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VICTORIAN COMMON FUNDING AGREEMENT

Clause Bank – Short Form

December 2015 Version 2.0

**To be used with the VCFA Short Form Agreement**

To be used with the VCFA Short Form Agreement



FOR INTERNAL USE ONLY

Authorised by the Victorian Government, Melbourne, December 2015.

**VERSION AND REVIEW**

Victorian Common Funding Agreement Clause Bank - Short Form

December 2015, Version 2.0, subject to ongoing update and scheduled for review 2019.

**ACCESSIBILITY**

If you need this information in an accessible format, please email cfaproject@dhhs.vic.gov.au.

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# Before You Get Started

The Victorian Common Funding Agreement Clause Bank provides the menu of additional terms and conditions that are specific to a government agency or an Activity/Service being funded. This version of the Clause Bank can be used with the:

* **Victorian Common Funding Agreement - Short Form**

Additional Terms and Conditions in this document can be used in the Short Form under these sections:

* Part A: Terms and Conditions, *Clause 3*
* Part B: Additional Terms and Conditions, *Clause 13*
* An alternative option is also available for the Execution clause (alternative Funding recipient signature block).

The Clause Bank is used in line with the business rules for the Agreement and guidance on how to use the Clause Bank. Key things to remember are:

* Only approved clause wording, as it appears in the Clause Bank, can be inserted into your Agreement
* Additional terms and conditions are allowed only where identified in the Agreement *(Clause 3 & Clause 13)*
* If the Clause Bank does not address your needs, you can make a request to amend an existing clause or to have a new clause added to the Clause Bank.

For further advice and support or to request an amendment to the Clause Bank:

* **Email** VCFA Support at [cfaproject@dhhs.vic.gov.au](mailto:cfaproject@dhhs.vic.gov.au)
* **Visit** the support pages for the Victorian Common Funding Agreement at:

