proponent’s employees, volunteer workers and officers do not access, use or disclose Personal Information and Health Information other than in the performance of their duties in connection with the Implementation Agreement;

### ensure that the Proponent’s contractors and the Proponent’s auspices who have access to Personal Information or Health Information comply with the obligations the same as those imposed on the Proponent under this clause;

### fully co-operate with the State to enable the State to respond to applications for access to, or amendment of a document containing an individual’s Personal Information or Health Information and to privacy complaints; and

### comply with such other privacy and security measures as the State reasonably notifies the Proponent about from time to time.

## Confidentiality Deed Poll

On the State’s request, the Proponent must obtain from its employees, volunteer workers, officers and contractors engaged for the purposes of the Implementation Agreement, an executed confidentiality deed poll in a form acceptable to the State.

## Proponent Privacy Notice

### If the Proponent collects, records or otherwise deals with Personal Information or Health Information, the Proponent must make available a copy of its Privacy Notice to the person giving the Proponent the Personal Information or Health Information.

### The Proponent’s Privacy Notice must be of a standard reasonably acceptable to the State and must state that information the Proponent collects may be provided to the State to ensure that the Proponent is delivering quality services.

## Proponent will notify the State

### The Proponent must make every reasonable effort to notify the State immediately upon becoming aware of any breach of this clause 25.

### The Proponent must notify the State immediately in the event that it becomes aware that disclosure of Personal Information or Health Information, in relation to any child subject to the *Children, Youth and Families Act 2005* (Vic) is made (whether or not the disclosure is authorised under that Act) or may be required by law.

# Recordkeeping

## Proponent’s records and files

### The Proponent must store all records and files regarding its use of the Payments and the delivery of the Services in secure storage for at least 7 years from the date of expiry or termination of the Implementation Agreement.

### The Proponent must maintain complete and adequate data and financial and other records to ensure that the State is able to validate the accuracy and completeness of all reports and other information that the Proponent provides to the State, including under the reporting requirements set out in the Operations Manual.

## State’s Material

### The Proponent must ensure that the State’s Material is only used, copied, supplied or reproduced for the purposes of delivering the Services.

### On the expiration or termination of the Implementation Agreement, the Proponent must return to the State all of the State’s Material that the State requires the Proponent to return.

DEALING WITH RISK

# Insurance and indemnity

## Proponent must obtain insurance

### The Proponent must effect and maintain the insurances specified in the Project Details for the term of the Implementation Agreement.

### All insurance policies must be effected with an insurer authorised to carry on insurance business by the Australian Prudential Regulation Authority.

### Upon the State’s request, the Proponent must provide the State with a copy of any insurance policy maintained in accordance with clause 27.1(a) and a certificate of currency.

### If the Proponent fails to take out or maintain any insurance required under clause 27.1(a) or to provide the State a copy of any such insurance policy or certificate of currency as required under clause 27.1(c), then, without limiting any other right that the State may have, the State may take out the relevant insurance and pay the required premiums on the Proponent’s behalf and any such amount that the State pays will be a debt due and owing to the State by the Proponent.

### Neither failure to comply nor full compliance by the Proponent or by any relevant subcontractor with the insurance provisions of the Implementation Agreement will limit or relieve the Proponent of its liabilities and obligations under the Implementation Agreement.

## Indemnity

### The Proponent releases, discharges, indemnifies and keeps indemnified the State, its officers, employees and agents from and against any Claim that may be made or brought by any person against the State in connection with:

#### the Proponent failing to observe or perform any of its obligations under the Implementation Agreement;

#### any wilful, negligent or unlawful act or omission of the Proponent, its officers, employees, volunteer workers or subcontractors;

#### contravention of any legislative requirement by the Proponent, its officers, employees, volunteer workers or subcontractors; or

#### any:

##### death or personal injury;

##### loss of or damage to property (including property belonging to the State or for which the Proponent is responsible);

##### infringement or alleged infringement of any Intellectual Property Rights (including Moral Rights); or

##### third party suits claims, actions, demands, proceedings, penalties, costs, charges or expenses in respect of the Services and/or delivery or achievement of the Outcomes,

### which may arise out of, or in connection with, the performance or non-performance by the Proponent and/or the Proponent’s subcontractors of the Implementation Agreement or any subcontract,

but the Proponent’s liability to indemnify the State under this clause will be reduced proportionally to the extent that an act or omission of the State contributed to the Claim and shall not apply in respect of any Consequential Loss.

### The indemnity contained in this clause 27.2 is a continuing obligation of the Proponent that is separate and independent of any of the Proponent’s other responsibilities and will continue beyond the Term.

OTHER LEGAL MATTERS

# Subcontracting

## Consent for subcontracting

### The Proponent must not, without the State’s prior written consent, subcontract the whole, or any part, of its obligations under the Implementation Agreement.

### The State may impose any terms and conditions the State thinks fit when giving approval under clause 28.1(a).

### If requested by the State, the Proponent must provide a copy of any subcontract to the State.

#### [***Include the following for SPE Proponent Transactions****:*

### The State hereby consents to the Proponent subcontracting the provision of the Services to the Service Provider set out in the Project Details]

## Proponent’s obligations

### The Proponent is responsible for ensuring the suitability of any subcontractor and for ensuring that the Services performed by the subcontractor meet the requirements of the Implementation Agreement.

### The State’s consent to any subcontract will not relieve the Proponent from any liability or obligation under the Implementation Agreement.

### The Proponent remains liable under the Implementation Agreement for the acts or omissions of any past subcontractors as if they were current subcontractors.

### The Proponent must ensure that:

#### any subcontract entered into is consistent with the Implementation Agreement; and

#### all subcontractors comply with their subcontracts and the terms of the Implementation Agreement as if they were a party to it.

## The State’s rights

[***Standard Provision.*** *Insert:*[The State may revoke the approval of a subcontractor on any reasonable ground at any time.]*End of Standard Provision* *(delete if the following optional provision is inserted)*]

[***Option 2 Provision (SPE Proponent Transactions).*** *Insert:* [The State may revoke the approval of a subcontractor (other than the Service Provider) on any reasonable ground at any time.]*End of Option 2 Provision* *(delete if transaction structure does not involve an SPE Proponent)*]

## Procedure

Upon receipt of a written notice from the State revoking the State’s approval of a subcontractor, the Proponent must:

### immediately replace the subcontractor; or

### as soon as practicable, cease using that subcontractor to perform the Services,

and the Proponent agrees to release and indemnify the State from and against any loss or damage suffered by the Proponent, or for any Claim made by the Proponent or any other person against the State, whether in respect of the Proponent’s contract with a subcontractor or otherwise, arising out of the Proponent’s compliance with this clause.

# Governing law

The Implementation Agreement will be governed by and construed in accordance with the laws of Victoria and the parties submit to the non-exclusive jurisdiction of the courts of Victoria.

# Right to information

### The Proponent acknowledges that:

#### all documents and other information held by the State in relation to the PAD Arrangement or the Proponent are subject to the *Freedom of Information Act 1982* (Vic) and may be subject to disclosure under that Act; and

#### the State may make such documents or other information available in response to requests under the *Freedom of Information Act* *1982* (Vic), or requests from the Victorian Auditor-General or the Ombudsman.

### The Proponent agrees to assist the State by providing any information which may be required to respond to a request under the *Freedom of Information Act* *1982* (Vic), or a request from the Victorian Auditor-General or the Ombudsman.

# Publication of information

The Proponent agrees that, despite any other provision of the Implementation Agreement, the State may publish or require the Proponent to publish any or all of the following details:

### the Proponent’s name and address, including its head office, premises where any of the Services are delivered and other business premises;

### a description of the Services to be delivered under the Implementation Agreement;

### the Agreement Commencement Date and Agreement Expiry Date and any Establishment Date;

### the total amount of the Payments to be provided under the Implementation Agreement; and

### the procurement method used to award the Payments to the Proponent and the Project.

# Waiver

### A waiver by a party of any breach of a provision of the Implementation Agreement, including a failure to enforce an obligation, is not, and will not be deemed to be, a waiver of any other or subsequent breach.

### Any waiver by the State to the Proponent must be in writing and signed by the Contact Officer or an authorised delegate.

# Dispute resolution

## Dispute resolution under the Implementation Agreement

### Subject to clause 33.2 the parties must attempt to resolve any dispute in relation to the Implementation Agreement in accordance with this clause 33 before resorting to court proceedings or other external dispute resolution mechanisms except as specified in this clause.

### Both parties agree to initiate discussions with the other to resolve concerns prior to claiming a dispute has arisen.

