

ATTACHMENT D



Joint Development Phase Agreement Partnerships Addressing Disadvantage Opportunity 2021/22

Between

State of Victoria
acting through **Department of Treasury and Finance**

and

[Legal name of Proponent]



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This document has been derived in part from the SBB Joint Development Phase Agreement (Reference Work) prepared by the State of Queensland in consultation with Trevor Danos AM and King & Wood Malletsons, available at <https://www.treasury.qld.gov.au/projects-infrastructure/initiatives/sbb/resources.php>. The Reference Work is derived in part from the Joint Development Phase 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 the Department of Treasury and Finance

and

[Insert legal name and ABN of Service Provider] (Proponent).

Background

- A The State of Victoria acting through the Department of Treasury and Finance (**State**) wishes to develop a Partnership Addressing Disadvantage arrangement in the area of homelessness (**PAD arrangement**).
- B The State issued a Request for Proposals relating to the PAD arrangement on 10 December 2021 (**RFP**, which term includes each and every document governing the process by which the State has advanced the tender process for the PAD arrangement).
- C The **Proponent and others (Consortium Members)** have submitted a proposal in response to the RFP (**Proposal**).
- D The Proponent has been selected by the State to participate in a joint development phase, as described in the RFP, relating to the PAD arrangement and in accordance with the terms of this document and the RFP (**Joint Development Phase**).

1. Objectives, purpose and scope of the Joint Development Phase

- 1.1 The Joint Development Phase will commence on the date of this document (**Commencement Date**) and will terminate [6] calendar months from the Commencement Date (**Expiry Date**) unless otherwise extended by the State in writing or unless terminated earlier in accordance with the terms of this document.

Objectives

- 1.2 The objectives of the PAD Joint Development Phase are to:
- (a) further develop and/or design the overall approach to the implementation of the PAD arrangement;
 - (b) negotiate arrangements for the implementation of the PAD arrangement; and
 - (c) ensure resource plans and other agreements are in place to support the PAD arrangement's implementation,
- (together, the **Objectives**).

Purpose and Scope

- 1.3 The purpose and scope of the Joint Development Phase is to develop the Proposal to a level of feasibility suitable for contracting including (without limitation):
- (a) specification of the following matters for the PAD arrangement:
 - (i) cohort;
 - (ii) program outcomes;

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- (iii) evidence base for program;
 - (iv) measurement of outcomes and unintended consequences;
 - (v) duration of the program, its assessment and the return to investors;
 - (vi) extension/variation provisions;
 - (vii) return to the State;
 - (viii) social benefits/impacts;
 - (ix) government relationship with each of the investors, Proponent, Consortium Members and program provider (if different);
 - (x) risk allocation;
 - (xi) structure of the PAD arrangement;
 - (xii) process for appointment of independent evaluators or similar for both the program and payments;
 - (xiii) monitoring process and reporting processes;
 - (xiv) communication strategy;
 - (xv) risk management strategy;
 - (xvi) roles and responsibilities of the parties for the duration of the program; and
 - (xvii) such other matters as the parties may reasonably agree; and
- (b) terms and conditions of the primary agreement to implement the PAD arrangement (including the matters specified in accordance with clause 1.3(a)) to be entered into by the State and the Proponent should the State so elect (**Implementation Agreement**).

Successful Proponent

1.4 The Proponent acknowledges and agrees that:

- (a) nothing in this document may be construed as an indication or representation to the Proponent or the Consortium Members by the State that the State will enter into an Implementation Agreement. The State is not liable for any loss or damage suffered by the Proponent or any Consortium Member arising out of or in connection with the State not entering into an Implementation Agreement; and
- (b) the Victorian State election is expected to be held on 26 November 2022. The government is expected to assume a caretaker role in October 2022 until such time that either it becomes clear that the incumbent government will be returned, or a new government is sworn in. It is expected that the Joint Development Phase will conclude before the caretaker period commences. However, should delays occur negotiation may (subject to clause 1.1) continue during the caretaker period and the incoming government will determine whether to proceed with the PAD arrangement, including whether to proceed with the Joint Development Phase and/or enter into an Implementation Agreement.