# Short Form Additional Terms and Conditions

| Clause Heading & Wording | **Guidance Note** | | **Internal Ref No.** |
| --- | --- | --- | --- |
| FOR USE IN PART A: TERMS AND CONDITIONS, *CLAUSE 3* | | | |
| Application |  | |  |
| Your application and any additional information that is requested by the Department prior to this Agreement being executed, is part of this Agreement. The Activity delivered must be consistent with those documents. If there is a conflict or inconsistency between Your application and Your Agreement then the Agreement has precedence, to the extent of the conflict or inconsistency. | *Use for Activities where specific Agreement details are contained in the original funding application.* | | S-02 |
| Eligibility |  | |  |
| You must adhere and maintain Your eligibility for funding, as prescribed in the program guidelines. | *Use for specific Activities where eligibility for funding is critical for the funding to continue.* | | S-03 |
| Return of Funds |  | |  |
| You must return all unspent and uncommitted Funding after the Activity has finished. | *Requires the Organisation to return unspent funding.* | | S-04 |
| Revision of Budget |  | |  |
| Before payment will be released, You must submit for approval by Us a revised budget and brief summary outlining any changes to the project plan resulting from the amount offered differing to that requested, and/or income amounts previously unconfirmed in Your application. | *Select for Activities where there is a risk of a change in budget that requires Departmental approval.* | | S-83 |
| FOR USE IN PART B: ADDITIONAL TERMS AND CONDITIONS, *CLAUSE 13* | | | |
| Acknowledgement |  | |  |
| You must erect a Community Information Billboard at the front of the Activity site three weeks before the Activity works commence, and remove the billboard no later than [three weeks] after Activity completion. The billboard shall be consistent with the Acknowledgement and Publicity Guidelines as amended from time to time, which can be found at: [Attachment X] / on [website]. | *Requires the Organisation to place a Billboard at the front of the Activity. You must manually edit this clause to refer to either an Attachment or a website.* | | S-05 |
| FOR USE IN PART B: ADDITIONAL TERMS AND CONDITIONS, *CLAUSE 13* (CONT.) | | | |
| Acknowledgement (cont.) |  | |  |
| You will acknowledge any financial or other support by the Commonwealth Government according to the Commonwealth Government funding acknowledgement guidelines as amended from time to time. | *Use for Activities which also receive Commonwealth Government funding.* | | S-06 |
| Melbourne is officially designated a UNESCO City of Literature. As a recipient of Victorian Government funding for a literature-based project You must include the UNESCO Melbourne City of Literature logo in Your publicity material. Guidelines for City of Literature acknowledgement can be found on the Creative Victoria website at [www.creative.vic.gov.au/logos](http://www.creative.vic.gov.au/logos). | *Select for literature-based projects.* | | S-82 |
| Assignment and Subcontracting |  | |  |
| You must not assign or subcontract Your rights or obligations under this Agreement without Our consent. | *Requires the Organisation to seek consent before subcontracting rights or obligations. Use with the “Our consent” clause.* | | S-07 |
| Auspice |  | |  |
| You are auspicing this grant for [#]. You agree that You are responsible for making sure that the terms and conditions of this agreement are complied with by You and by [#]. | *Use for auspice grants. If you are unable to manually insert the name of the auspice party, use the next clause.* | | S-08 |
| If You are auspicing this grant for a third party, You agree that You are responsible for making sure that the terms and conditions of this Agreement are complied with by You and by the third party You are auspicing this grant for. | *Use for auspice grants where you are unable to manually insert the name of the auspice party.* | | S-09 |
| Banking Details |  | |  |
| You must provide banking details for payment directly into a bank account. Your banking details will not be used by Us for any other purpose.  Contact name:  Phone number:  Email address:  Account Name:  BSB Code Number:  Bank Account Number:  Name of Bank or Financial Institution: | *Requires the Organisation to fill out bank details and return them to the Department. If required, you can manually edit this clause to insert number blocks.* | | S-10 |
| FOR USE IN PART B: ADDITIONAL TERMS AND CONDITIONS, *CLAUSE 13* (CONT.) | | | |
| Banking Details (cont.) |  | |  |
| Regardless of any invoice arrangements, We may send You a cheque to fund the Activity. In such a case, and for the avoidance of doubt, We will not make a deposit into Your bank account for this payment. | *Allows the Department to fund the Activity by cheque instead of direct deposit. This should only be used in extenuating circumstances.* | | S-86 |
| Breach |  | |  |
| Non-compliance or failure by You to perform any of these conditions may constitute a breach of this agreement. In particular, You will breach this agreement if You:   1. Fail to comply satisfactorily with the reporting requirements set out in this agreement, as required. 2. Misappropriate or misuse the funding payment in any way; 3. Refuse to provide any information as may be required under this agreement. 4. Knowingly accept the payment in the knowledge that You cannot meet one or more of the conditions of this Agreement. 5. Fail to advise the Department during the duration of the Activity in line with the notification requirements of this agreement. | *Use to set further breach conditions for the Agreement.* | | S-11 |