### A party claiming a dispute has arisen in relation to the Implementation Agreement must immediately notify the other party (“**Notice of Dispute**”). The Notice of Dispute must specify in reasonable detail the nature of the dispute.

### If a dispute is so notified, the Joint Working Group will attempt to resolve the dispute.

### If the dispute is not resolved by the Joint Working Group within 10 Business Days of it being referred to them then the dispute will be escalated by each party to:

#### in the Proponent’s case, [*insert appropriate representative (e.g. CEO or another senior executive position*]; and

#### in the State’s case, the Chief Executive or an authorised delegate.

### If the dispute is not resolved within 10 Business Days of the dispute being referred to the parties’ respective senior representatives in accordance with clause 33.1(e), or within 20 Business Days of the dispute being notified in accordance with clause 33.1(c), either party may, by notice to the other specifying the issue for determination, refer the dispute to independent expert determination provided that the referral notice must be given within 5 Business Days of the right to refer the dispute to expert determination having arisen.

### If a party gives notice in accordance with clause 32.2(f):

#### the parties shall negotiate in good faith for a period of not less than 5 Business Days to agree upon the identity of the independent expert to be appointed; and

#### if no agreement has been reached after the negotiation referred to in paragraph (i) above, the parties shall request the President of the Law Institute of Victoria to appoint an independent expert and shall submit to the determination of that independent expert.

### Whether or not a dispute exists, each party must continue to perform its obligations under the Implementation Agreement.

## Exceptions to resolution procedures

### A party does not need to follow the resolution procedures set out in clauses 33.1 if they are seeking urgent interlocutory relief from a court.

### The Proponent cannot seek to claim under clause 33.1 that a dispute has arisen in relation to action the State takes under clauses 14, 15, 16 or 17, or if the disputed decision has been made under a Relevant Law.

### Use of the resolution process in clause 33.1 does not preclude other action being taken under a Relevant Law or action being taken under a provision of the Implementation Agreement.

# Notices, requests and other communications

## Address for notices

Any notice, request, or other communication to be given or served under the Implementation Agreement must be in writing and addressed and forwarded to the attention of the recipient’s Contact Officer at the address stated in the Project Details, or as otherwise notified by the recipient.

## Method of delivery

### Any such notice, request, or other communication will be delivered by hand, sent by post, facsimile or email to the address of the party to which it is sent.

### Subject to clause 34.3(b) the parties consent to providing information required under the Implementation Agreement by way of electronic communication.

## Receipt of notice

### Any notice, request, or other communication will be deemed to be received:

#### if delivered by hand, on the date of delivery;

#### if sent by post within Australia, upon the expiry of 2 Business Days after the date on which it was sent;

#### if transmitted by facsimile, upon receipt by the sender of an acknowledgment that the communication has been properly transmitted to the recipient; and

#### if transmitted by email, upon receipt by the sender of an acknowledgment that the communication has been properly transmitted to the recipient.

### A notice to be given or served under clauses 14, 15, 16 or 17 must not be sent only via email.

# General provisions

## Discretion

Where, under the Implementation Agreement:

### the State’s consent or approval is required to any act, omission, matter or thing; or

### a right or discretion is conferred on the State, including as denoted by the words ‘the State may” in any clause,

then, unless stated otherwise, the consent, approval, right or discretion may be granted, withheld or exercised (as the case may be) by the State at in its absolute discretion and may, in the case of a consent or approval, be subject to such conditions as the State may determine.

## Relevant Laws not limited

Nothing in the Implementation Agreement limits:

### the information or material the Proponent may be required to provide under a Relevant Law;

### the State’s, the Chief Executive’s or any other person’s rights under a Relevant Law; or

### The Proponent’s or any other person’s obligations under a Relevant Law.

## Entire agreement

The terms of the agreement between the Proponent and the State are those set out in the Implementation Agreement, and no written or oral agreement, arrangement or understanding made or entered into prior to the Agreement Commencement Date will in any way be read or incorporated into the Implementation Agreement.

## Assignment

[***Standard Provision.*** *Insert:*[The Proponent may not assign the Implementation Agreement or any of the benefits or obligations under the Implementation Agreement to another party without the State’s prior written consent.]*End of Standard Provision* *(delete if the following optional provision is inserted)*]

[***Option 2 Provision (SPE Proponent Transactions).*** *Insert:* [Other than a Permitted Dealing, the Proponent may not assign the Implementation Agreement or any of the benefits or obligations under the Implementation Agreement to another party without the State’s prior written consent.]*End of Option 2 Provision* *(delete if transaction structure does not involve an SPE Proponent)*]

## Relationship

Notwithstanding that the parties have engaged in a PAD as described in the Transaction Documents, both parties acknowledge that no agency or legal partnership exists between the Proponent and the State, and the Proponent must not:

### either expressly or by implication represent itself to be, allow itself to be represented as, or allow any other person to represent it as; or

### do anything else which may lead any person to believe that it is,

### a partner, employee or agent of the State or in any relationship of partnership (whether within the meaning given to that term in the Partnership Act 1958 (Vic) or otherwise) with the State.

## Time

Any act, matter or thing required under the Implementation Agreement to be done on a day which is not a Business Day must be done on the next Business Day.

## Survival

The following clauses of these Standard Terms will survive termination or expiration of the Implementation Agreement:

### clause 9 – Use of Project Funds;

### clause 18 – Consequences of termination;

### clause 20.3(b) – cooperation if Services to cease;

### clause 23 – Intellectual Property Rights;

### clause 24 – Disclosure of Confidential Information;

### clause 25 – Protection of Personal Information and Health Information;

### clause 26 – Recordkeeping;

### clause 27 – Insurance and indemnity;

### clause 28 – Subcontracting; and

### clause 35.7 – Survival.

## Further Assurances

The parties agree to do any act and sign any document required to give effect to any provision in the Implementation Agreement.

## Severability

If any part of the Implementation Agreement is determined to be invalid, unlawful or unenforceable in any jurisdiction and for any reason, then that part, to the extent of the invalidity, unlawfulness or unenforceability, will be severed from the rest of the Implementation Agreement and the remaining terms and conditions will continue to be valid and enforceable to the fullest extent permitted by law.

## Counterparts

The parties may execute the Implementation Agreement in counterparts, each of which, taken together, will constitute one instrument. The parties may communicate their execution by posting the executed document, providing a copy of the executed document by facsimile or scanning and sending a copy of the executed document by email.

[***Option 2 Provision (SPE Proponent Transactions)***. *Insert:*

## Limitation of the Proponent’s liability

[*The following sets out a sample limitation of liability provision for use where the SPE Proponent is a trustee of a special purpose trust. Whilst it is recognised that an individual third-party trustee may have a preference for its own form of these provisions, regard should be had to the principles that are included below.*]

### The Proponent enters into the Implementation Agreement only in its capacity as trustee of the Trust and in no other capacity. Notwithstanding any other provisions of the Implementation Agreement, a liability arising under or in connection with the Implementation Agreement is limited to and can be enforced against the Proponent only to the extent to which it can be satisfied out of the Trust Assets out of which the Proponent is actually indemnified for the liability. This limitation of the Proponent’s liability applies despite any other provision of the Implementation Agreement and extends to all of the Proponent‘s liabilities and obligations in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to the Implementation Agreement.

### The State, and any other person (other than the Proponent) with an interest in the Implementation Agreement, may not sue the Proponent in any capacity other than as trustee of the Trust, including by seeking the appointment of a receiver (except in relation to the Trust Assets), a liquidator, an administrator or any similar person to the Proponent or by proving in any liquidation, administration or arrangement of or affect the Proponent (except in relation to the Trust Assets).

### The provisions of this clause 35.11 shall not apply to any obligation or liability the Proponent may have to the extent that it is not satisfied because under the Implementation Agreement or by operation of law there is a reduction in the extent the Proponent’s indemnification out of the Trust Assets as a result of the Proponent’s fraud, negligence or Wilful Default in relation to the Trust.

### No act or omission by the Proponent (including any related failure to satisfy its obligations or breach of representation or warranty or undertaking under the Implementation Agreement) will be considered fraud, negligence or Wilful Default by the Proponent for the purpose of clause 35.11(b) to the extent to which the act or omission was caused or contributed to by any failure by the State, the Service Provider or any other person to fulfil its obligations relating to the Services or by any other act or omission by the State, the Service Provider or any other person.

### Neither the Service Provider nor any attorney, agent, receiver or receiver and manager appointed in accordance with the Implementation Agreement has authority to act on the Proponent’s behalf in a way which exposes the Proponent to any personal liability and no act or omission of any such person will be considered fraud, negligence or Wilful Default by the Proponent for the purpose of clause 35.11(b).

