



Justice

The Crown in Right of the State of New South Wales
acting through the
Department of Justice, Victims Services NSW

AND

Victims of Crime Assistance League Inc NSW (VOCAL)

Funding Deed of Agreement

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Funding Deed of Agreement

Parties

The Crown in Right of the State of New South Wales acting through the Department of Justice, Victims Services NSW, ABN 64 782 244 502 of 160 Marsden Street, Parramatta, NSW 2150 ('the Department')

And

Victims of Crime Assistance League Inc NSW, ABN 99 422 394 085 of 432 Hunter Street, Newcastle 2300 ('the Provider')

Background

1. The Victims of Crime Assistance League Inc (VOCAL) is an integrated criminal justice and social welfare response to victims of crime and non-offending affected others. (hereafter 'victims of crime') The VOCAL Victim Support Unit - Hunter provides support, advice and referrals to victims of crime, specifically to:
 - 1.1 Provide information, support and a referral service to victims of crime in the Hunter region.
 - 1.2 Provide information, support and advocacy to victims of crime and protective parents leaving family violence and entering the Family Law and Child protection systems.
2. The Department funds the Provider to provide support to victims of crime in the Hunter region. The Provider contributes to the overall objectives of the Department by:
 - 2.1 Providing support to victims of crime, including alcohol- related crimes and/or anti-social behaviour.
 - 2.2 Providing assistance and referral advice to Victims Services for counselling and financial assistance, and any Charter matters.
 - 2.3 Providing support and assistance to victims of crime regarding a police investigation, or decision not to investigate.
 - 2.4 Providing court preparation and/or support to victims of crime, including pre-trial, trial, sentencing, appeals and restorative justice processes.
 - 2.5 Providing assistance and support to victims of crime who wish to prepare a Victim Impact Statement (may include delivering the statement on behalf of the victim).
 - 2.6 Providing support and assistance to victims of crime in following the relevant complaints processes when lodging a complaint about a service or service provider.
 - 2.7 Providing victims of crime with advice and assistance with the media.
 - 2.8 Providing victims of crime with advocacy when dealing with the Parole Authority and Mental Health Tribunals.

- 2.9 Providing community education and training to service providers and victims of crime in the Hunter region.
- 2.10 Facilitating positive working relationships with relevant agencies to promote the rights of victims of crime and improve their access to local services.

Operative Provisions

1. Interpretation

1.1 Definitions

In this Agreement except where a contrary intention appears:

Agreement means this Deed of Agreement and includes all Schedules, attachments and annexures.

Attachment means an attachment to this agreement.

Authorisation means an approval, consent, declaration, exemption, notarisation, licence, permit, certificate, waiver or other authorisation, however described, required by any law.

Authorised Representative means any authorised representative of the Party, as the context requires.

Authority means any:

- (a) government, government department or government agency;
- (b) governmental, semi-governmental or judicial person (including the Department carrying out any statutory authority or function); or
- (c) other person (whether autonomous or not) who is charged with the administration of a law.

Business Plan means a proposal designed by the Provider and approved by the Department outlining, amongst other things, how the Provider will provide, monitor and report upon the Provider's provision of services pursuant to the Agreement.

Change of Control means, in relation to a body corporate or entity (the body) where:

- (a) an entity that controls the body ceases to control the body; or
- (b) an entity that does not control the body comes to control the body.

No Change of Control occurs if:

- (c) the entity that ceases to control the body under paragraph (a) was, immediately beforehand, a wholly-owned subsidiary of a body corporate that controls the body; or
- (d) the entity that comes to control the body under paragraph (b) is, immediately afterward, a wholly-owned subsidiary of a body corporate that previously controlled and continues to control the body.

Change of Management means the appointment, resignation or termination of the General Manager, Chief Executive Officer or an analogous position.

Claim includes any claim, action, demand, proceeding, judgment or order however arising, whether at law or in equity and including:

- (e) under or in connection with this Agreement or any other contract, deed or agreement;
- (f) by statute;
- (g) in tort for negligence or otherwise, including negligent misrepresentations;
- (h) in restitution for unjust enrichment;

and includes any notice, order, demand or other official requirement of any Authority.

Commencement Date means the date specified in Item 1 of Schedule 1 (Agreement Details).

Confidential Information of a Party means any written or oral information of a technical, business or financial nature disclosed to the Provider by the Department (whether orally or in writing), whether before or after the Commencement Date, that:

- (i) is by its nature confidential; or
- (j) is designated as confidential; or
- (k) the Provider knows or ought to know is confidential,

but does not include information which:

- (l) is or becomes public knowledge other than by breach of this Agreement; or
- (m) is in the lawful possession of the Provider without restriction in relation to disclosure before the date of receipt of the information; or
- (n) is required to be disclosed by law, government policy or legal process.

Conflict of Interest means a situation where the exercise of a person's duty or decision-making is influenced, or may appear to be influenced, by his or her personal interests.

