



National Heart Foundation
of Australia
ABN 98 008 419 761

For heart health information
visit heartfoundation.org.au

This draft agreement is provided for reference purposes only and does not constitute a binding offer or create any legal obligations.

The terms and conditions set out in this example are illustrative and may be amended, supplemented, replaced, or otherwise varied by the Heart Foundation at its sole discretion.

Applicants should not rely on this example as representing the final or definitive terms that will apply to any grant funding arrangement.

Applicants are required to keep this document confidential.

Schedule 1 - Terms & Conditions

1. Term

- a. This Agreement commences on the date of execution of this Agreement by all parties and continues in full force and effect until completion of the Project, unless terminated earlier in accordance with this Agreement.

2. Project

- a. The Grantee and Council agree that they will conduct and deliver the Project with professional skill and care accordance with **Annexure A, Annexure C, Annexure D** and this Agreement.

3. Reporting requirements

- a. The Grantee and, where relevant, Council will provide all reasonable assistance and information as required by the Heart Foundation, including any additional reports in the manner or form directed by the Heart Foundation.
- b. The Grantee and Council grant the Heart Foundation access to any premises where the Project is being performed to monitor compliance with this Agreement.

4. Funding

- a. The Heart Foundation will pay the Funds, exclusive of goods and services tax (**GST**), to the Grantee as a once-off payment within a reasonable time after this Agreement is executed by all parties. If the Grantee is not registered for GST, it must notify the Heart Foundation in writing.
- b. The Grantee remains solely responsible for applying the Funds to the Project in accordance with this Agreement, irrespective of any support, assistance or involvement by Council in relation to the delivery of the Project.
- c. If the Heart Foundation determines that any Funds have been spent, used or committed other than for the Project or in accordance with this Agreement, it may immediately terminate this Agreement and seek repayment of all or part of the Funds under clause 14.
- d. The Grantee is responsible for all cost overruns and applicable taxes, duties and government charges relating to the Project.
- e. The Grantee must keep full and accurate records of Fund expenditure and Project progress, and provide information about the receipt, use and application of the Funds within 14 days of the Heart Foundation's written request.
- f. Where relevant, the parties must comply with *A New Tax System (Goods and Services Tax) Act 1999* (Cth) for supplies under this Agreement.

5. Intellectual property

- a. For the purposes of this clause f:
- i. **Intellectual Property** includes any:
 1. copyright;
 2. design, patent, trademark, semiconductor, circuit layout or plant breeder rights (whether registered, unregistered or applied for);
 3. trade, business, company, or domain name; and
 4. know-how, inventions, processes, confidential information (whether in writing or recorded in any form);
 and any other proprietary, licence or personal rights arising from intellectual activity in the business, industrial, scientific or artistic fields, including all rights to apply for, register or renew any of the above.
 - ii. **Background IP** means any other Intellectual Property that a party has offered to contribute as

Background IP for the purposes of this Agreement, and, for the avoidance of doubt, does not include any Intellectual Property created as a result of or in the course of the performance of this Agreement or the name, logo or other identifying mark of either party.

- b. All Intellectual Property created by the Grantee or Council as a result of or in the course of the performance of this Agreement, including conducting the Project (**Material**), either solely or jointly with others, vests in the party that created it, or jointly where created jointly.
- c. The Grantee and Council each grant the Heart Foundation a permanent, irrevocable, royalty-free, worldwide, sub-licensable, non-exclusive licence to use, adapt, modify and communicate the Material for any purpose the Heart Foundation considers appropriate at its discretion.
- d. Clause **fError! Reference source not found.** does not affect the ownership of Background IP contributed by a party for the purposes of this Agreement, but each party grants to the other party a permanent, irrevocable, royalty-free, world-wide licence to use any such Background IP only for the purposes as specified in this Agreement and, where Background IP is incorporated into the Material, to the extent necessary to exploit the Material.
- e. The Grantee and Council each warrant that the performance of this Agreement will not infringe any Intellectual Property belonging to any third party and that they have obtained all necessary consents and waivers of moral rights from authors, participants and contributors.
- f. The Grantee and Council each severally indemnify the Heart Foundation and its employees, directors, officers, committee members, honoraries, research fellows, servants, agents, volunteers, contractors and subcontractors (**Personnel**), against any claims, losses, liabilities and legal costs arising directly or indirectly from any allegation of or actual infringement of third party Intellectual Property rights caused or contributed to by that party or its Personnel.