### The Proponent is not obliged to do or refrain from doing anything under the Implementation Agreement (including incur any liability) unless the Proponent’s liability is limited in the same manner as set out in this clause 35.11.

### In this clause 35.11, **“Wilful Default”** means any intentional failure to comply with or intentional breach by the Proponent of any of its obligations under the Implementation Agreement, other than a failure or breach:

#### which arose as a result of a breach by the State, the Service Provider or any other person to fulfil its obligations relating to the Services or by any other act or omission by the State, the Service Provider or any other person;

#### which is in accordance with a lawful court order or direction or required by law; or

#### which is in accordance with a proper instruction or direction given by the State or is in accordance with an instruction or direction given to it by any person in circumstances where that person is entitled to do so at law.]*End of Option 2 Provision* *(delete if transaction structure does not involve an SPE Proponent)*]

# Definitions and interpretation

## Definitions

In the Implementation Agreement including all parts, unless stated otherwise or a contrary intention appears:

1. [***Mandatory definitions (standard).*** The following definitions are to be included in all Implementation Agreements as standard provisions:

“**Agreement Commencement Date**” means the Agreement Commencement Date specified in the Project Details;

“**Agreement Expiry Date**” means the Agreement Expiry Date specified in, or determined in accordance with, the Project Details;

[“**Annual Review**” has the meaning given in clause 13;]

“**Approved Financial Institution**” means a financial institution registered in Australia and operating as a bank, credit union or building society;

### “**Authorised Investments**”means any investments which at their date of acquisition are:

### cash and/or deposits with an Approved Financial Institution;

### bonds, debentures, stock or treasury bills of any government of an Australian jurisdiction rated A- (or its equivalent) or better by a Recognised CRA;

### debentures or stock of any public statutory body constituted under the law of any Australian jurisdiction where the repayment of the principal secured and the interest payable thereon is guaranteed by that Australian jurisdiction rated A- (or its equivalent) or better by a Recognised CRA;

### notes or other securities of any government of an Australian jurisdiction rated A- (or its equivalent) or better by a Recognised CRA;

### certificates of deposit (whether negotiable, convertible or otherwise) that are rated A- (or its equivalent) or better by a Recognised CRA, issued by an Approved Financial Institution; or

### bills of exchange which at the time of acquisition have a remaining term to maturity of not more than 200 days, accepted or endorsed by an Approved Financial Institution rated A- (or its equivalent) or better by a Recognised CRA,

### or such other investments approved by the State in writing;

“**Bond**” means a debt obligation or series of debt obligations issued or to be issued by the Bond Issuer on terms (unless otherwise agreed by the State) consistent with the Bond Model to raise funds for the Proponent’s performance of the Implementation Agreement in the Bond Issue Amount;

“**Bond Deed**” means the deed or deed poll to be entered into by the Proponent constituting the Bonds;

“**Bond Investor**” means an investor in any Bonds;

“**Bond Issue Amount**” means the total amount to be raised by the issue of the Bond (or if there are to be more than one Bond issues, by all of them) specified in the Project Details;

“**Bond Issue Documents**” means the Bond Deed and all other agreements, deeds or other instruments relating to the issue of the Bonds, including any relevant Security Documents issued to secure the Proponent’s indebtedness to Bond Investors, applicable pricing or other issue supplements or confirmations, the dealership or subscription agreement and any conflicts management protocols;

“**Bond Issuer**” means the entity specified in the Project Details;

“**Bond Model**” means the commercial terms specified in the Project Details;

“**Bond Payment**”means, with respect to a Bond, a payment of principal, interest or any other amount that is due and payable on that Bond in accordance with the terms of the Bond;

“**Bond Settlement Date**” means the date on which the Bond Investors pay the purchase price for the Bond/s in an aggregate amount at least equal to the Bond Issue Amount;

“**Break Costs**” means costs and expenses relating to the transition-out of Services following termination of the Implementation Agreement, including:

### additional or modified Services connected with the transition-out;

### staff redundancies;

### lease termination costs (relating to vehicles, building and equipment); and

### other costs and expenses (including legal costs and additional future period costs and expenses that are brought forward by the termination)), subject to the relevant caps provided under Part D of the Payment Schedule.

“**Business Day**” means any day other than a Saturday, Sunday or public holiday in Victoria;

“**Cap on Payments**” means the amount specified in the Project Details;

“**Change in Control**”means, in respect of an organisation, any event such that a change occurs in the ability or capacity to determine the outcome of decisions about that organisation’s financial and operating policies and procedures;

“**Chief Executive**” means, for Payments given by:

### a Department, the Secretary of the Department or other person from time to time holding the office of Secretary or having delegated responsibilities under relevant legislation; or

### another body or agency, the chief executive officer or equivalent person;

“**Claim**” includes any claim, action, proceeding, demand, liability, obligation, costs (including legal costs), losses, damages and expenses, including those arising out of the terms of any settlement;

“**Cohort**” means those individuals participating in the Project, as part of either the Intervention Group or the Control Group;

[*Note — “Cohort” concept may be modified to encompass multiple intakes, with a reference to ‘Cohort’ being a reference to each intake – make relevant changes to clause 5.2(a)*]

“**Condition Precedent**”means a condition precedent specified in clause 2.1;

“**Confidential Information**” means information that is by its nature confidential or, when it is received, is marked as confidential in nature, but does not include information which:

### is or becomes public knowledge other than by:

#### breach of the Implementation Agreement; or

#### any other unlawful means;

### is in a party’s possession without restriction in relation to disclosure before the date of receipt from the other;

### has been independently developed or acquired by the party receiving or obtaining it; or

### is publicly disclosed by compulsion of law, including during testimony before any judicial or quasi-judicial court or tribunal, under court subpoena, parliamentary order or as part of discovery during legal proceedings;

“**Conflict of Interest**” includes:

### having an interest (whether personal, financial, political or otherwise) that conflicts or which may reasonably be perceived as conflicting with the Proponent’s ability to perform its obligations under the Implementation Agreement fairly and objectively, including as a result of employment, procurement or service delivery arrangements that may exist or be put in place; and

### for clause 20.7,a potential Conflict of Interest;

“**Consequential Loss**” means any loss not arising naturally (according to the usual course of things) from the relevant breach, act or omission, whether or not such loss may reasonably be supposed to have been in the contemplation of the parties at the time they entered these Standard Terms as the probable result of the relevant breach, act or omission, and includes loss of profit, or loss of anticipated savings, but Consequential Loss expressly does not include:

### loss that cannot be legally excluded;

### loss arising from death or personal injury;

### loss arising from property damage caused by the Proponent or its subcontractors;

### loss caused by the Proponent’s breach or a breach by its subcontractors of the privacy and intellectual property clauses of the Implementation Agreement; and

### loss caused by fraud or illegal conduct on the part of the Proponent or its subcontractors;

“**Constitution**” means:

### a company's or incorporated association's constitution, or equivalent documents, which (where relevant) includes rules and any amendments that are part of the constitution; or

### in relation to any other kind of body:

#### the body's charter or memorandum; or

#### any instrument or law constituting or defining the constitution of the body or governing the activities of the body or its members;

“**Contact Officer**” of an organisation, means the person, being an officer or employee of that organisation, who:

(a) is specified as the Contact Officer; or

(b) for the time being holds, occupies or performs the position specified,

in the Project Details, or any other person notified by that organisation to the parties to the Implementation Agreement;

“**Cut-Off Date**” means, with respect to a condition precedent, the date by which that Condition Precedent must either be satisfied by the Proponent or waived by the State, as specified in the applicable paragraph of clause 2;

“**Cybersecurity Incident**” means a breach of data directly relevant to the Project, a defect or malfunction in an information system directly relevant to the Project, or a threat, denial of access to, or corruption or compromise of, data or an information system directly relevant to the Project, in each case other than where the predominant cause of such incident is the actions or omissions of the State or any of the State’s employees, agents or contractors (other than the Proponent, any Service Provider or any of their respective employees, agents or contractors);

“**Disputed Amount**” means a disputed amount as described in clause 8.3;

“**Early** **Termination Date**” means any date on which a party provides written notice to the other party exercising its right to terminate the Implementation Agreement in accordance with clause 2.3, 14, 15.2 or 16;

“**Early Termination Payment**”means the relevant amount determined in accordance with Part C of the Payment Schedule;

“**Eligibility Criteria**” means the eligibility criteria set out in the Operations Manual.