Consequential loss means any:

- (a) special damages;
- (b) indirect, or incidental damages; or
- (c) damages that could not have been reasonably supposed to have been in the contemplation of the Parties at the date of the Agreement,

but does not include general damages or any damages that may occur due to a negligent misrepresentation or fraud of a Party.

Control means control as provided in section 50AA of the *Corporations Act 2001* (Cth) except that, in addition, an entity controls a second entity if the first entity would be taken to control the second entity but for subsection 50AA(4).

CPI means the Consumer Price Index (all Capitals) published from time to time by the Australian Bureau of Statistics.

Default Notice means a notice given by the Department under clause 15 ('Default by Provider').

Department Representative means the person appointed as Department Representative under clause 28 ('Representatives of the Parties') and specified in Schedule 1 (Agreement Details).

Event of Default means any event specified in clause 15.1 ('Event of Default').

Extension means the extension period or periods specified in Schedule 1 (Agreement Details).

Force Majeure Event means, without limiting its generality, any of the following events or occurrences:

- (d) acts of God, including fire, tidal wave, cyclone, earthquake, landslide, mudslide;
- (e) war, revolution or other state of armed hostility of a like nature;
- (f) insurrection, an act of terrorism, civil disturbances or riot;
- (g) collisions or accidents which constitutes a major catastrophe, an example being an aircraft crash; or
- (h) statewide or national industrial disputation that prevents delivery of the Services.

Funding means the funding to be provided by the Department to the Provider on the terms of this Agreement.

GIPA Act means the *Government Information (Public Access) Act 2009* (NSW) and includes its Regulation.

Government and Departmental Policies means the policies of the New South Wales State Government and the Department as notified by the Department.

GST Law means *A New Tax System (Goods and Services Tax) Act 1999* (Cth), related legislation and any delegated legislation.

Insolvency Event with respect to the Provider means:

- (i) insolvency as defined under section 95A of the *Corporations Act 2001* (Cth);
- (j) a winding up order being made;
- (k) an application being made to a court for an order for its winding up;
- (l) an application being made to a court for an order to appoint a controller, administrator, receiver and manager, provisional liquidator or liquidator or analogous person to the Provider or any of the Provider's property, or an appointment of the kind referred to in this paragraph is made (whether or not following a resolution or application);
- (m) the holder of a security interest, or any agent on its behalf, taking possession of any of the Provider's property;
- (n) the process of any Court or Authority being invoked against the Provider or any of its property to enforce any judgment or order for the payment of money or the recovery of any property;
- (o) the Provider failing to comply with a statutory demand under section 459F(1) of the *Corporations Act 2001* (Cth);
- (p) the Provider;

- (i) suspending payment of its debts, ceasing (or threatening to cease) to carry on all or a material part of its business, stating that it is unable to pay its debts or being or becoming otherwise insolvent; or
- (ii) being taken by applicable Law to be (or if a court would be entitled or required to presume that the person is) unable to pay its debts or otherwise insolvent.

Intellectual Property Rights includes patent, knowhow, copyright, design, semi-conductor or circuit layout rights, trademark, trade, business or company names or other proprietary rights and any rights to registration of such rights, whether created before or after the Commencement Date, in Australia or elsewhere.

Key Performance Indicators or **KPIs** means those indicators specified in Schedule 6 (Key Performance Indicators).

Loss means any loss, cost, expense or liability, but does not include Consequential Loss, indirect loss, loss of profit, loss of revenue and damages for loss of opportunity.

Moral Rights means the rights of integrity of authorship and the right not to have authorship falsely attributed, as defined by the *Copyright Act 1968* (Cth) and rights of similar nature anywhere in the world, whether in existence before or after the Commencement date.

Party means a party to this Agreement.

Personal Information means personal information as defined in the *Privacy and Personal Information Protection Act 1998* (NSW), being information or an opinion (including information or an opinion forming part of a database and whether or not recorded in a material form) about an individual whose identity is apparent or can reasonably be ascertained from the information or opinion.

Privacy Legislation means the *Privacy and Personal Information Protection Act 1998* (NSW), *Health Records and Information Privacy Act 2002* (NSW) and the *Privacy Act 1988* (Cth) and includes any directions, regulations, codes of practice and principles made under these Acts.

Provider Representative means the person specified as such in Schedule 1 (Agreement Details) and as notified in writing by the Provider from time to time.

Referrer means any agency, body, or person who makes a referral of a matter to VOCAL's Victim Support Unit – Hunter.

Reports means the reports to be submitted by the Provider as set out in clause 22 ('Reports') and as further specified in Schedule 5 (Service Delivery Specifications).

Schedule means a schedule to this Agreement.

Serious Incident is an incident which significantly affects the operations or routine or may disrupt or threaten to disrupt the good order of the Services, harms or threatens to harm the safety of any individual or has the potential to embarrass the Department or attract media attention.

Serious Misconduct means conduct including, but not limited to, corruption that could result in the dismissal of a member of the Provider's Staff.