| A breach of this agreement may result in You being ineligible to apply for future funding. | *Informs the Organisation that a breach may result in ineligibility for future funding.* | | S-12 |
| Confidentiality |  | |  |
| If We give You information and:   1. tell You that it is confidential; or 2. by the nature of the information or the circumstances in which it is given, it may be reasonably inferred that the information is confidential,   then You must not disclose the information to any third party without Our consent and must deal with that information as directed by Us.  The rights and obligations in this Agreement in relation to confidentiality continue to apply after the end of this Agreement. | *Use for Activities which will involve specific confidential information.* | | S-14 |
| FOR USE IN PART B: ADDITIONAL TERMS AND CONDITIONS, *CLAUSE 13* (CONT.) | | | |
| Conflict of Interest |  | |  |
| If there is an actual or perceived conflict of interest that in Our view may impact on Your ability to deliver the Activity, You must take such steps as We may reasonably direct You to take to resolve or manage the actual or perceived conflict of interest. | *Use for Activities where your risk assessment requires the Agreement to deal with potential Conflicts of Interest.* | | S-15 |
| Contributions |  | |  |
| In the event that any Contribution is withdrawn or is not paid or supplied when due, You must immediately notify Us.  In the event that any Contribution is withdrawn or is not paid or supplied when due, You acknowledge:   1. that We shall not be liable to pay any amount in excess of the Funds to cover any resulting funding shortfall; and 2. that We shall be entitled to elect to revoke the grant of the Funds or, if any part of the Funds has already been paid to You, to cease any further payment of Funds to You. | *Use for Activities which are reliant upon other Contributions outside of Department funding.* | | S-16 |
| Dispute Resolution |  | |  |
| Where a dispute arises from this Agreement, You agree to enter into good faith discussion with Us to resolve the dispute. If the dispute cannot be resolved through discussions, both parties to this Agreement will be subject to follow Our formal dispute resolution process. The process can be found at: [#]. | *Use for higher risk Activities which may benefit from an agreement to follow a formal dispute resolution process.* | | S-17 |
| Evaluation |  | |  |
| You must provide additional information that We request in relation to the evaluation of the program through which the grant Funding is provided. We must make only reasonable requests and should give notice of at least 20 (twenty) Business Days. | *Use for Activities where the Department may require additional information to evaluate its effectiveness. Do not use this clause if you can predetermine all required information for evaluation, as this can be built into the Activity Payments and Deliverables Table.* | | S-18 |
| You will allow Us access to Your premises or place of business to carry out any audit or performance review. | *Clause 5b requires the Organisation to provide the Department with access to records. This clause should only be used for higher risk Activities where access to the premises is also required.* | | S-90 |
| FOR USE IN PART B: ADDITIONAL TERMS AND CONDITIONS, *CLAUSE 13* (CONT.) | | | |
| Force Majeure |  | |  |
| If either of the Organisation or the Department is unable to perform its obligations due to an event that is beyond its reasonable control, the obligation will be suspended while the event continues. | *Use for Activities which may be impacted by “force majeure” or “Acts of God”.* | | S-20 |
| Funding |  | |  |
| You agree that We are not obligated to continue to provide funding to You beyond the Funding set out in Part A of the Agreement nor to renew Funding at the End Date of the Agreement | *Use only in circumstances where there is a funding gateway or hurdle or a second stage process where funding is only provided for part or initial feasibility of a project.* | | S-89A |
| Governing Law and Jurisdiction |  | |  |
| You agree that the laws of the State of Victoria apply to this Agreement and submit to the jurisdiction of the courts of the State of Victoria and courts entitled to hear appeals from those courts. | *For use by DH / DHS / DEECD.* | | S-21 |
| Insurance |  | |  |
| You must on and from the Start Date effect and maintain appropriate insurance coverage for Your operational and business risks. | *Requires the Organisation to have ‘appropriate’ insurance cover. ‘appropriate’ is a standard term used in reference to insurance. Do not use this clause if you select the next clause.* | | S-71 |
| You must on and from the Start Date effect and maintain the following insurance cover for the duration of this Agreement, and for insurance policies that are on a ‘claims made’ basis for no less than six years after the completion of the Activity:   1. public liability cover for at least $10,000,000 for any one occurrence; 2. professional indemnity cover for at least $1,000,000 for any one claim, unless We specifically waive this requirement in writing; 3. if the Activity includes the provision of goods, product liability cover for at least $5,000,000.   The rights and obligations in this Agreement in relation to insurance continue to apply after the end of this Agreement. | *Requires the Organisation to have specific insurance cover. Do not use this clause if you select the previous clause. If you need to enter different figures then consider using the Long Form Agreement.* | | S-72 |