“**Establishment Date**” means the establishment date for commencement of the Services specified in the Project Details, or such later date as the State and the Proponent may agree;

“**Existing Material**” means any information, document, file, record, electronic image, cinematographic film, video, equipment, software or data that has been incorporated in, or supplied as part of, the Proponent’s Material that was either:

### in existence prior to the Agreement Commencement Date; or

### produced after the Agreement Commencement Date independently of the Implementation Agreement;

“**GST**” means Goods and Services Tax imposed by or through the GST Legislation;

“**GST Amount**” means the GST payable in respect of a taxable supply under the Implementation Agreement, calculated at the rate of GST applicable at the time;

“**GST Legislation**” means A New Tax System (Goods and Services Tax) Act 1999 (Cth) and any related tax imposition Act and any legislation which is enacted to validate, recapture or recoup the tax imposed by any of such Acts;

“**Health Information**” has the meaning given to that term in the *Health Records Act 2001* (Vic);

“**Human Services Standards**” means the Department of Health and Human Services “Human Services Standards”, as published in the Victorian Government Gazette from time to time;

“**Independent Certifier”** means an independent body, acceptable to both parties, that is suitably qualified and experienced to undertake the certification of payments and performance as required under the Implementation Agreement, appointed in accordance with clause 11.1;

“**Implementation Agreement**” means the agreement entered into by the Proponent and the State which details Payments that the State will provide to the Proponent for the purpose of delivering Services and which is comprised of the documents specified in clause 1.2 of these Standard Terms;

“**Insolvency Event**”means, in respect of a person, the occurrence of any one or more of the following events in relation to that person:

### application is made to a court for an order, or an order is made, that it be wound up, declared bankrupt or that a provisional liquidator or receiver or receiver and manager be appointed and, in the case of an application, the application is not withdrawn, struck out or dismissed within 21 days of it being made;

### a liquidator or provisional liquidator is appointed and the appointment is not terminated within 21 days of it being made;

### an administrator or a controller (each as defined in section 9 of the Corporations Act 2001 (Cth) (“**Corporations Act**”)) is appointed to any of its assets and the appointment is not terminated within 21 days of it being made;

### it enters into an arrangement or composition with one or more of its creditors, or an assignment for the benefit of one or more of its creditors, in each case other than to carry out a reconstruction or amalgamation while solvent;

### it proposes a winding-up, dissolution or re-organisation, moratorium, deed of company arrangement or other administration involving one or more of its creditors;

### it is insolvent as disclosed in its accounts or otherwise, states that it is insolvent, is presumed to be insolvent under an applicable law (including under section 459C(2) or section 585 of the Corporations Act) or otherwise is, or states that it is, unable to pay all its debts as and when they become due and payable;

### it becomes, or states that it is, an insolvent under administration (as defined in section 9 of the Corporations Act) or action is taken which could result in that event and the proceeding is not dismissed within 21 days of the date action is taken;

### an order is made, a resolution is passed, proposal put forward or any other action taken, in each case which is preparatory to or could result in any of the matters referred to in paragraphs (a) – (g) inclusive;

### it is taken to have failed to comply with a statutory demand as a result of section 459F(1) of the Corporations Act;

### a notice is issued under sections 601AA or 601AB of the Corporations Act and not withdrawn or dismissed within 21 days;

### a writ of execution is levied against it or a material part of its property which is not dismissed within 21 days;

### any step is taken by a secured party to enter into possession of or dispose of the whole or any part of the other party’s assets or business; or

### anything that occurs under the law of any jurisdiction which has a substantially similar effect to any of the above paragraphs of this definition;

“**Intellectual Property Rights**” includes copyright, rights in relation to inventions (including patent rights), registered and unregistered trademarks (including service marks), registered designs, Confidential Information (including trade secrets and know how), and other rights resulting from the intellectual activity in the industrial, scientific, literary or artistic fields, but does not include Moral Rights;

### “**Intervening Event**” means an act, omission, cause or circumstance that:

### isoutside a party’s reasonable control (including, without limitation, inclement weather, fire, storm, flood, earthquake, explosion, accident, enemy acts, war, sabotage, labour dispute, riot or civil commotion and an act or omission of an unrelated third party);

### could not have been reasonably prevented or remedied by reasonable expenditure by the party which is seeking to rely on the event; and

### cannot be circumvented by the party which is seeking to rely on the event through the use of other commercially reasonable means (including alternate sources and work-around plans which provide a viable solution for the other party, as determined by that other party acting reasonably),

### but does not include third party non-performance (including, to avoid doubt, non-performance by a subcontractor) or the failure of an individual component or group of components (including hardware and software) used in the performance of the Services and/or delivery or achievement of the Outcomes;

### “**Joint Material**” means any information, document, file, record, electronic image, cinematographic film, video, equipment, software or data stored by any means which is developed jointly by the Proponent and the State in connection with the Implementation Agreement (and includes, for the avoidance of doubt, the Operations Manual) which is not State’s Material or Proponent’s Material, including all copies and extracts;

### “**Joint Working Group**”has the meaning ascribed to it in the Operations Manual;

### “**Local Content**” means, under the Victorian Industry Participation Policy, the required amount of Victorian, Australian or New Zealand content, so as to be in accord with the requirements of the Australia New Zealand Government Procurement Agreement entered into by the Australian State and Federal Governments and New Zealand;

### “**Moral Rights**” means the right of integrity of authorship, the right of attribution of authorship and the right not to have authorship falsely attributed, more particularly as conferred by the Copyright Act 1968 (Cth), and the rights of a similar nature anywhere in the world whether existing before, on or after the commencement of the Implementation Agreement;

### “**Notice of Dispute**” means a notice given in accordance with clause 33.1(c);

### “**Ombudsman**” means the Victorian Ombudsman established by the *Ombudsman Act 1973* (Vic);

“**Operational Matters**” means any action, step, matter or thing necessary or incidental to the day-to-day provision, management and administration of the Services;

“**Operations Manual**” means the document titled *Implementation Agreement – Operations Manual*, as agreed between the Proponent and the State;

“**Outcome Payment 1**” has the meaning given at [*insert appropriate clause reference*] of the Payment Schedule;

“**Outcome Payment 2**” has the meaning given at [*insert appropriate clause reference*] of the Payment Schedule;

“**Outcome Payment Date**” means [*specify an appropriate date(s) that Outcome Payments will be made*];

“**Outcome Payments**” has the meaning given at [Part B, clause 2] of the Payment Schedule;

“**Payment Schedule**” means the conditions, timing and amounts of the Payments set out in Schedule 2;

“**PAD**” means a Partnership Addressing Disadvantage arrangement;

“**PAD Arrangement**” means the PAD arrangement documented in the Implementation Agreement and the other Transaction Documents and any other legal transaction documentation associated with any of them;

“**Payment**” means an outcome payment and any other amount of funding assistance that the State will provide to the Proponent under the Implementation Agreement, as specified or included in the Payment Schedule. In an appropriate context, it also means all of the outcome payments and funding assistance payable under the Implementation Agreement;

“**Performance Period**” means:

### for the first such period, the period commencing on (and including) the Establishment Date to (but excluding) the first anniversary of the Establishment Date; and

### for each subsequent Performance Period, the period commencing on (and including) the day immediately following the date on which the previous Performance Period ends to the earlier to occur of (i) the anniversary of that commencement date (but excluding that date), or (ii) the Agreement Expiry Date (and including that date);

“**Personal Information**” has the meaning given to that term in the *Privacy and Data Protection Act 2014* (Vic);

“**Prescribed Rate**” means the rate specified in the Project Details;

“**Privacy Notice**” means the document which describes how the Proponent will deal with any Personal Information and Health Information provided to the Proponent;

“**Project**”means the social outcomes project in the Policy Area to be undertaken by the parties on the terms of the Implementation Agreement and the other Transaction Documents, and includes the PAD Arrangement;

“**Project Account**” means the account opened by the Proponent in the Proponent’s name with an Approved Financial Institution and designated by notice from the Proponent to the State as the account for the Project;

“**Project Details**” means the information and materials set out in Schedule 1;

“**Proponent**” and related parts of speech or other grammatical forms means the Proponent; and

“**Proponent’s Material**” means any information, document, electronic image, cinematographic film, video, equipment, software or data stored by any means which is created by the Proponent or on the Proponent’s behalf in performing Services under the Implementation Agreement.