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2. Commitments

Good faith, co-operation and collaboration

- 2.1 Each of the parties agrees to act in good faith during the Joint Development Phase. This means that the parties will act honestly and reasonably having regard to the terms of this document and the RFP and co-operatively by doing everything properly and reasonably within a party's control which is necessary to enable the other party to perform its obligations under this document.
- 2.2 The parties agree to work collaboratively throughout the Joint Development Phase in accordance with the following principles:
- (a) all efforts by the parties will be open, transparent and collaborative;
 - (b) to the extent possible, all estimates of outcomes, milestones, measurements, timeframes and costs will be validated by competitive market testing or will otherwise be established by benchmarking by the Proponent to a standard reasonably acceptable to the State;
 - (c) all innovations and technical solutions identified by the Proponent will be incorporated into the Implementation Agreement and considered in evaluating the PAD arrangement;
 - (d) there will be a genuine commitment to innovation and continuous improvement in the development of the PAD arrangement, the Implementation Agreement and to satisfying the State's requirements as set out in the RFP;
 - (e) the terms of the Implementation Agreement will be developed as part of the Joint Development Phase but will as far as reasonably possible be consistent with the relevant precedent documentation published by the State; and
 - (f) the PAD arrangement will be delivered in accordance with the Implementation Agreement.
- 2.3 The parties agree they will each exercise proper professional skill, care and diligence in the Joint Development Phase (and will ensure that their respective, officers, employees, contractors, consultants, advisers and agents, and additionally in the case of the Proponent, the Proponent will ensure that its Consortium Members and their respective, officers, employees, contractors, consultants, advisers and agents) are appropriately qualified, skilled and experienced and also exercise professional skill, care and diligence.
- 2.4 Each party will as soon as reasonably practicable after the Commencement Date nominate in writing a working group to represent that party during the Joint Development Phase.

Sharing of information

- 2.5 The Proponent will maintain and make its records and other information and documentation relevant to the Joint Development Phase and the PAD arrangement available to the State on request. However, the Proponent will not be required to make records, information or documentation available if these are subject to confidentiality obligations, or are unable to be lawfully disclosed.

Negotiations with investors

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- 2.6 It is the Proponent's responsibility to negotiate with the investors in the development of the PAD arrangement and the Implementation Agreement.

Disputes

- 2.7 The Proponent acknowledges that the Joint Development Phase is one of the steps in the procurement process set out in the RFP and this document is subject to the terms and conditions of the RFP.
- 2.8 If a dispute arises between the parties in relation to the Joint Development Phase or this document, each party agrees to use all reasonable efforts to settle the dispute by discussions between their nominated senior representatives. If the nominated senior representatives are unable to resolve the dispute then the dispute will be referred to the Project Control Board for the State's PADs initiative for advice as to how the Joint Development Phase is to proceed including, in the event that the dispute cannot be resolved, whether the Joint Development Phase is to be terminated under clause 3.

Consortium Members

- 2.9 The Proponent must ensure that Consortium Members take all necessary action to enable the Proponent to fulfil its obligations in a timely manner under this document.

3. Term

- 3.1 Subject to clause 3.2, this document will commence on the Commencement Date and will terminate on the first to occur of the following dates:
- (a) the date of the Implementation Agreement;
 - (b) if the State determines that it will not enter into an Implementation Agreement, the date of written notification to the Proponent of that fact;
 - (c) if the Proponent or a Consortium Member commits a material breach of the terms and conditions, or rules, contained in this document or the RFP, the date of written notification to the Proponent of that fact;
 - (d) if the State and the Proponent by mutual agreement decide that this document is to terminate, the date agreed in writing as the termination date; or
 - (e) the Expiry Date.
- 3.2 The State may at any time in its absolute discretion and with immediate effect terminate this document by giving the Proponent written notice of termination.
- 3.3 Subject to compliance with law and, in the case of the State, its obligations under the Public Records Act 1973 (Vic), on termination or expiry of this document each party agrees to:
- (a) return to the other party all copies of information, documentation and material provided by the other party for the purposes of this document and in whatever form the information, documentation and material is held by that party; or
 - (b) alternatively, if permitted or requested by the other party, destroy all copies of the information, documentation and material referred to in clause 3.3(a).
- 3.4 On termination or expiry of this document, at no cost, the Proponent must provide any work, documentation or information developed under this document to the State, to enable the State's use under clause 5.2(a), within 10 business days of a written request.

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- 3.5 The Proponent must not do, or omit to do, anything which prevents or impedes the State from carrying out a PAD arrangement including without limitation, the State contracting with any other person or persons to implement a PAD arrangement.
- 3.6 Termination or expiry of this document does not affect the continued operation of clauses that by their nature should survive termination or expiry, including without limitation, this clause 3 (Term), clause 4 (Confidentiality) and clause 5 (Intellectual Property).