6. Media and Publicity

- a. The Grantee and Council must obtain the Heart Foundation's approval before publishing any media or publicity about the Funds or Project.
- b. If selected for Heart Foundation media opportunities, the relevant party must use best endeavours to be available and participate promptly.
- c. The Heart Foundation may use photographs or images submitted in reports for social media and marketing. The Grantee and Council must ensure featured individuals have consented to that ongoing use.

7. Use of Heart Foundation logo

- a. The Heart Foundation permits the Grantee and Council to use the Heart Foundation's logos or marks in Annexure B (**Heart Foundation Mark**) solely for Project marketing and advertising, provided that:
 - i. the Heart Foundation gives prior written approval, subject to any reasonable conditions; and
 - ii. the Grantee and Council comply with any relevant specifications and reasonable written terms.

8. Acknowledgement of Funding

- a. The Grantee and Council must, unless otherwise notified in writing by the Heart Foundation, acknowledge the Heart Foundation's funding in all

signage, promotional material, communications and media exposure regarding the Project during the Term of this Agreement.

- b. The acknowledgement will be in the form of a statement approved by the Heart Foundation.

9. General Obligations

- a. The Grantee, Council and their respective Personnel must perform their obligations under or associated with this Agreement in accordance with all relevant statutes, laws, rules, regulations, proclamations, orders in council, ordinances, by-laws or statutory instruments (including, but not limited to: orders, directions, guidelines or standards with legislative force), whether in force now or during the term of this Agreement and where relevant to the performance of the Project, including but not limited to applicable legislation and regulations governing work health and safety.
- b. The Grantee and Council agree to comply with any direction or instruction imposed by the Heart Foundation in relation to the Project, including compliance with any policy or procedure notified and made available to them.
- c. Where the Project involves the creation, installation, construction, purchase or improvement of any physical asset or tangible item, the Grantee and Council must ensure that appropriate written arrangements are in place for the ongoing ownership, repair, maintenance, safety and lawful use of that asset or item after completion of the Project and termination of this Agreement. Those arrangements must identify the party or person responsible for those ongoing obligations, having regard to the nature of the asset or item and the ownership, occupation, management or control of the land or premises on which it is located. For the avoidance of doubt, the Heart Foundation has no responsibility or liability for any such asset or item, including its ownership, operation, repair, maintenance, safety, access or lawful use.

10. Indemnity

- a. Each party must at all times indemnify (**Indemnifying Party**) the other party and its Personnel (**Those Indemnified**) from and against all loss, damage (excluding consequential losses), liability, cost or expense including legal expenses on a solicitor and own client basis (**Loss**), whatsoever incurred or suffered by Those Indemnified or arising from any claim, suit, demand, action or proceeding by any person against any of Those Indemnified to the extent that such Loss was caused or contributed to in any way by any accidental, wilfully wrongful, unlawful or negligent act or omission of the Indemnifying Party, or its Personnel in performing and carrying out its obligations set out in this Agreement, including breach of this Agreement.
- b. The liability of the Indemnifying Party in this clause to indemnify Those Indemnified will reduce proportionally to the extent that any fault of any of Those Indemnified contributed to the relevant Loss.
- c. The Indemnifying Party acknowledges and agrees that the benefit of the indemnities in this clause to Those Indemnified's Personnel is held on trust by Those Indemnified.
- d. To the fullest extent permitted by law, the total aggregate liability of the Heart Foundation to the Grantee and/or Council under or in connection with this Agreement in respect of all Loss, damages, and claims is limited to the amount of the Funds.