“**RCTI**” means a “recipient created tax invoice” within the meaning given in the GST Legislation;

“**Recognised CRA**” means:

### Standard & Poor’s Ratings Services, a division of The McGraw Hill Companies, or any of its subsidiaries or successors;

### Moody’s Investors Service, Inc., or any of its subsidiaries or successors;

### Fitch Ratings Inc., or any of its subsidiaries or successors; and/or

### any other internationally recognised ratings agency approved by the State;

“**Referral**” means the act of referring an individual [who meets the Eligibility Criteria] to the [*relevant party*] to participate in the Project [as part of the Intervention Group];

“**Relevant Law**” means any law to which the Project, the PAD Arrangement (including any Payments), the Services and/or the Outcomes is, or becomes, subject, and includes any regulation from time to time made under it and any statutory duty or requirement in respect of any Service User or other Eligible Person (including any relevant Minister’s duty of care);

“**Responsible Minister**” means the Minister with responsibility for administering the *Victorian Industry Participation Policy Act 2003* (Vic);

“**Service Delivery Requirements**” means the service delivery requirements (if any) for the Services, specified in the Operations Manual;

“**Standard Terms**” means this document titled *Implementation Agreement - Standard Terms*, as updated or replaced from time to time in accordance with clause 1.2(c);

“**Standing Charge Payment**” means any one or more of the Payments outlined under Part A of the Payment Schedule;

“**State**” means the State of Victoria acting through the Department or other body, agency or person giving the Payments (including its Chief Executive), as specified in the Payment Schedule, or any other department or agency of the Victorian Government responsible for the administration of the Implementation Agreement;

“**State’s Material**” means any information, document, file, record, electronic image, cinematographic film, video, equipment, software or data stored by any means which is given to the Proponent by the State for the purposes of performing its obligations under the Implementation Agreement, including all copies and extracts;

“**Taxable Supply**” has the meaning given in the GST Legislation;

“**Term**” means the term of the Implementation Agreement, as determined under clause 1.4;

“**Transaction Documents**” means:

the Implementation Agreement;

each Bond Issue Document; and

each other document or instrument agreed by the parties to be a Transaction Document;

“**Transition-Out Period**” has the meaning given to it by clause 22;

“**Transition-Out Plan**”means the plan developed in accordance with clause 22;

“**Victorian Auditor-General**” means the designated independent officer of the Victorian Parliament established under section 94A of the Victorian *Constitution Act 1975* (Vic);

“**Victorian Government Body**”means any of:

(a) a body corporate or an unincorporated body established or constituted for a public purpose by the legislation of the State of Victoria, or an instrument made under that legislation (including a local authority);

(b) a body established by the State of Victoria through the Governor or a Minister; or

(c) an incorporated or unincorporated body over which the State of Victoria exercises control;

“**Victorian Industry Participation Policy**” means the policy made pursuant to section 4 of the *Victorian Industry Participation Policy Act 2003* (Vic); and

“**Wilful Default**” has the meaning given in clause 35.11(g).

[*End of mandatory definitions (standard)*]

1. [***Other mandatory definitions (transaction-specific).*** *The following definitions are to be modified as appropriate for the terms of the Project and included (in alphabetical order) with the definitions already set out above:*

“**Eligible Persons**”means [*insert appropriate description for potential participants / recipients of the Service*];

“**Measurement Date**” means [the / each] date as at which the State will measure the Proponent’s delivery or achievement of the Outcomes under the Implementation Agreement, being [the date that falls [insert applicable time] after the Establishment Date][OR][*describe timing for other regular measurements*] or, in the event of early termination of the Agreement, the date of termination;

“**Outcomes**” means [*insert appropriate description for agreed Outcomes*] [and any other deliverables, outputs, outcomes, results or quantities of, or for, the Services specified in the Operations Manual]. In an appropriate context, it also means all of the Services to be delivered under the Implementation Agreement;

“**Policy Area**” means [*describe relevant area in which services will be provided*];

“**Project Funds**” means the funds raised, or otherwise earned, by the Proponent in connection with the Project (including the Bond Issue Amount, Payments, the Standing Charge, interest and other earnings);

“**Service Users**” means [*insert appropriate description for actual participants / recipients of the Service*];“**Services**” means [*insert appropriate description for agreed Services*] [and such other services that the Proponent must deliver as specified in the Operations Manual] and for which Payments are provided under the Payment Schedule. In an appropriate context, it also means all of the Services to be delivered under the Implementation Agreement;

“**[Measure X]**” has the meaning given at [*insert appropriate clause reference*] of the Payment Schedule;

“**[Measure X] Success Rate**” has the meaning given at [*insert appropriate clause reference*] of the Payment Schedule;

“**[Measure Y]**” has the meaning given at [*insert appropriate clause reference*] of the Payment Schedule;

“**[Measure Y] Success Rate**” has the meaning given at [*insert appropriate clause reference*] of the Payment Schedule;

1. *End of other mandatory definitions (transaction-specific*)]

[***Optional definitions (transaction-specific)****. Definitions for the following terms can be modified as appropriate for the terms of the Project and, where required, included (in alphabetical order) with the definitions already set out above. These concepts have been incorporated in the provisions of this form of Implementation Agreement. If any of these are not used in connection with any Project, alternative arrangements will need to be carefully considered and consequential changes made throughout the document:*

[“**Agreed Locations**”, “**Control Group**”, “**Intervention Group**”, “**Performance Level**”, “**Referral Period**”]

1. *End of optional definitions (transaction-specific*)]

[***Option 1 Provisions (Secured Transactions).*** *Where security is given by the Proponent in connection with the PAD Arrangement:*

1. *The following definitions are for inclusion (in alphabetical order) and modification as appropriate:*
2. “**First Security Deed**” means the document titled “First Security Deed (Victorian Government Partnerships Addressing Disadvantage)” entered into between the State and the Proponent on or before the date of the Implementation Agreement in connection with the PAD Arrangement;

“**Priority and Co-ordination Deed**” means the document titled “Priority & Co-ordination Deed (Victorian Government Partnerships Addressing Disadvantage)” entered into between the State, the Bond Security Trustee (named therein) and the State in connection with the PAD Arrangement;

“**Security**” means the first ranking charge taken over the collateral described therein by the State pursuant to the First Security Deed and in connection with the PAD Arrangement;

“**Security Documents**” means the First Security Deed and the Priority and Co-ordination Deed;

1. *The following additional sub-paragraph is to be included in the definition of “****Transaction Documents****”:*
2. (c) the Security Documents;

[*End of Option 1 Provisions (delete if security is not given by the Proponent)*]

1. [***Option 2 Provisions (SPE Proponent Transactions).*** *Where a special purpose entity is included in the transaction structure*:
2. *The following definitions are for inclusion (in alphabetical order) and modification as appropriate:*
3. “**Direct Deed**” means the document titled “Direct Agreement” entered into between the State and the Service Provider in connection with the Project;
4. “**Services Subcontract**” means the subcontract of the Services by the Proponent to the Service Provider, the terms of which are (unless otherwise agreed with the State) consistent with the Services Subcontract Agreed Scope;
5. “**Service Provider**” means [*insert legal name and ABN*], or any other person approved by the State;
6. “**Services Subcontract Agreed Scope**” means the terms specified in Schedule 1;
7. *The following additional sub-paragraphs are to be included in the definition of* ***“Transaction Documents”****:*
8. (d) the Services Subcontract;
9. (e) the Direct Agreement;
10. *Where the SPE Proponent is a special purpose trust, the following definitions are also for inclusion (in alphabetical order) and modification as appropriate:*

“**Permitted Dealing**” means any assignment, encumbrance, novation or other transfer or dealing with any right or obligation under the Implementation Agreement which arises from or under the PAD Arrangement in respect of the Trust in accordance with the terms of the Transaction Documents (including in connection with the grant of the Security) or such other assignment, encumbrance, novation or other transfer or dealing as approved by the State in writing;

1. “**Trust**”means the trust established by, and subject to the terms of, the Trust Deed;
2. “**Trust Assets**” means, in relation to the Trust, all the Proponent’s rights, property and undertaking which are the subject of the Trust:
3. (a) of whatever kind and wherever situated; and

(b) whether present or future;

“**Trust Deed**”means the trust deed titled [*describe trust deed constituting the Trust*];

[*End of Option 2 Provisions (delete if transaction structure does not involve an SPE Proponent)*]

## Interpretation

In the Implementation Agreement including all parts, unless stated otherwise or a contrary intention appears:

### references to all or any Payments or Services are to be read as references to all or any of the Payments to be provided or the Services to be delivered under the Implementation Agreement;

### words indicating the singular include the plural and words indicating gender include other genders;

### where there is more than one organisation, the obligations of each organisation will be joint and several;

### reference to a person includes an individual and a corporation;

### reference to any legislation includes any subordinate legislation made under it and any legislation amending, consolidating or replacing it;

