

VICTORIAN COMMON FUNDING AGREEMENT

Short Form

Lynne Kosky Memorial VCAL Grant

PART A: Terms and Conditions

1. Start Date and End Date

The Activity must start by the date on which You receive payment of the Funding (the Start Date) and be completed by 31 December (the End Date) in 2021.

2. Amount of Funding:

We will provide **\$6,250 (includes GST)** to You in 2021.

3. Purpose of Funding

The Funding is provided to enable You to perform the Activity described in Your Application by the End Date to Our reasonable satisfaction. By signing this Agreement, you agree to use the Funding solely to perform the Activity described in Your Application by the End Date to Our reasonable satisfaction and within the timeframe specified.

4. Reporting and record-keeping requirements (see also clause 16 regarding records):

To meet Your reporting requirements, You must, within 4 weeks of successfully completing the Activity, submit and send to Us a Report in the form and which includes the information specified by Us.

You must:

- a. keep accurate records, including all receipts and tax invoices, in relation to the Activity and for everything You purchase with the Funding in accordance with the requirements set out in Part B, if any; and
- b. provide access to, and copies of, the records at any time to Us or a third party authorised by Us.

5. Use of Funding

You must:

- a. use the Funding only for the Activity and in accordance with this Agreement or as otherwise agreed in writing by Us;
- b. comply with all applicable laws and departmental policies in connection with the Funding, the Activity or this Agreement; and
- c. follow Our reasonable directions in connection with the Funding, the Activity or this Agreement.

6. Matters requiring urgent notification from Recipient

You must let Us know in writing within 5 Business Days from when You become aware if:

- a. You no longer meet the eligibility requirements for the Funding, if any;
- b. there is an actual or perceived conflict of interest that may impact on Your ability to deliver the Activity;
- c. You will not complete the Activity; or
- d. You will not spend the total amount of the Funding.

7. Matters requiring Authority consent

You need Our written consent to:

- a. use any of the Funding for anything other than the Activity or in any way that is not in accordance with this Agreement;
- b. change the Deliverables/Milestones, Start Date or End Date of the Activity; or

- c. change the reporting requirements.

8. Repayment of Funding

You agree to repay all or part of the Funding in accordance with any written request from Us to do so if there is unspent Funding at the completion of the Activity or if You do not use the Funding in accordance with this Agreement.

9. Acknowledgement of Funding

You will acknowledge any Funding support provided by Us, on behalf of the State of Victoria, as specified in any applicable policy for Government schools by the Department of Education and Training, Catholic schools by the Catholic Education Commission of Victoria, and Independent schools by Independent Schools of Victoria.

Unless a recipient created tax invoice (RCTI) arrangement is in place, You will submit an invoice to Us that complies with tax legislation (including *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*) for each Deliverable/Milestone that is linked to a payment. Invoice arrangements are described at Part B of this Agreement.

10. Survival of clauses

Clauses 4, 5, 8, 9, 10, 14, 15, 16, 17, 18, 19 and, if they apply, 20 and 21, continue to apply after the end of this Agreement.

PART B: Additional Conditions

11. Interpretation

In this Agreement:

“Activity” means the activity that the Funding will be used for, as described in the Recipient’s Application.

“Application” means the Recipient’s application for Funding, as lodged with the Authority.

“Authority” means the Victorian Curriculum and Assessment Authority, a statutory corporation under the *Education and Training Reform Act 2006 (Vic)*.

“Business Day” means any day other than Saturday, Sunday or a public holiday.

“Funding” means the amount of money referred to in clause 2.

“Our”, “Us” and “We” means the Authority.

“Recipient” means the party receiving Funding from the Authority under this Agreement.

“You” and “Your” means the Recipient.

In this Agreement, unless it specifically states differently:

- a. the plural includes any singular and vice versa;
- b. a reference to a statute, ordinance, code or other law includes subordinate legislation, consolidations, amendments, re-enactments, and replacements of it;
- c. “including” and “includes” when introducing an example, does not limit the meaning to that example or examples of that kind;
- d. headings are inserted for readability and do not affect the interpretation of this Agreement; and
- e. a reference to a person includes an entity recognised by law including a body politic, and incorporated and unincorporated bodies.

12. Priority:

If there is a conflict or inconsistency between:

- a. the terms and conditions set out in Parts A and B of this Agreement; and
- b. 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.

13. Tax Requirements and Definitions:

In this clause 13, 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.

The parties agree:

- a. to enter into a *recipient created tax invoice* (RCTI) arrangement;
- b. We can issue tax invoices in respect of the supplies by You to Us under this Agreement;
- c. You will not issue tax invoices in respect of the supplies by You to Us under this Agreement;
- d. You acknowledge and warrant that You are registered for GST when You enter into this Agreement; and
- e. 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.

14. Confidentiality:

If We give You information and:

- a. tell you that it is confidential; or
- b. by the nature of the information or the circumstances in which it is given, it may reasonably be 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.