4. Confidentiality

4.1 Each party (**Recipient Party**) agrees:

- (a) not to disclose the Confidential Information of the other party (**Disclosing Party**) to any person except:
- (i) on a confidential basis to the officers, employees, contractors, consultants, advisers or agents of the Recipient Party requiring the information for the purposes of performing its obligations or exercising rights under this document;
 - (ii) on a confidential basis to the Recipient Party's legal or professional advisers;
 - (iii) with the prior written consent of the Disclosing Party;
 - (iv) in the case of the State, a Minister, the Parliament of Victoria or any committee of the Parliament of Victoria; or
 - (v) if required to do so by law, State or Commonwealth government policies, procedures or protocols or for public accountability purposes to the extent required in those circumstances or, if required to do so, in connection with legal proceedings; and
- (b) to ensure that all Confidential Information of the Disclosing Party in the custody of the Recipient Party is protected at all times from unauthorised access or use by a third party or misuse, damage or destruction by any person.

4.2 For the purposes of this document, **Confidential Information** means:

- (a) any information exchanged between the parties before, on or after the date of this document regarding the business affairs of either party that is not publicly available;
- (b) this document and its terms;
- (c) any information that is marked confidential by either party; and
- (d) any information disclosed to, or acquired by, the parties during the course of the Joint Development Phase and the RFP process that is by its nature confidential.

4.3 For the purposes of this clause 4, Confidential Information of the Proponent includes Confidential Information of a Consortium Member.

5. Intellectual Property

5.1 Ownership of Intellectual Property Rights

Each party agrees and acknowledges that:

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- (a) Intellectual Property Rights in the Proponent's Material vests in the Proponent; and
- (b) Intellectual Property Rights in the State's Material vests in the State.

5.2 **Licence of Intellectual Property Rights**

- (a) 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 for any purpose.
- (b) 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, or to pursue the Objectives, in accordance with the terms of this document.

5.3 **Documentation**

If requested by the State, the Proponent will sign, execute, or otherwise complete any document that may be necessary or desirable to give effect to this clause 5.

5.4 **Use of Intellectual Property Rights**

- (a) 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 5 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 that, to the extent necessary, the Proponent agrees to obtain the consent of any holder of Moral Rights to ensure no such infringement).
- (b) 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 5 and that the exercise by the Proponent of its rights in the State's Material will not infringe any person's Intellectual Property Rights.

5.5 **Protection of Intellectual Property and Moral Rights**

- (a) The Proponent agrees to take all reasonable steps to protect the Intellectual Property Rights in the Proponent's Material and to comply with the warranties in clause 5.4(a).
- (b) The Proponent will ensure that, in delivering the services and performing its obligations under this document, the Proponent (including its officers, employees, contractors, consultants and) does not:
 - (i) infringe any person's Intellectual Property Rights or an individual's Moral Rights; or
 - (ii) authorise the infringement of any such rights.

5.6 For the purposes of this clause 5:

- (a) **Intellectual Property Rights** includes existing and future 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;

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- (b) **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:
 - (i) in existence prior to the Commencement Date; or
 - (ii) produced on or after the Commencement Date independently of this document;
- (c) **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 this document;
- (d) **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 this document, including all copies and extracts;
- (g) **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 its obligations under this Joint Development Phase Agreement; and
- (h) the Intellectual Property Rights of the Proponent include those of the Consortium Members and the Moral Rights of the Proponent's personnel include those of the Consortium Members' personnel.

6. Relationship

Notwithstanding that the parties intend to engage in a transaction referred to as a "partnership addressing disadvantage", both parties acknowledge that no agency or legal partnership exists between the Proponent and the State, and the Proponent must not:

- (a) 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
- (b) 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.

7. Costs

Each party will bear its own costs arising out of or in connection with this document.

8. Deed

This document is executed as a deed and may consist of a number of copies, each signed by one or more parties to the deed. If so, the signed copies are treated as making up the one document.

9. Governing Law

This document is governed by and construed in accordance with the laws of Victoria.

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Signed, sealed and delivered for and on behalf of the **State of Victoria** through the **Department of Treasury and Finance** by its authorised representative in the presence of:

.....
Witness

.....
Authorised Representative

.....
Name of Witness (print)

.....
Name of Authorised Representative (print)

Date: ____ / ____ / ____

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The terms of this document are accepted and agreed by the Proponent.

[Insert Proponent's execution block]

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