### the headings in the Implementation Agreement are included for convenience only and do not affect the interpretation of the Implementation Agreement;

### reference to a clause, paragraph or schedule is reference to a clause, paragraph or schedule of the document, forming part of the Implementation Agreement, in which the reference appears;

### reference to a document or agreement includes reference to the document or agreement as amended, notated, supplemented, varied or replaced from time to time;

### if the day on or by which anything is to be done under the Implementation Agreement is not a Business Day, that thing may be done on the next proceeding Business Day;

### a reference to the Proponent includes the Proponent’s administrators, successors and permitted assigns;

### a reference to a “subcontractor” includes an agent, authorised representative or a person delivering any of the Services under the Proponent’s auspices;

### a reference to a public entity, special body, department or administrative office (as those terms are defined in the *Public Administration Act 2004* (Vic)) in the event that entity is reconstituted or replaced, will be a reference to the entity then carrying out its powers or functions;

### the words “including”, “for example” or “such as” when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind; and

### if there is any inconsistency between these terms and conditions and a Relevant Law, the Relevant Law will prevail.

SCHEDULE 1 – PROJECT DETAILS

|  |  |
| --- | --- |
| Item 1 | DEPARTMENT |
| Details |  |
| Name | [*Department’s name*] |
| ABN | [*Insert ABN*] |
| Address | [*Insert address*] |
| **Contact Officer** | |
| Name | [*Insert name*] |
| Position | [*Insert position*] |
| Address | [*Insert address*] |
| Tel | [*Insert telephone number (including area code)*] |
| Fax | [*Insert fax number (including area code)*] |
| Email | [*Insert email address*] |
| Item 2 | PROPONENT |
| Details |  |
| Name | [*Insert legal name*] |
| ABN | [*Insert ABN*] |
| Address | [*Insert address*] |
| **Contact Officer** | |
| Name | [*Insert name*] |
| Position | [*Insert position*] |
| Address | [*Insert address*] |
| Tel | [*Insert telephone number (including area code)*] |
| Fax | [*Insert fax number (including area code)*] |
| Email | [*Insert email address*] |
| Item 3 | [Not used][OR][SERVICE PROVIDER] |
| **Details** |  |
| Name | [*Insert legal name*] |
| ABN | [*Insert ABN*] |
| Address | [*Insert address*] |
| **Contact Officer** | |
| Name | [*Insert name*] |
| Position | [*Insert position*] |
| Address | [*Insert address*] |
| Tel | [*Insert telephone number (including area code)*] |
| Fax | [*Insert fax number (including area code)*] |
| Email | [*Insert email address*] |

|  |  |
| --- | --- |
| Item 4 | AGREEMENT DATES |
| Agreement Commencement Date [*insert*]  Agreement Expiry Date [*insert*]  Establishment Date [*insert*] | |
| Item 5 | BOND ISSUER |
| [*Insert details*] | |

|  |  |  |
| --- | --- | --- |
| Item 6 | BOND MODEL | |
| Bond Model | Element | Detail |
| [1] | [ ] | [*Complete for key commercial terms of the Bond Model, including interest rates, interest payment frequency, tenor of the Bonds etc.*] |
| [2] | [ ] | [ ] |
| [3] | [ ] | [ ] |
| Item 7 | BOND ISSUE AMOUNT | |
| $[*insert Bond Issue Amount*] (GST excl.). | | |

|  |  |  |
| --- | --- | --- |
| Item 8 | [Not used][OR][SERVICES SUBCONTRACT AGREED SCOPE] | |
| [The Services Subcontract will be back to back with the Implementation Agreement, to the extent applicable.  The Service Provider will represent and warrant that it has made its own assessment of the risks, contingencies and other circumstances which might affect the Project and has satisfied itself as to the Project’s viability and its ability to successfully deliver or achieve the Outcomes.  [*Describe other key commercial matters to be set out in the Services Subcontract*]] | |

|  |  |
| --- | --- |
| Item 9 | CAP ON PAYMENTS |
| The aggregate cap on all payments to be made by the State under the Implementation Agreement is $[*insert amount*] (GST excluded) | |

|  |  |
| --- | --- |
| Item 10 | INSURANCES |

1. The insurances required to be held and maintained by the Proponent and each subcontractor for and in respect of the period of the Term and any additional period stated for the particular policy are listed below.

(a) broad form public liability policy of insurance which includes:

(i) occurrence based public liability insurance of the value of at least $[*insert agreed minimum amount*] million in respect of each occurrence and of at least $[*insert agreed minimum amount*] million in the annual aggregate;

(ii) products liability insurance arising out of the provision of the Services and/or delivery or achievement of the Outcomes for the period of cover, for an amount of at least $[*insert agreed minimum amount*] million in respect of each occurrence and of at least $[*insert agreed minimum amount*] million in the annual aggregate;

(b) workers’ compensation insurance in accordance with applicable legislation for all the relevant employees;

(c) professional indemnity insurance for an amount of at least $[*insert agreed minimum amount*] million in respect of each claim and of at least $[*insert agreed minimum amount*] million in the annual aggregate. The professional indemnity insurance:

(i) must cover liability owed to or incurred by the Proponent and the State in respect of the Services and any products supplied ancillary to the Services;

(ii) must be maintained until the expiry or termination of the Implementation Agreement and for a period of not less than 6 years after the expiry or termination of the Implementation Agreement;

(d) all risk property insurance for the insurable value of all of the equipment and materials used in the provision of the Services and/or delivery or achievement of the Outcomes;

(e) business continuity insurance for an appropriate amount to cover business interruption in respect of the Services and delivery or achievement of the Outcomes;

(f) personal accident (volunteers) insurance insuring volunteers for personal injury risk arising during voluntary duties in respect of the Services and delivery or achievement of the Outcomes; and

(g) such other insurance policies to be effected by the relevant subcontractor as reasonably required by the State from time to time in respect of the Services and delivery or achievement of the Outcomes.

2. For all public liability insurance policies required under this Item 10, all such insurance policies must:

(a) name both the Proponent and the State as insured or as additional insured for the respective rights and interests of each party;

(b) contain a cross-liability clause in which the insurer agrees to waive any rights of subrogation or action that it may have to acquire against all or any of the persons comprising the insured or otherwise entitled to the benefit of the policy;

(c) require the insurer to notify all named insured of any variation or cancellation of the policy provided that a notice of claim given to the insurer by the State, the Proponent or any subcontractor (as applicable) will be accepted by the insurer as a notice of claim given by all of the insured;

(d) upon its terms and subject to relevant policy limits, deductibles, exclusions and conditions, cover the State or the Proponent in respect of the Services and/or delivery or achievement of the Outcomes; and

(e) not exclude liability assumed by the Proponent under the Implementation Agreement or by the subcontractor under any subcontract.

3. All insurance policies required under this Item 10 must be effected with an insurance company which, if Australian, is licensed by the Australian Prudential Regulation Authority or, if the insurer is an international company, has a rating of not less than A- from a Recognised CRA.

4. The State acknowledges that the Proponent may have business continuity insurance. However, regardless of whether the Proponent has business continuity insurance or not, and without limiting any other remedy or cause of action that the Proponent may have in connection with any breach by the State of the Implementation Agreement, the State will not provide the Proponent with insurance cover or otherwise be responsible for or in any way liable in respect of any interruption to the Proponent’s business, and Outcome Payments under the Implementation Agreement will not be interrupted or otherwise altered if the Proponent suffers an interruption that impacts on Services, the Outcome Payments or both.

|  |  |
| --- | --- |
| Item 11 | PRESCRIBED RATE |
| [*Insert details*] | |
| [Item [ ]] | [ ] |
| [*Complete for all other additional items as required*] | |

# SCHEDULE 2 – PAYMENT SCHEDULE

[*The Payment Schedule is to set out in full the detailed payment and repayment arrangements for the PAD Arrangement. The following provisions provide a framework only for the schedule*]

**INTRODUCTION**

This Schedule 2 (the “**Payment Schedule**”) sets out the terms and amounts for specified Payments to be made under the terms of the Implementation Agreement. The information in this schedule reflects the financial model agreed between the parties prior to the [Establishment Date] as the basis on which payment amounts will be calculated, increased and/or discounted.

All amounts specified below are exclusive of GST.