| The insurance must be taken out with:   1. An insurer authorised under the *Insurance Act 1973* (Cth); or 2. An insurer approved in writing by the Department. | *Requires the Organisation to have a specific standard of insurer.* | | S-73 |
| You must provide Us with certificates of currency as proof of currency of insurance upon Our written request. | *Requires the Organisation to provide proof of insurance.* | | S-74 |
| You will ensure Our interests under this Agreement are noted on the policies of insurance and the terms and conditions of these policies shall be reasonably acceptable to Us. | *Select for Activities where it is desirable for the Department to have final say over the terms and conditions of insurance policies.* | | S-75 |
| FOR USE IN PART B: ADDITIONAL TERMS AND CONDITIONS, *CLAUSE 13* (CONT.) | | | |
| Insurance (cont.) |  | |  |
| You indemnify Us against all Liability We may incur in respect of any Claim including Claims relating to:   1. loss of or damage to property; 2. death or personal injury; 3. a breach of any third party’s Intellectual Property rights; 4. a breach of privacy law; and 5. a breach of Your recordkeeping obligations,   arising in any way from:   1. Your breach of this Agreement or any law; or 2. any unlawful or negligent act or omission, or wilful misconduct, by You in connection with the Activity or this Agreement.   Your Liability will be reduced to the extent that Liability is caused or contributed to by an unlawful or negligent act or omission of Us.  For the purposes of this clause:   1. ‘Liability’ includes all costs, damages, expenses and losses of any kind; 2. ‘Claim’ includes all claims, demands, rights, actions, suits or proceedings of any kind.   The rights and obligations in this Agreement in relation to indemnities and Liability continue to apply after the end of this Agreement. | *Select when your risk assessment of the Activity requires the Agreement to legally indemnify the Department.* | | S-76 |
| FOR USE IN PART B: ADDITIONAL TERMS AND CONDITIONS, *CLAUSE 13* (CONT.) | | | |
| Intellectual Property |  | |  |
| For the purposes of this Agreement:   1. ‘Intellectual Property’ includes: 2. all copyright (including rights in relation to all documents, reports, charts, drawings, data bases, software, source codes, models, systems, slides, tapes and specifications); 3. all copyright and all rights in relation to inventions (including registered and registrable patents), registered and unregistered trade marks, registered and unregistered designs, circuit layouts, and know-how; and 4. all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields. 5. ‘Background Intellectual Property’ means the Intellectual Property of a party which was either created: 6. before the Start Date; or 7. independently of this Agreement,   and all improvements to such Intellectual Property by the party.   1. ‘Activity Intellectual Property’ means all Intellectual Property (excluding Background Intellectual Property) developed, created, discovered, brought into existence or otherwise acquired (other than from Us) by You under this Agreement. 2. ‘Licence’ means a non-exclusive, world-wide, everlasting, irrevocable, royalty free licence to exercise all rights in relation to the Intellectual Property it applies to as if the licensee were the owner, including the right to sub-license. A Licence does not include the right to transfer or assign the Intellectual Property, or to seek or enforce remedies for infringements of the Intellectual Property against a third party. 3. ‘Third Party Intellectual Property’ means any Intellectual Property owned or created by a third party other than You or Us. | *Use this clause to add definitions related to:*   * *Intellectual Property* * *Background IP* * *Activity IP* * *Licence* * *Third Party IP*   *Only use this clause if selecting S-63 & S-65 which should be used together or S-6 which would be used instead of S-63..* | | S-77 |
| FOR USE IN PART B: ADDITIONAL TERMS AND CONDITIONS, *CLAUSE 13* (CONT.) | | | |
| Intellectual Property (cont.) |  | |  |
| All Intellectual Property created in performing this Activity vests in You.  You grant a Licence, and We accept the Licence over the Activity Intellectual Property, the Background Intellectual Property and any Third Party Intellectual Property, to the extent that the Licence is needed to allow Us to enjoy the full benefit of the Activity and this Agreement.  You will make available at no fee all or part of the Intellectual Property the subject of the Licence in such manner and at such time as We request. | *This clause is the default position for agreements involving intellectual property.* | | S-63 |
| All Intellectual Property created in performing this Activity vests in Us.  We grant a Licence, and You accept that Licence over the Activity Intellectual Property and the Background Intellectual Property and any Third Party Intellectual Property, subject to Our ability to grant the Licence of Third Party Intellectual Property, to the extent that the Licence is needed to allow You to enjoy the full benefit of the Activity and this Agreement.  You will make available at no fee all or part of the Intellectual Property the subject of the Licence in such manner and at such time as We request. | *This clause vests intellectual property in the Department. It reverses the default position set out in the clause above.*  *This clause should only be used in accordance with the* [*Whole of Victorian Government Intellectual Property Policy*](http://www.vic.gov.au/IPpolicy/wp-content/uploads/2012/08/Intellectual-Property-Policy-Intent-and-Principles-20-August-2012.pdf)*. The Policy provides that a licence or ownership of IP created under funding should not be secured by the State unless there is a stated purpose for doing so, and then only to the minimum extent necessary to achieve that purpose. For further information contact your Legal office. Further information on the Whole of Victorian Government Intellectual Property policy can be found on the DTF website.* | | S-64 |
