

## 1 DEFINITIONS AND INTERPRETATION

In this Agreement, capitalised words have the meaning given in the Details section, unless otherwise defined below.

## 2 SPONSORSHIP OF ACTIVITY

- (a) You will pay the Sponsorship Contribution in accordance with this Agreement.
- (b) We will:
- (i) plan, organise and undertake the Activity in accordance with this Agreement; and
- (ii) provide the Package as specified in the Details.
- (c) We may extend, by not longer than the Permitted Extension Period, any date for completion of a Milestone.

## 3 ACTIVITY PLANNING, PROMOTION AND OPERATION

- (a) We will plan, organise and implement the Activity.
- (b) We will acknowledge you as a sponsor in communications and media concerning the Activity as specified in the Package.
- (c) We will market and promote the Activity in our absolute discretion.
- (d) You must obtain our prior written consent in relation to the form of any printed or electronic materials that you propose to release publicly which refers to us or the Activity and/or uses our or the Victorian Government's name or logo.
- (e) Our acceptance of your sponsorship does not constitute endorsement of you, your products or services, and should not be represented as such in any manner.
- (f) You will ensure that all work carried out by you in the course of the Activity complies with environmental laws and, as far as possible, minimises environmental impacts.
- (g) You warrant that you have the power to enter into and observe the obligations of this Agreement without contravention of any other legal rights or obligations.
- (h) You must ensure that all your business activities are conducted in a professional manner and:
- (i) in a manner that ensures the safety of persons and property; and in accordance with all laws, codes and standards, including occupational, health and safety laws and standards, the [Code of Conduct for Victorian Public Sector Employees 2015](#) (if relevant), environmental laws and notices from the Environment Protection Authority or other regulatory body.
- (i) You must use your best endeavours to have systems, equipment and/or procedures in place to minimise environmental impacts and immediately rectify any breach of any standard or procedure to our satisfaction.
- (j) You must ensure that any information or representation provided by you about your environmental practices in any application document relating to the Activity is accurate and you comply with any such practices in the performance of this Agreement.
- (k) You must not do or fail to do anything that may damage or bring into disrepute, or attract public or media attention which may be detrimental to, our or the Victorian Government's reputation or messages.

## 4 CHANGES TO THE ACTIVITY

We reserve the right to make any changes to the time, schedule, dates, venue, presenters and the general plan of the Activity as we consider necessary. Any such changes do not affect your obligations in this Agreement.

## 5 CANCELLATION AND/OR POSTPONEMENT OF ACTIVITY

- (a) We reserve the right to cancel, postpone or reschedule the Activity by notifying you within 30 days of the date of the Activity.
- (b) Where we cancel the Activity and do not reschedule, we will refund any Sponsorship Contribution paid by you.
- (c) Where we postpone and reschedule the Activity, any Sponsorship Contribution paid by you at the postponement date will be credited towards the rescheduled date.
- (d) Subject to paragraph (b) above, where you are unable to attend the Activity or any activity to which a Sponsorship Contribution has been paid for any reason, you forfeit all Sponsorship Contribution paid and are not eligible for any further credit for future activities in respect of a Sponsorship Contribution already paid.

## 6 INVOICING AND PAYMENT

### 6.1 Submission of invoice

- (a) We will submit to you a tax invoice:
- (i) within 30 days from completion of each Milestone; and
- (ii) for the relevant Milestone Amount.
- (b) You will pay all invoiced amounts which comply with clause 6.1(a) and are not in dispute, within 30 days of receipt of the invoice.

### 6.2 Interest on overdue amounts

- (a) You will, on demand by us, pay simple interest on a daily basis on any overdue amount, at the rate for the time being fixed under section 2 of the *Penalty Interest Rates Act 1983* (Vic).
- (b) For the purpose of clause 6.2(a) **overdue amount** means an amount (or part) not in dispute, due and owing under a valid tax invoice and outstanding for more than 30 days from the date of receipt of the invoice or the date the amount was no longer disputed, as the case may be.

## 7 GST

- (a) In this clause 7, additional defined terms have the meanings given to them in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- (b) Unless otherwise specified, the consideration specified in this Agreement excludes any amount for GST.
- (c) If a Supply under this Agreement is subject to GST, the Party paying for the Supply must pay to the Party making the Supply (**supplier**) an additional amount equal to the amount payable multiplied by the applicable GST rate (**additional amount**).
- (d) The additional amount is payable at the same time as the consideration for the Supply is payable or to be provided, subject to receipt of a Tax Invoice from the supplier in relation to the Supply.
- (e) If the additional amount differs from the amount of GST payable by the supplier, the Parties must adjust the additional amount.
- (f) If a Party is entitled to be reimbursed or indemnified under this Agreement, the amount to be reimbursed or indemnified excludes any amount for GST for which the Party is entitled to an Input Tax Credit.