**DEFINITIONS**

Unless otherwise indicated, capitalised terms used but not defined in this Payment Schedule have the same meanings as in the Implementation Agreement and the following terms have these meanings:

[*Insert applicable definitions*]

[**PART A: STANDING CHARGE PAYMENTS**

1. Standing Charge Payments will be determined and paid in accordance with this Part A.

2. Each Standing Charge Payment is payable to the Proponent:

1. subject to the Implementation Agreement not having been terminated and neither party having given notice to the other of an intention, or in exercise of a right, to terminate the Implementation Agreement; and
2. [*include details of timing and method of when Standing Charge Payments are to be paid*].

3. The total aggregate Standing Charge Payments are not to exceed $[*cap*].

4. The amount of the Standing Charge Payment for each quarter is the amount set out in Table 1 of this Part A.

Table : Standing Charge Payment Look-up Table

|  |  |
| --- | --- |
| [Quarterly period] beginning | Quarterly Standing Charge Payment ($) |

|  |  |
| --- | --- |
| [Date] | $[●] |
| [Date] | $[●] |
| [Date] | $[●] |
| [Date] | $[●] |
| [Date] | $[●] |

[**PART B: OUTCOME PAYMENTS**

1. Outcome Payments will be calculated and paid in accordance with this Part B, except to the extent that calculations and payment timeframes may be varied in accordance with [other parts of this Payment Schedule in circumstances of early termination of the Implementation Agreement / and the Operations Manual].
2. The Outcome Payment 1 and Outcome Payment 2 (together, the “**Outcome Payments**”) at each Measurement Date are payable:
   1. [*consider timing of payments*]
   2. [*consider other conditions precedent to / conditions of payment*]]

**Outcome Payment 1 – [*Measure X*] payable outcome**

1. The amount of the [*Measure X*] payable outcome as at the Outcome Payment Date is to be determined in respect of each Measurement Date as follows:
2. first, calculating the “[***X Measure***]” for the Intervention Group and the Control Group using the following formula:
   1. Intervention Group

[X Measure] = D = A / B

where:

A = *Total [insert details of measure (e.g., days in hospital, convictions, education classes attended etc.)] for individuals in the Intervention Group over the relevant [insert details of measurement period]*

B = *Total number of individuals in the Intervention Group as at the [Measurement Date]*

* 1. Control Group

[X Measure] = C = E / F

where:

E = *Total [insert details of measure (e.g., days in hospital, convictions, education classes attended etc.)] for individuals in the Intervention Group over the relevant [insert details of measurement period]*

F = *Total number of individuals in the Intervention Group as at the [Measurement Date]*

1. second, determining the “[**X Measure Comparison**]” by comparing the [X Measure] for the Intervention Group and the [X Measure] for the Control Group as follows;

[**X Measure** **Comparison]** = ((C – D) / C) x 100%

where:

*C = [insert details of measure (e.g., days in hospital, convictions, education classes attended etc.)] for individuals in the Intervention Group over the relevant [insert details of measurement period]*

*D = [insert details of measure (e.g., days in hospital, convictions, education classes attended etc.)] for individuals in the Intervention Group over the relevant [insert details of measurement period]*

1. third, determining the “**[X Measure Outcome Payment]**” in accordance with Table 2 of this Part B.

Table 2: Outcome Payment 1 Look-up Table

|  |  |
| --- | --- |
| **X Measure Comparison** | X Measure Outcome Payment 1 ($) |
| [<10%]  (A) | [●] |
| [≥10%,<15%]  (B) | [●] |
| [≥15%,<20%]  (C) | [●] |
| [≥20%,<30%]  (D) | [●] |
| [≥30%,<40%]  (E) | [●] |
| [≥40%]  (F) | [●] |

[***Note*** *— repeat the above four steps for each relevant measure*]

[*Insert details of invoicing process*]

[**PART C: TERMINATION PAYMENTS**

1. The Payments will be calculated and paid in accordance with this Part C in the event:
2. the Implementation Agreement is performed up to the Agreement Expiry Date;
3. the State terminates for convenience under clause 14.1 of the Implementation Agreement;
4. the State terminates for cause under clause 14.2 of the Implementation Agreement;
5. the Proponent terminates for cause under clause 14.3 of the Implementation Agreement; or
6. either party terminates due to an Intervening Event under clause 15 of the Implementation Agreement or for a change of tax legislation or Relevant Law under clause 16 of the Implementation Agreement.

**Early Termination Payment**

1. Early Termination Payments are payable:
2. [*consider timing of payments*]
3. [*consider other conditions precedent to / conditions of payment*]]
4. If the State terminates for convenience under clause 14.1 of the Implementation Agreement (as per clause 1(b) of this Part C), the amount of the Early Termination Payment payable in respect of an Early Termination Date is the amount determined by reference to Table [*3*] of this Part C below and the [quarterly] period in which the Early Termination Date occurs.

[***Note*** *— specify references to the relevant performance band in accordance with project-specific measurement criteria*]

[***Note*** *—: replicate the above draft clause 3 for each different type of termination listed under clause 1 of this Part C, or combine within one clause*]

Table [*3*]: Early Termination Payment Look-up Table

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
|  | Performance band | | | | |
| Early Termination Date Occurs in [quarter ending] | B  ($) | C  ($) | D  ($) | E  ($) | F  ($) |
| [Date] | $[●] | $[●] | $[●] | $[●] | $[●] |
| [Date] | $[●] | $[●] | $[●] | $[●] | $[●] |

**Rebate payments**

[***Note*** *— consider calculations for rebate payments to the State upon early termination of the IA.* *New definitions introduced in this section will need to be added to the Definitions section.*]

Table [*4*]: Rebate Payment Look-up Table

|  |  |
| --- | --- |
| Rebate Determination Date Occurs in [quarter ending] | Rebate Payment |
| [Date] | $[●] |
| [Date] | $[●] |
| [Date] | $[●] |
| [Date] | $[●] |
| [Date] | $[●] |
| [Date] | $[●] |

**Maximum amount of Break Costs**

[***Note*** *— consider calculations for Break Costs payable by the State upon early termination of the IA.* *New definitions introduced in this section will need to be added to the Definitions section.*]

Table [*5*]: Break Costs Cap Look-up Table

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| Termination Date Occurs in [quarter ending] | (a)  Wind-down Services ($) | (b)  Staff Redundancies ($) | (c)  Lease termination costs ($) | (d)  Head-leasing Costs ($) | (e)  Other Break Costs ($) | (f)  Other program costs ($) |
| [Date] | $[●] | $[●] | $[●] | $[●] | $[●] | $[●] |
| [Date] | $[●] | $[●] | $[●] | $[●] | $[●] | $[●] |
| [Date] | $[●] | $[●] | $[●] | $[●] | $[●] | $[●] |
| [Date] | $[●] | $[●] | $[●] | $[●] | $[●] | $[●] |
| [Date] | $[●] | $[●] | $[●] | $[●] | $[●] | $[●] |
| [Date] | $[●] | $[●] | $[●] | $[●] | $[●] | $[●] |

[**PART D: INDEPENDENT CERTIFIER’S REPORT**

1. Each party must each provide to the Independent Certifier, within [●] Business Days of the Measurement Date, such information as required to enable the Independent Certifier to prepare its report.

2. The Independent Certifier must determine and report on the following for the relevant period for which payment is due, based on information and data supplied by the parties and in accordance with the provisions of this Payment Schedule and any relevant calculation and measurement methods set out in the Operations Manual:

[*Describe scope of engagement for the Independent Certifier*]

3. The Independent Certifier must in providing its report include details in relation to the determination of the matters in item 2 of this Part D, setting out the evidence used in the determination and the formula or method by which the matters were determined.

4. The Independent Certifier must provide its final report to the Proponent within [●] Business Days of the Measurement Date.

5. In the event of a termination of the Implementation Agreement prior to the Agreement Expiry Date, the Independent Certifier will be required to certify the data and information required to calculate the amounts payable under this Payment Schedule. In addition, the report will include details of the determination of the data, information and calculations relating to the payments.

6. Either party may dispute the findings in the Independent Certifier’s report within 20 Business Days of receipt of the report.

7. The process for disputing any report by the Independent Certifier is as set out in the Operations Manual.

8. Any agreement on the variations to timeframes for payment as set out in this Payment Schedule must be reached following the process set out in the Operations Manual.]

[**PART [ ]**]

[*Other relevant provisions for the determination of payments to be set out in full*]

SCHEDULE 3 – SCOPE OF OPERATIONS MANUAL

[*The scope for the Operations Manual to be described in this section (in headline detail only). The following provides an example only of the kind of information to be included by this Schedule 3.*]

[The Operations Manual will cover the following subject areas:

**Services and Outcomes**

1. Service Delivery Requirements and such other details for the Services and/or Outcomes as are required to be specified.