| You warrant to Us that any Intellectual Property provided by You to Us and embodied or used by You in connection with the Activity is either Your sole property or is Third Party Intellectual Property that You are legally entitled to use for the purpose of the Activity in a manner consistent with absolute ownership.  You will obtain all consents needed for any Licence granted under this Agreement, including in relation to any moral rights.  You indemnify and will keep indemnified Us against any action, claim, suit or demand arising out of, connected with, or in respect of any breach of a third party’s rights in relation to any Intellectual Property.  The rights and obligations in this Agreement in relation to Intellectual Property continue to apply after the end of this Agreement. | *This clause is mandatory for all agreements where intellectual property is generated as part of the Activity.* | | S-65 |
| FOR USE IN PART B: ADDITIONAL TERMS AND CONDITIONS, *CLAUSE 13* (CONT.) | | | |
| Intellectual Property (cont.) |  |  | |
| Intellectual Property - Indigenous Cultural Knowledge | *You must select one clause from this category if the Activity is related to Aboriginal Affairs.* |  | |
| The License does not extend to intellectual property which is based on, or related to, Aboriginal cultural knowledge, except by prior agreement between Us and You, acting in consultation with the Office of Aboriginal Affairs Victoria. | *Select this clause for all Indigenous organisations, or if the Activity is related to Aboriginal Affairs.*  *Relevant for* ***Local Government*** *if required.* | S-89 | |
| Interpretation |  |  | |
| In this Agreement, unless it specifically states differently:   1. the plural includes any singular and vice versa; 2. a reference to a statute, ordinance, code or other law includes subordinate legislation, consolidations, amendments, re-enactments, and replacements of it; 3. “including” and “includes” when introducing an example, does not limit the meaning to that example or examples of that kind; 4. headings are inserted for readability and do not affect the interpretation of this Agreement; and 5. a reference to a person includes an entity recognised by law including a body politic, and incorporated and unincorporated bodies. | *For use by DH / DHS / DEECD.* | S-80 | |
| Joint and Several Liability |  |  | |
| If You are a partnership, joint venture or consortium of two or more persons, all such persons are liable both individually and as a group to Us for the full performance of this Agreement. | *For use by DH / DHS / DEECD.* | S-31 | |
| Maximum Amount |  |  | |
| You agree that We do not have any obligation to provide any funding to You other than the Funding. | *Use when there is a risk of the Organisation believing funding to be flexible, recurrent or likely to be increased.* | S-33 | |
| No Agency or representation |  |  | |
| Nothing in this Agreement creates any joint venture, partnership, employment or agency relationship between the parties, and neither party has authority to incur any liability or make any representation on behalf of the other. | *Use this when there is an unacceptable risk to the Department that this Agreement creates a partnership between the Department and the Organisation.* | S-34 | |
| FOR USE IN PART B: ADDITIONAL TERMS AND CONDITIONS, *CLAUSE 13* (CONT.) | | | |
| Notices |  | |  |
| A party giving notice, seeking consent or giving consent under this Agreement must do so in writing and provide it to the other party’s Representative by hand delivery, pre-paid post, email or facsimile transmission.  The parties agree that a notice will be taken to be received by the other party:   1. if hand delivered, on delivery; 2. if sent by pre-paid post, 3 Business Days after the date of posting unless it is received earlier; 3. if transmitted electronically and, in the case of facsimile, the sender has a transmission confirmation report showing an error-free transmission, or, in the case of email, the sender’s computer does not report that the message has not been delivered: 4. if transmitted before 5.00pm on a Business Day, on the day it was transmitted; 5. if transmitted after 5.00pm on a Business Day, on the Business Day next following the day of transmission. | *Use this for higher risk Activities which require the exact conditions of Notices to be set in advance.* | | S-36 |
| Our Consent |  | |  |
| When You seek Our consent under this Agreement, You will provide any information or documentation requested by Us. If We grant Our consent subject to any terms and conditions, You agree to comply with those terms and conditions. | *For use with any clauses which require written agreement for “Consent”.* | | S-37 |
| Policies |  | |  |