- e. Neither party is liable for any indirect, special or consequential loss (including loss of profit, opportunity or reputation).

11. Insurance

- a. Each party must, at its own expense, maintain with a reputable insurer authorised under the *Insurance Act 1973* (Cth) adequate insurance for the Term, and professional indemnity insurance for 7 years after expiration or termination, covering its obligations under this Agreement, including:
 - i. public and products liability insurance;
 - ii. workers compensation and, where required, employer's liability insurance;
 - iii. professional indemnity insurance; and
 - iv. any other insurance agreed for the Project's activities and risks.
- b. Notwithstanding clause 11(a), if elected by Council and permitted under Council's applicable insurance policies, the Grantee may be covered under Council's insurance policies in respect of the Project, provided that Council gives the Heart Foundation written notice of that coverage and, on request, provides evidence reasonably satisfactory to the Heart Foundation that such coverage is in place and remains current for the Term.
- c. On request, each party must provide certificates of currency to the other party within a reasonable time.

12. Confidentiality Obligations

- a. Each party (each a **Receiving Party**, as relevant) acknowledges that information disclosed to it by the other party (**Provider**) under this Agreement is proprietary, confidential or a trade secret of the Provider.
- b. Except as stated in this Agreement, the Receiving Party must not and must not permit any of its officers, employees, agents, contractors, or related entities to use or disclose to any person any information disclosed to it by the Provider under this Agreement, without the prior written consent of the Provider.
- c. The above provisions do not apply to any information which:
 - i. is generally available to the public (other than as a result of the wrongful disclosure by the Receiving Party); or
 - ii. is required to be disclosed by law.

13. Termination

- a. Subject to clauses 13Error! Reference source not found., 13Error! Reference source not found. and 13d, this Agreement continues for the Term.
- b. The Heart Foundation may terminate this Agreement at any time by giving not less than 30 days' notice to the Grantee and Council. This Agreement will terminate upon the expiration of the notice period.
- c. Any party may terminate this Agreement at any time during the Term by written notice to the other parties if another party:
 - i. commits or allows to be committed a breach of any provision of this Agreement which is capable of remedy and the other party fails to rectify the breach within 30 days after receipt of written notice from the party specifying the nature of the breach and requiring the other party in default to remedy the breach;
 - ii. commits or allows to be committed a breach of any provision of this Agreement which is not capable of remedy;

- iii. repeatedly breaches any provision of this Agreement in which case notice to rectify the breach or breaches is not required; or
 - iv. is insolvent, becomes bankrupt, has entered into any form of administration, receivership or liquidation, whether voluntary or involuntary, formal or otherwise or does not pay its debts as and when they fall due.
- d. In addition to any other express right of termination granted to a party under this Agreement, the Heart Foundation may terminate this Agreement by giving notice with immediate effect:
- i. where, in the opinion of the Heart Foundation, the name, goodwill, reputation or interest of the Heart Foundation is at risk;
 - ii. where the Heart Foundation knows or suspects that the Grantee, Council or their respective Personnel:
 - a. have or attempted to engaged in conduct which has dishonestly obtained a benefit or caused a loss by deception or other means;
 - b. provided false or misleading statements in relation to the Project; or
 - c. have engaged in an illegal or corrupt practice.

14. Consequences of termination

- a. On expiration or termination, the Grantee and Council must:
 - i. stop using, publishing and distributing the Heart Foundation Mark and any material containing it; and
 - ii. destroy all items bearing the Heart Foundation Mark or suggesting a relationship with the Heart Foundation.
- b. If the Grantee or Council breaches clause 6 or 7, it must, at the Heart Foundation's request, issue corrective advertising and stop further printing of the material.
- c. If this Agreement is terminated under clauses 13b, 13c or 13d, the Grantee must repay the Funds in full within 14 days, whether or not any Funds have been spent.
- d. Subject to clause 14c, no further Funds are payable after expiration or termination.
- e. Termination does not affect any accrued rights or claims for breach of this Agreement.