**Control Group**

1. Control Group (requirements and methodology for deriving and managing this group).
2. Process and methodology for measuring Outcomes for Intervention Group and comparison with Control Group annually and at the Measurement Date.

**Agreed Locations**

1. Agreed Locations.
2. Process for agreeing new Agreed Locations.
3. Process for agreeing removal of location from Agreed Locations.

**Referral process (includes requirements and timeframes)**

1. Referrals over the Referral Period, including timing of Referrals over that period.

**Cohort and eligibility criteria**

**Roles and Responsibilities**

**Records**

1. List of records the State requires the Proponent and its subcontractors to maintain and those for which copies are required, including documents / records which the State will require the Proponent and its subcontractors to hand over on termination / expiry of the Agreement and that will be required for Project evaluation.
2. Records management protocol agreed by the parties.

**Reporting requirements**

1. Reports, information and evidence required from the Proponent, including for court proceedings (requirements and timeframes).

**Information exchange**

1. Includes information technology arrangements and electronic sharing of data.

**Government policies and guidelines**

1. Any Department or other Government policies and guidelines with which the Proponent and its subcontractors must comply.
2. Any particular requirements or checks in relation to working with the Service Users etc.

**Annual review**

1. Content of annual review:
   1. includes review of the performance of the parties in achieving the objectives set out in clause 3
   2. the Proponent’s performances in delivering or achieving the Outcomes
   3. implementation of the Operations Manual
   4. such other matters as the State may determine from time to time.
2. Timeframes for annual reviews.

**Communications and Media Protocol**

**Transition-In**

1. Plan for transition-in of the provision of the Services (if applicable).

**Transition-Out**

1. Process for agreeing Transition-Out Plans (content and timeframes).

**Contract management**

1. Joint Working Group
   1. membership
   2. terms of reference
   3. frequency of meetings
   4. procedure.
2. Contract representatives.
3. Tracking and monitoring referrals and Outcomes.
4. Audit and access rights for the Department.
5. Payment process – process for agreeing variations to timeframes for payments in Schedule 2.
6. Dispute resolution and complaints procedures for Service Users.
7. Independent certification
   1. process for requesting certification of annual performance data that evidences a breach of the Implementation Agreement
   2. process for disputing independent certifier’s report.

**Key contacts**

1. Includes Contact Officers for the Department, Proponent [and Service Provider] as listed in the Project Details.]

SCHEDULE 4 – FORMS OF LEGAL OPINION

[*The following sets out standard opinions to be provided to the Department in connection with any PAD Arrangement, but it does not limit the opinions and other conditions that may be required by the Department for a particular PAD Arrangement or generally. The below ordering assumes that the Implementation Agreement is to be signed prior to the finalisation and execution of the other Transaction Documents, which may not necessarily or always be the case.*]

Each legal opinion to be delivered in connection with the Implementation Agreement:

1. must be given in respect of the laws of Victoria and the Commonwealth of Australia (the “**Relevant Jurisdictions**”);
2. must be addressed to the [*Department’s name*] and must expressly permit disclosure of the opinion by the Department to other departments and agencies of the Victorian Government, the Victorian Auditor-General and the Victorian Parliament; and
3. may be provided in a legal adviser’s standard form, including as to assumptions, qualifications and limitations. However, the legal opinion must not be subject to assumptions, qualifications or limitations that are unduly restrictive and all assumptions must be specific, factual and adequately explained in the legal opinion.

**PART A**

1. *Documents reviewed*: Must include: (A) the Implementation Agreement and (B) the Proponent’s Constitution.
2. *Opinions*: Must include opinions that:
   1. the Proponent:
      1. is duly constituted and validly existing under the laws of Australia and is capable of suing and being sued in its own name;
      2. has the power to enter into the Implementation Agreement and to observe its obligations under it; and
      3. has taken all action required on its part under its Constitution and the laws in force in the Relevant Jurisdictions to authorise the execution, delivery and observance of its obligations under it;
   2. the Implementation Agreement has been correctly executed by the Proponent; and
   3. the obligations of the Proponent under the Implementation Agreement are valid, binding and (subject to its terms) enforceable.

**PART B**

1. *Documents reviewed*. Must include: (A) the Implementation Agreement, (B) the Proponent’s Constitution, and (3) each other Transaction Document.
2. *Opinions*: Must include opinions that:
   1. the Proponent has:
      1. the corporate power to enter into the Transaction Documents to which it is a party and to issue the Bonds and, in each case, to observe its obligations under them; and
      2. taken all corporate action required on its part to authorise the execution and delivery of the Transaction Documents to which it is a party and to issue the Bonds and, in each case, the observance of its obligations under them;
   2. the obligations of the Proponent:
      1. under each Transaction Document to which it is a party are valid, binding and (subject to the terms of the Transaction Document) enforceable against it; and
      2. under the Bonds will be, upon their issue, valid, binding and (subject to their terms) enforceable against it;
   3. the execution and delivery by or on behalf of the Proponent of the Transaction Documents to which it is a party and the observance of its obligations under them has not violated and will not contravene:
      1. any law in force in the Relevant Jurisdictions; or
      2. its Constitution;
   4. it is not necessary in the Relevant Jurisdictions to provide a copy of a Transaction Document to a court or governmental agency in order to ensure the legality, validity, enforceability or admissibility in evidence of the Transaction Documents; and
   5. the courts of Victoria and the federal courts of Australia will give effect to:
      1. the choice of the laws of Victoria to govern the Transaction Documents; and
      2. the submission to the jurisdiction of the courts of Victoria by the Proponent,

and must confirm whether any stamp duty, mortgage duty or other similar Tax is payable in the Relevant Jurisdictions on the execution of the Transaction Documents or the issue of the Bonds or, in either case, in connection with the observance of obligations under them.

SCHEDULE 5 – FORM OF CONDITIONS PRECEDENT SATISFACTION CONFIRMATION

*A confirmation in the following form may be provided by the Proponent in satisfaction of the requirements under clause 2.1. The confirmation should be completed for satisfaction of relevant Conditions Precedent at or around each applicable Cut-Off Date and delivered to the State in accordance with clause 2.2.*

To: [*Department’s name*]

(the “**Department**”)

**Implementation Agreement dated [*insert date*] (**“**Implementation Agreement**”**) between the Department and [*insert legal name of Proponent*] – Conditions Precedent Confirmation**

We refer to the Implementation Agreement and the Conditions Precedent set out under clause 2.1 thereof. Capitalised terms used in this letter but not defined have the meaning given to them in, and references to a clause are to a clause under, the Implementation Agreement.

We confirm that:

[*complete and* *include the following confirmations as appropriate, otherwise delete:*

* [for the purposes of clause 2.1(b)(ii), the Proponent is, and the State has confirmed it is, satisfied with the arrangements for the establishment and operation of the PAD Arrangement (including, without limitation, as to tax matters);]
* [for the purposes of clause 2.1(b)(iii), the Proponent is, and the State has confirmed, that the financial model forming the basis of the payments to be made under the Implementation Agreement has been finalised in writing;]
* [for the purposes of clauses 2.1(c)(i) and 4, the Proponent is, and the State has confirmed that the Operations Manual is in a final form;]
* [for the purposes of clause 2.1(d)(iv) of the Implementation Agreement, the Proponent and the State confirm that the Proponent, and its subcontractors, hold and currently maintain the insurances set out in Item [10] of the Project Details;]
* [for the purposes of clause 2.1(e), the Bonds have been fully subscribed in the Bond Issue Amount pursuant to [*describe Bond subscription arrangements*]; and
* [for the purposes of clause 2.2, the Conditions Precedent set out under clauses [*insert applicable Implementation Agreement clause references*][2.1(a)(i) / 2.1(a)(iv) / 2.1(b)(ii) / 2.1(c)(i) / 2.1(c)(ii) / 2.1(c)(iii)] have been satisfied.]

[*Include if previous confirmation(s) have been provided, otherwise delete:* [As confirmed under our letter[s] to you dated [*insert date(s)*], the Conditions Precedent set out under clauses [*insert applicable Implementation Agreement clause references*] have also been satisfied.]*End of option*]

This letter is governed by the laws of Victoria.

For and on behalf of

**[*Proponent’s legal name*]**

[*Execution block*]

Date

SIGNING PAGE

Executed as an agreement

**Dated: [●]**

**State of Victoria acting through**

**[*Department’s name*]**

**[*Insert relevant departmental execution block*]**

|  |  |  |
| --- | --- | --- |
|  |  |  |

**Proponent**

|  |  |  |
| --- | --- | --- |
| **[*Execution block*]** |  |  |