| You must comply with the expectations of the Victorian Anti-doping Policy 2009 which requires strict adherence with the anti-doping policies and rules established for Your sport(s) as approved by the Australian Sports Anti-Doping Authority. Anti-doping policies and rules are available on the Australian Sports Anti-Doping Authority website and through National Sport Organisations and International Federations. Ignorance of Australia's anti-doping rules is not an excuse from an alleged anti-doping rule violation, and shall not be deemed grounds for mitigation of a breach of this Agreement. | *Use this for relevant Sporting Activities.* | | S-40 |
| FOR USE IN PART B: ADDITIONAL TERMS AND CONDITIONS, *CLAUSE 13* (CONT.) | | | |
| Policies (cont.) |  | |  |
| We are committed to promoting the Victorian Code of Conduct for Community Sport (VCCCS), and expect that the VCCCS will be actively promoted and adhered to by all sporting associations, clubs and other organisations that receive Funding from Us.  For the purposes of this clause:   1. ‘Breach of the VCCCS’ includes any conduct which We, in Our discretion, reasonably believe is, or may lead to, a contravention of the VCCCS including conduct in any way connected with the Activity. 2. ‘Related Entities’ means Your members, affiliates, and all other persons in Your sport over whom You can influence, control, or in relation to whose conduct You set rules, standards or guidelines. 3. ‘Timely Notice’ means giving written notice to Us as soon as practicable and within seven days. 4. ‘Unresolved Breach’ means a Breach of the VCCCS or a complaint of a Breach of the VCCCS, that has not been, or is not being, investigated, assessed or resolved at the appropriate level in accordance with the VCCCS. 5. You agree to actively promote the VCCCS in Your sport and to all Related Entities. 6. You agree to take all reasonable steps to ensure compliance with the VCCCS by You and all Related Entities. 7. You agree to provide Timely Notice of any Unresolved Breach by You or Related Entities of which You become aware.   We may suspend or withhold payments under this Agreement in whole or in part if You or Related Entities refuse or fail to resolve a Breach of the VCCCS or an Unresolved Breach to Our satisfaction. | *Select for community sports organisations.* | | S-88 |
| Under the *Working with Children Act 2005* people engaging in “child-related work” must apply for and pass the Working with Children (WWC) Check. The Organisation (its staff and volunteers) must meet all requirements of the WWC Check that are relevant to this Activity. | *Use this for child-related Activities.* | | S-81 |
| FOR USE IN PART B: ADDITIONAL TERMS AND CONDITIONS, *CLAUSE 13* (CONT.) | | | |
| Priority |  | |  |
| If there is a conflict or inconsistency between:   1. the terms and conditions set out in Parts A and B of this Agreement; and 2. any attachments to this Agreement,   then the terms and conditions set out in Parts A and B of this Agreement take precedence to the extent of the conflict or inconsistency. | *Use this if the Attachments are inconsistent with the rest of the Agreement.* | | S-41 |
| Privacy |  | |  |
| You agree to comply with and be bound by:   1. the information privacy principles contained in the Privacy and Data Protection Act 2014 (Vic); and 2. the health privacy principles contained in the Health Records Act 2001 (Vic); and 3. any applicable code of practice under those Acts,   with respect to Your conduct for the purposes of this Agreement in the same way and to the same extent as We would have been bound in respect of that conduct had it been engaged in by Us.  The rights and obligations in this Agreement in relation to information and health privacy continue to apply after the end of this Agreement. | *Use this for specific Health Activities.* | | S-43 |
| Recordkeeping |  | |  |
| In addition to Item 6, Records You are required to keep are:  [#] | *Use to set additional requirements for recordkeeping.* | | S-44 |
| You must maintain and manage records as specified by the Department and in accordance with any Applicable Departmental Policy. You must retain records for a period of seven (7) years after the termination or expiry of the Agreement or the completion of the Activity (whichever is the earlier). | *Use to set appropriate recordkeeping requirements. Applicable Departmental Policies must be made available.*  *Local Government are bound by their own recordkeeping requirements as a tier of government. If additional recordkeeping is required, please ensure that it is not already covered in Local Government requirements.* | | S-66 |
| FOR USE IN PART B: ADDITIONAL TERMS AND CONDITIONS, *CLAUSE 13* (CONT.) | | | |
| Recordkeeping (cont.) |  | |  |
| In this Agreement, “Records” means all hard copy and electronic documents that are created, acquired, maintained or used by You in relation to the Funding, the Activity and this Agreement, and includes records You must keep in accordance with clause 5.  You agree to provide access to, and copies of, all Records at any time to:   1. Us or a third party authorised by Us (including without limitation, any other person authorised by Us exercising rights under the *Freedom of Information Act 1982* (Vic) or any other laws that apply to the Records); and 2. the Victorian Auditor General or Ombudsman, if requested.   The rights and obligations in this Agreement in relation to Records continue to apply after the end of this Agreement. | *Use for outsourced Government Activities which require a particularly strong recordkeeping regime.* | | S-45 |
| You must make, keep and dispose of all Records in accordance with the *Public Records Act 1973* (Vic) and its standards, and as directed by Us.  You agree that We have full legal rights to and own all Records, and that You will transfer all Records to the Us when the Activity is completed. | *Use for outsourced Government Activities which require a particularly strong recordkeeping regime as outlined under the Public Records Act 1973 (Vic).* | | S-46 |