## 8 INSURANCE

The Parties will maintain such insurances as are reasonable and prudent for their respective responsibilities and obligations in this Agreement.

## 9 LIABILITY AND INDEMNITIES

### 9.1 Your liability and indemnity to us

- (a) You indemnify us, our employees, agents and officers (**Indemnified Parties**) and hold us and each of them harmless against any liability and any other loss, damage (including reputational damage), claim, action or expense (including legal expense) (**Loss**) incurred or suffered by any of them in connection with the Agreement or the Activity which arises from or in connection with:
- (i) any breach of this Agreement or any representation or warranty contained in this Agreement, whether express or implied by you; or
- (ii) any claim, action, demand, or proceeding by a third party against an SV Indemnified Party caused or contributed to by you, your employees, agents or officers.
- (b) Your liability under clause 9.1(a) to an SV Indemnified Party will be reduced to the extent that any negligent act or omission or wilful misconduct by that SV Indemnified Party directly caused the relevant Loss.
- (c) Our liability under or in connection with this Agreement is limited in aggregate to an amount equal to the total Milestone Amounts payable to us under this Agreement.
- (d) The liability under this clause to an Indemnified Party will be reduced to the extent that any negligent act or omission or wilful misconduct by that Indemnified Party directly caused the relevant Loss.

## 10 CONFIDENTIALITY

- (a) Subject to this clause 10, each Party must keep information of the other Party which, by its nature is or is described by the other Party to be confidential (**Confidential Information**), confidential at all times, and must not, without the other Party's written consent:
- (i) disclose any Confidential Information to any person; or
- (ii) use or allow any person to use any Confidential Information for any purpose other than the performance of this Agreement.
- (b) A Party may disclose Confidential Information of the other Party to: the extent required by law or in connection with legal proceedings; and its professional advisers for purposes connected to this Agreement.
- (c) We may disclose your Confidential Information for public accountability purposes or to comply with any reporting obligation.
- (d) Each Party consents to the other Party publishing or making available information in relation to the Parties or the Activity as may be required by the Auditor-General, to comply with the *Freedom of Information Act 1982* (Vic) or otherwise by law.

## 11 PRIVACY AND DATA PROTECTION

- (a) For the purposes of this clause 11, **Personal Information** and **public sector data** have the meanings given to them in the *Privacy and Data Protection Act 2014* (Vic) (**Privacy Act**).
- (b) Each Party must, and must procure that their employees, agents, officers and subcontractors comply with:
- (i) the Information Privacy Principles set out in the Privacy Act;
- (ii) any privacy statement issued by us from time to time (as published on our website);
- (iii) protective data security standards (including the Victorian Protective Data Security Framework established under Part 4 of the Privacy Act); and
- (iv) any other applicable laws, principles, policies and codes dealing with the collection, holding, use, disclosure, storage, management, transfer or granting of access rights to Personal Information and public sector data,
- in relation to any Personal Information and public sector data collected, held, used, managed, disclosed, transferred or stored in relation to this Agreement and in the same way and to the same extent as we would have been bound had the relevant act been done by us (where applicable).

## 12 INTELLECTUAL PROPERTY

### 12.1 Definition

In this clause 12:

- (a) **Intellectual Property** includes patents, know-how, copyright, designs, semiconductor or circuit layout rights, trade marks, trade secrets, data, Confidential Information, business or company names and other proprietary rights or any right to registration of such rights, whether created before or after the date of this Agreement and whether protected under common law or statute.

### 12.2 Your warranty

- (a) You warrant to us that you have all necessary rights and consents (including any necessary consents to infringe moral rights) in relation to any Intellectual Property provided by you to us for the purposes of the Activity.
- (b) Ownership of Intellectual Property
- (c) The Parties acknowledge that:
- (i) our Intellectual Property remains our property at all times; and
- (ii) your Intellectual Property remains your property at all times.
- (d) We may use or exploit your Intellectual Property provided by you to us for the purposes of the Activity, including your name, logo and endorsement, for any purpose consistent with the Activity and You grant to us a worldwide, irrevocable, non-exclusive, royalty-free, perpetual licence to use, reproduce, modify or otherwise exploit your Intellectual Property for those purposes, including the right to sub-license such rights. For the avoidance of doubt, this includes without limitation use on our websites.

### 12.3 Indemnity by you

You indemnify, and must at all times keep us indemnified, against any Loss arising out of or in connection with any infringement or alleged infringement by you or us of the Intellectual Property rights of any third person relating to any Intellectual Property provided by you to us for the purposes of the Activity.

## 13 CONFLICT OF INTEREST

- (a) You must not, and must ensure your employees, agents and contractors do not, hold any office or property, be involved in any business, trade or calling, or have any obligations under any contract whereby, directly or indirectly, duties or interests are or might be created (or appear to be created) in conflict with your duties and interests under this Agreement.
- (b) You must promptly notify us of any matter which may give rise to a breach of clause 13(a).