15. Intellectual Property:

For the purposes of this Agreement:

- a. "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.
- b. "Background Intellectual Property" means the Intellectual Property of a party which was either created:
 - i. before the Start Date; or
 - ii. independently of this Agreement,and all improvements to such Intellectual Property by the party.
- c. "Intellectual Property" includes all copyright and neighbouring rights (including rights in relation to all documents, reports, charts, drawings, data bases, software, source codes, models, systems, slides, tapes and specifications), all copyright and all rights in relation to inventions (including registered and registrable patents), registered and unregistered trademarks, registered and unregistered designs, circuit layouts, and know-how, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.
- d. "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.
- e. "Third Party Intellectual Property" means any Intellectual Property owned or created by a third party.

All Intellectual Property created in performing this Activity vests in You.

You grant Us 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.

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 Us and will keep Us indemnified 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.

16. Recordkeeping – general:

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 4.

You agree to provide access to, and copies of, all Records at any time to:

- a. 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
- b. the Victorian Auditor General or Ombudsman, if requested.

17. Privacy:

You agree to comply with and be bound by:

- a. the information privacy principles contained in the *Privacy and Data Protection Act 2014 (Vic)*; and
- b. the health privacy principles contained in the *Health Records Act 2001 (Vic)*; and
- c. 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.

18. Termination:

We may terminate this Agreement immediately by giving written notice to You if We reasonably believe that:

- a. 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;
- b. You are, or will be, unable to pay your debts as and when they fall due;
- c. 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:

- a. immediately repay any Funding:
 - i. that remains unspent as at the date of termination; and
 - ii. You have not used in accordance with this Agreement.
- b. transfer to Us, or person authorised by Us, any Records that We require.

19. VMIA and Risk Management

Clauses 20 and 21 apply only in respect of a Provider that is not a school or other form of provider owned and conducted by the State of Victoria. In relation to a Provider which is a school or other form of provider owned and conducted by the State of Victoria, both parties acknowledge and agree that clauses 20 and 21 of this Agreement will not apply as it is the recommendation of Victorian Managed Insurance Authority (VMIA) that it is unnecessary for VMIA clients, when dealing with each other, to require any indemnity or insurance clauses.

20. Indemnity:

You indemnify Us against all Liability We may incur in respect of any Claim including Claims relating to:

- c. loss of or damage to property;
- d. death or personal injury;
- e. a breach of any third party's Intellectual Property rights;
- f. a breach of privacy law, and
- g. a breach of Your recordkeeping obligations,

arising in any manner in connection with:

- h. Your breach of this Agreement or any law; or
- i. 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 the Authority.

For the purposes of this clause:

- a. 'Liability' includes all costs, damages, expenses and losses of any kind;
- b. 'Claim' includes all claims, demands, rights, actions, suits or proceedings of any kind.

21. Insurance:

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:

- a. public liability cover for at least \$20,000,000 for any one occurrence;
- b. professional indemnity cover for at least \$5,000,000 for any one claim, unless We specifically waive this requirement in writing;
- c. if the Activity includes the provision of goods, product liability cover for at least \$20,000,000.

The insurance must be taken out with:

- a. An insurer authorised under the *Insurance Act 1973* (Cth); or
- b. an insurer approved in writing by the Authority.

You must provide Us with certificates of currency as proof of currency of insurance upon Our written request.

22. Variation:

This Agreement may be varied only if both parties agree in writing to the variation.

23. 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.

24. Assignment and Subcontracting:

You must not assign or subcontract Your rights or obligations under this Agreement without Our consent.

25. 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.

26. 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.

27. 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 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:

- a. if hand delivered, on delivery;
- b. if sent by pre-paid post, 3 Business Days after the date of posting unless it is received earlier;
- c. 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:
 - i. if transmitted before 5.00pm on a Business Day, on the day it was transmitted; or
 - ii. if transmitted after 5.00pm on a Business Day, on the Business Day next following the day of transmission.

28. 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:

- a. fail to comply satisfactorily with the reporting requirements set out in this Agreement, as required;
- b. misappropriate or misuse the funding payment in any way;
- c. refuse to provide any information as may be required under this Agreement;
- d. knowingly accept the payment in the knowledge that You cannot meet one or more of the conditions of this Agreement; or
- e. fail to advise US during the duration of the Activity in line with the notification requirements of this agreement.

Executed as an agreement

Signed for and on behalf of)
The Victorian Curriculum and Assessment)
Authority ABN 82 628 957 617 by an)
authorised person in the presence of:)

[print name of VCAA authorised officer]

[signature of VCAA authorised officer]

[print name of witness]

[signature of witness]

Date

Signed for and on behalf of the **Fund**
Recipient by an authorised person in the
presence of:

[print name of authorised officer]

)
)
)
)
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[signature of authorised officer]

[print name of witness]

[signature of witness]

Date