| FOR USE IN PART B: ADDITIONAL TERMS AND CONDITIONS, *CLAUSE 13* (CONT.) | | | |
| Representatives |  | |  |
| A party’s representative (Representative) has authority to receive notices for that party under this Agreement and, and in Your case accept any direction from Us in relation to an Activity.  As at the Start Date:  Our Representative is:  Name:  Position:  Telephone: Fax:  Email:  Address:  Your Representative is:  Name:  Position:  Telephone: Fax:  Email:  Address:  A party may appoint new Representatives at any time by notifying the other party in writing. | *Use this clause to include the names of particular representatives in the Agreement.* | | S-49 |
| Standards and Permits |  | |  |
| You will:   1. obtain and maintain any accreditation or registration required by law for the delivery of the Activity, or that We request in writing; and 2. comply with the Standards listed in any attachment to this Agreement. | *Use for Activities which require specific standards, accreditation or registration. If this clause is used, ensure that the correct Attachments are joined to the Agreement.* | | S-51 |
| FOR USE IN PART B: ADDITIONAL TERMS AND CONDITIONS, *CLAUSE 13* (CONT.) | | | |
| Standards and Permits (cont.) |  | |  |
| In this Agreement, “Standards” include:   1. if You are registered under the *Children Youth and Families Act 2005* (Vic), any performance standards made under that Act; 2. if You are registered under the *Disability Act 2006* (Vic), any performance standards made under that Act; and 3. any standards developed or endorsed by Us. | *Use for specific Health Activities.* | | S-52 |
| Funding of an Activity does not constitute a permit from Us or from Local Government Authorities. You are responsible for obtaining all necessary permits required in relation to the Activity including but not limited to the following:   1. Any planning permits that are required 2. Any building permits that are required 3. Any heritage approvals that are required | *Use for infrastructure Activities which will require the funding recipient to obtain permits before the Activity can commence.* | | S-87 |
| Tax Requirements and Definitions |  | |  |
| If You:   1. are required by law to be registered for GST, You warrant that You are registered for GST. 2. cease to be registered for GST, You will notify Us in writing within 5 Business Days. 3. become required by law to be registered for GST, You will register for GST and notify Us in writing within 5 Business Days of registration. | *Use this clause for all Agreements which do not have a Recipient Created Tax Invoice (RCTI) arrangement.* | | S-67 |
| The parties agree:   1. to enter into a recipient created tax invoice (RCTI) arrangement; 2. We can issue tax invoices in respect of the supplies by You to Us under this Agreement; 3. You will not issue tax invoices in respect of the supplies by You to Us under this Agreement; 4. You acknowledge and warrant that You are registered for GST when You enter into this Agreement; and 5. if You cease to be registered for GST, You will notify Us in writing within 5 Business Days.   If this RCTI arrangement is unable to be implemented or ceases, You will issue invoices in respect of the supplies by You to Us under this Agreement. | *Use this clause for all Agreements which have a Recipient Created Tax Invoice (RCTI) arrangement.* | | S-68 |
| FOR USE IN PART B: ADDITIONAL TERMS AND CONDITIONS, *CLAUSE 13* (CONT.) | | | |
| Tax Requirements and Definitions (cont.) |  | |  |
| In this Agreement, italicised words or expressions have the same meaning as set out in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).  If GST is payable on a supply by You to Us under this Agreement, We will pay You an amount equal to the GST payable on the taxable supply.  We are registered for GST and agree to notify You if We cease to be registered. | *Use this clause for Agreements that require terms defined under the A New Tax System (Goods and Services Tax) Act 1999 (Cth).*  *Do not use if your system does not allow for italicised words.* | | S-70 |
| If You are not registered for GST or GST is not payable on the supply of the Activity by You under this Agreement, both parties agree to a recipient created invoice (RCI) arrangement under this Agreement whereby:   1. We can issue an invoice in respect of a supply made to Us of goods or services provided by You under this Agreement; 2. We will issue a copy of each invoice to You and retain the original; 3. You will not issue invoices in respect of supplies of goods or services Us under this Agreement.   If for any reason the arrangement in this clause is unable to be implemented or ceases, You must give Us an invoice in respect of any supply made to Us by You in connection with the Agreement prior to any payment of Funding to You. | *Use this clause for Agreements which do not use a Recipient Created Tax Invoice (RCTI) arrangement, but where the Department wishes to issue an invoice for the Organisation for the Funding, i.e. a Recipient Created Invoice (RCI). For more information, contact your legal section.* | | S-85 |
| FOR USE IN PART B: ADDITIONAL TERMS AND CONDITIONS, *CLAUSE 13* (CONT.) | | | |
| Tax Requirements and Definitions (cont.) |  | |  |