## 14 TERMINATION

Definition

- (a) For the purposes of this clause 14(1)(a), **Change in Control** means, for a corporation or company, a change in control of the composition of the board of directors of the corporation; more than half the voting rights attaching to shares in the corporation; or more than half the issued shares of the corporation (not counting any share which carries no right to participate beyond a specified amount in the distribution of either profit or capital), and that in our opinion, has a potentially detrimental impact on your ability to perform the Agreement.

### 14.2 Grounds for termination

- (a) Without disadvantage to any other rights we may have, we may terminate this Agreement immediately or on a specified date by issuing a notice to you if:
- (i) you become insolvent, go into liquidation, are wound up, dissolved, commit an act of bankruptcy or enter into a scheme of arrangement with any creditor;
- (ii) you appoint, or are appointed, an administrator or receiver;
- (iii) any of your officers is found guilty of breaking any law;
- (iv) you provide any false or misleading information to us;
- (v) you fail to pay any Milestone Amount to us by the due date for payment;
- (vi) you commit a material breach of any of your obligations under this Agreement and;
- (A) the material breach is not capable of remedy; or
- (B) the material breach is not remedied by you within five days of being notified of the material breach by us;
- (vii) you breach clause 3(h)3(h), 10, 11 or 13;
- (viii) you undergo a Change in Control without our prior written approval; or
- (ix) you do anything which brings your, our or the Victorian Government's reputation into disrepute and as a consequence, in our opinion, our continued association with you will, or may, be detrimental to our or the Victorian Government's reputation or messages, including offering us or our employees or Board members a gift, benefit or hospitality.

### 14.3 Termination for convenience

- (a) Despite any other term of this Agreement, we may terminate this Agreement upon 30 days' written notice to you.

### 14.4 Payments on termination

- (a) If we terminate this Agreement under clause 14.2, we will refund to you the Milestone Amounts paid less any amount we are entitled to deduct or withhold under this Agreement, including the reasonable and unavoidable direct costs we incurred in the performance of the Activity and/or under any indemnity.

- (b) We are not liable to compensate or otherwise pay to you or any subcontractor any money that may have been incurred due to termination of this Agreement for any reason.

## 15 FORCE MAJEURE

- (a) Force Majeure Event means an event or circumstances beyond the reasonable control of a Party, not caused or contributed to by the Party affected, including an act of nature, an industrial dispute that is not specifically directed at the Party; a war, declared or undeclared; a blockade, revolution, riot, insurrection, civil commotion, sabotage; or a pandemic.
- (b) If we are unable to carry out any obligation under this Agreement due to a Force Majeure Event, we will use all reasonable diligence to remove the Force Majeure Event as quickly as possible, and use our best endeavours to resume performance in accordance with this Agreement. Our obligations which we cannot perform due to the Force Majeure Event shall be suspended as far as they are affected by the Force Majeure Event subject to this clause regarding Activity restoration. Should we not be able to restore the Activity within three (3) months from the Force Majeure Event, we may terminate this Agreement.
- (c) We are not liable to you for any Loss of any kind suffered by you as a result of a Force Majeure Event.
- (d) You accept the risk of all Losses however incurred resulting from a Force Majeure Event or any other delay or disruption in the progress of the Activity under this Agreement. You shall not be entitled to any financial compensation of any kind or to recover any Losses suffered or incurred by you in respect of a Force Majeure Event.

## 16 ASSIGNMENT AND SUBCONTRACTING

- (a) We may at any time assign, novate or subcontract any or all of our rights and obligations under this Agreement.
- (b) You must not assign, novate or subcontract this Agreement (or any rights or obligations under it) without our prior written consent, which we may withhold or give subject to conditions.

## 17 GENERAL

- (a) This Agreement contains the entire agreement between the Parties as to its subject matter.
- (b) The relationship between the Parties under this Agreement does not constitute a partnership, agency, joint venture or any form of fiduciary relationship or contract of employment.
- (c) Waiver of any provision of or right under this Agreement must be in writing signed by the Party entitled to the benefit of the provision or right being waived.
- (d) This Agreement may only be varied by written agreement signed by both Parties.
- (e) Clauses 3(d), 9, 10, 11 and 12, and any other clause that by its nature is intended to survive termination, survive expiry or termination of this Agreement.
- (f) You warrant to us that you have the power to enter into and perform the obligations of this Agreement without breaching any other legal rights or obligations.
- (g) All notices, approvals, consents or other communications under this Agreement must be provided in writing to the other Party's Representative.
- (h) This Agreement may be executed in counterparts.
- (i) This Agreement is governed by the laws of Victoria, and each Party submits to the exclusive jurisdiction of the courts of Victoria.