15. Dispute Resolution – Parties

- a. A party raising a dispute arising out of or relating to this Agreement (**Dispute**) must give the other parties written notice outlining the issues and preferred resolution.
- b. Within 10 days after notice is given, the parties must meet, physically or virtually, and attempt to resolve the Dispute.
- c. If the Dispute is not resolved within 7 days after notice is given (**First Period**), it is submitted to mediation in Melbourne, Victoria, Australia or by video conference under the Institute of Arbitrators and Mediators Australia Mediation and Conciliation Rules, as amended by this clause 15 and subject to any inconsistency with this clause.
- d. If the parties have not agreed the mediator and remuneration within 7 days after the First Period:

- i. the mediator is the person appointed by; and
 - ii. the mediator's remuneration is the amount or rate determined by the Chair of the Victorian Chapter of the Institute of Arbitrators and Mediators Australia (**Principal Appointor**) or nominee, at any party's request.
- e. The parties share the mediator's remuneration equally and each pays its own mediation costs.
 - f. This clause 15 does not prevent any party from seeking urgent injunctive, declaratory or interlocutory relief from a court.

16. Privacy

- a. When dealing with personal information, as defined in the *Privacy Act 1988* (Cth), the Grantee and Council each agree to:
 - i. to comply with the requirements of the *Privacy Act 1988* (Cth) and any other law or regulation applicable to the use, collection and disclosure of personal information;
 - ii. not to do anything which, if done by the Heart Foundation, would be a breach of the *Privacy Act 1988* (Cth);
 - iii. ensure its Personnel are aware of the requirements of the *Privacy Act 1988* (Cth) and its obligations under this clause;
 - iv. not to transfer or send any personal information outside of Australia without the Heart Foundation's prior written approval, which may be withheld or subject to any conditions;
 - v. immediately notify the Heart Foundation if it becomes aware of an actual or possible breach of this clause.

17. Conflict of Interest and Fraud

- a. The Grantee and Council each warrant that, to their knowledge at the date of this Agreement, neither they nor their Personnel have any actual, perceived or potential conflict of interest, or have engaged in fraud, in relation to the Project.
- b. During the Term, the Grantee and Council must promptly notify the Heart Foundation of any actual or suspected fraud, actual, perceived or potential conflict, or material change to a disclosed conflict, and take any steps the Heart Foundation requires.

18. General

- a. Electronic Counterparts: The parties may exchange and receive this Agreement and related information electronically. Signed scanned copies and electronic signatures are binding as originals.
- b. Variations & Assignment:
 - i. Any amendment or variation is effective only if in writing and signed by the parties.
 - ii. The Grantee and Council must not assign, novate or transfer this Agreement without the Heart Foundation's prior written consent. The Heart Foundation may assign or novate it to a related body corporate or business successor without consent.
- c. Other Benefits: This Agreement gives the parties only the benefits expressly stated in it.
- d. No Partnership: Nothing in this Agreement creates a partnership, agency, trust, joint venture, employment or representative relationship between the parties.
- e. Subcontracting:
 - i. The Grantee and Council must not subcontract any obligation without the Heart Foundation's prior written consent, which may be withheld in its sole discretion.

- ii. If consent is given under clause 18(e)(i), the relevant party remains responsible for its contractors' acts and omissions.
- f. Entire agreement: This Agreement is the entire agreement between the parties on its subject matter and supersedes all prior agreements or understandings about it.
- g. Legal advice: Each party warrants that, before entering into this Agreement, it has read and understood this Agreement and its obligations under it, and has obtained, or had a reasonable opportunity to obtain, independent legal advice in relation to this Agreement.
- h. Survival: Clauses 4(c), 5, 6, 9(c), 10, 11, 12 and 14 survive termination or expiry of this Agreement together with any other term which by its nature is intended to do so.
- i. Jurisdiction: This Agreement is governed by the laws of Victoria, and each party submits to the non-exclusive jurisdiction of the courts of Victoria and the Commonwealth of Australia.