| If you are registered for GST, the parties agree:   1. to enter into a recipient created tax invoice (RCTI) arrangement; 2. We can issue tax invoices in respect of the supplies by You to Us under this Agreement; 3. You will not issue tax invoices in respect of the supplies by You to Us under this Agreement; 4. You acknowledge and warrant that You are registered for GST when You enter into this Agreement; and 5. if You cease to be registered for GST, You will notify Us in writing within 5 Business Days.   If this RCTI arrangement is unable to be implemented or ceases, You will issue invoices in respect of the supplies by You to Us under this Agreement.  Or  If You are not registered for GST or GST is not payable on the supply of the Activity by You under this Agreement, both parties agree to a recipient created invoice (RCI) arrangement under this Agreement whereby:  We can issue an invoice in respect of a supply made to Us of goods or services provided by You under this Agreement;  We will issue a copy of each invoice to You and retain the original;  You will not issue invoices in respect of supplies of goods or services Us under this Agreement.  If for any reason the arrangement in this clause is unable to be implemented or ceases, You must give Us an invoice in respect of any supply made to Us by You in connection with the Agreement prior to any payment of Funding to You. | *Use this clause when recipients may or may not be registered for GST and a combination of Recipient Created Tax Invoice (RCTI) and Recipient Created Invoice (RCI) need to be generated.* | | S-85A |
| FOR USE IN PART B: ADDITIONAL TERMS AND CONDITIONS, *CLAUSE 13* (CONT.) | | | |
| Termination |  | |  |
| We may terminate this Agreement immediately by giving written notice to You if We reasonably believe that:  You have not complied, or will not be able to comply, with Your obligations under this Agreement after receiving notice from Us requesting rectification of Your non-compliance or inability to comply with this Agreement;  You are, or will be, unable to pay Your debts as and when they fall due;  in Our reasonable opinion, Our continued association with You may be detrimental to Our reputation.  If this Agreement is terminated, You will, upon request by Us:  immediately repay any Funding:   1. that remains unspent as at the date of termination; and 2. You have not used in accordance with this Agreement.   transfer to Us, or person authorised by Us, any Records that We require.  The rights and obligations in this Agreement in relation to termination and repayment of Funding continue to apply after the end of this Agreement. | *Use this clause for outsourced Government Activities.* | | S-60 |
| We may terminate this Agreement at any time before the end of the term with or without a reason by giving You ten (10) Business Days’ notice in writing of its intention to terminate this Agreement, after which these terms and conditions are at an end. | *Use this clause if your risk assessment determines that the Department would benefit from the right to terminate the Agreement without reason.* | | S-78 |
| If either of the parties to this Agreement fails to carry out any of its obligations or duties under this Agreement, the party not in breach may by notice to the party in breach specify the breach and request that the breach be remedied within ten (10) Business Days after receipt of such notice.  If the defaulting party fails to remedy the breach within ten (10) Business Days, the non-defaulting party may terminate this Agreement forthwith. | *Use this clause to set the results of any breach of the Agreement, including the right to terminate the Agreement. If used, you also need to use the “Notices” clause.* | | S-79 |
| Variation |  | |  |
| This Agreement may be varied only if both parties agree in writing to the variation. | *Use this clause if your risk assessment determines that the Department requires written agreement for any variation to the Agreement.* | | S-62 |
| FOR USE IN PART B: ADDITIONAL TERMS AND CONDITIONS, *CLAUSE 13* (CONT.) | | | |
| Waiver |  | |  |
| No waiver of any right of a party to this Agreement will be effective unless it is in writing and signed by that party. A single or partial exercise or waiver of a right under this Agreement does not prevent any other exercise of that right or the exercise of any other right. | *Use this clause to ensure any rights can only be waivered in writing.* | | S-84 |

# Short Form Alternative Execution – Recipient Signature Block

|  |  |  |
| --- | --- | --- |
| **Guidance note:** If you are using the Short Form with a person i.e. funding to an individual, you can use an alternative Execution clause that seeks signature from the Recipient and their witness, replacing the default Execution clause that seeks a signature from two authorised representatives of a funded organisation.  Differences between the default and alternative option for the Execution clause are limited to the shaded block the Recipient completes. No other changes apply.  If you need assistance with embedding this alternative Execution clause in your Agreement template please contact the Office for the Community Sector by email at [cfaproject@dhs.vic.gov.au](mailto:cfaproject@dhs.vic.gov.au) or telephone on 9096 1239. FOR USE IN EXECUTION CLAUSE | | |
| Funded individuals signature block | *Use if the Agreement is for an individual person receiving Funding.* |  | |

SIGNED by the RECIPIENT:

**Recipient to complete this section**

Name of Recipient <Name>

Sign here: ..................................................................... Date: <DD/MM/YYYY>

**Witness** <Name>

Sign here: ..................................................................... Date: : <DD/MM/YYYY>

*End of document.*