Services means the services to be performed by the Provider under this Agreement and as further specified in Schedule 5 (Service Delivery Specifications).

Service Delivery Specifications means the objectives and performance standards, including the specific service requirements in relation to the provision of the Services, as contained in Schedule 5 (Service Delivery Specifications).

Specified Purpose means the specified purpose of the Funding as set out in Schedule 1 (Agreement Details).

Staff means the employees of the Department or Provider, as the context requires.

Term means the duration of the Agreement as specified in Schedule 1 (Agreement Details), or the date on which this Agreement is terminated, whichever occurs first and includes any applicable period of Extension.

Unexpended Funding means Funding paid to the Provider under this Agreement that is unspent at the end of the Term and includes Funding that is committed but unspent.

Work Health and Safety Law or Work Health and Safety (WHS) means all laws, regulations and codes pertaining to health and safety in the workplace including but not limited to the *Work Health and Safety Act 2011* (NSW) and the *Work Health and Safety Regulation 2011*.

Worker means a worker as defined in the *Work Health and Safety Act 2011* (NSW).

VOCAL's Victim Support Unit - Hunter means Victims of Crime Assistance League Inc.'s Victim Support Unit, which provides support to victims of crime.

VOCAL Chief Executive Officer means the Chief Executive Officer for the VOCAL's Victims Support Unit.

VSF means The Victims Support Fund, and is an integrated criminal justice and social welfare response to support victims of crime.

1.2 Construction

In this Agreement, except where a contrary intention appears, the following rules apply:

- (a) **Headings.** The table of contents and headings in this Agreement are for convenience only and do not affect the interpretation of this Agreement.
- (b) **Definitions.** If a word or phrase is defined, cognate words and phrases have corresponding definitions.
- (c) **Legislation.** A reference to legislation (including subordinate legislation) is a reference to that legislation as amended, consolidated, re-enacted or replaced, and includes any subordinate legislation issued under it.
- (d) **Singular.** A reference to a word or expression in the singular form includes a reference to the word or expression in the plural form and vice versa.
- (e) **Persons.** References to 'person' or 'persons' will be taken to include any natural or legal person.
- (f) **Groups.** A reference to a group or groups is a reference to all of them collectively and to any two or more of them collectively and to each of them individually.
- (g) **Gender.** A reference to a gender includes a reference to other genders and each of them.

- (h) **Day, month and year.** References to day refer to a calendar day, references to 'month' refer to a calendar month, and a reference to a 'year' is a reference to a calendar year.
- (i) **Business Day.** References to 'Business Day' refer to a week day, excluding days which are gazetted as a public holiday in the State of New South Wales.
- (j) **Public Holiday.** References to 'Public Holiday' mean any day which is gazetted a public holiday in the State of New South Wales.
- (k) **Monetary amounts.** Money references are references to Australian currency.
- (l) **Time limits.** Where any time limit under this Agreement falls on a Saturday, Sunday or Public Holiday in the State of New South Wales then that time limit will be deemed to have expired on the next Business Day.
- (m) **Rules of construction.** No rule of construction operates to the detriment of a Party only because that Party was responsible for the preparation of this Agreement or any part of it.
- (n) **Joint obligations.** Where a person is comprised of more than one person, each obligation of the person will bind those persons jointly and severally and will be enforceable against them jointly and severally.
- (o) **Actions by the Department.** Where there is a reference to the doing of anything by the Department including giving notice, consent, direction or waiver, this may be done by any duly appointed officer, which includes an Authorised Representative of the Department.
- (p) **Reasonableness.** Any requirement for the Department to act reasonably in the performance of this Agreement means a requirement to act reasonably in its own best interests
- (q) **Reconstitution of a party.** A reference to a person which has ceased to exist or has been reconstituted, amalgamated or merged, or other functions of which have become exercisable by any other person or body in its place, shall be taken to refer to the person or body established or constituted in its place by which its said functions have become exercisable.

2. Term

2.1 Term of the Agreement

This Agreement commences on the Commencement Date specified in Schedule 1 (Agreement Details) and, subject to this Agreement will continue for the Term unless terminated earlier.

2.2 Extension period

- (a) The Department, at its sole discretion, may extend the Term of this Deed for a further period or periods as set out in Item 2 of Schedule 1 (Agreement Details), which will commence immediately following the end of the initial term or any existing extension period.
- (b) The Department must exercise its option to extend the Term by giving at least thirty (30) days' notice in writing prior to the end of the term of the Agreement or such further time agreed by the Parties.

- (c) By agreement in writing the Parties may vary the period of the Extension options in Item 2 of Schedule 1 (Agreement Details), provided that the total period of all extensions does not exceed the Extension.

3. Funding

3.1 Funding

The Department will provide Funding to the Provider for the Specified Purpose set out in Schedule 1 (Agreement Details), in accordance with this Agreement.

3.2 Fixed Funding

The Funding will be fixed at six hundred thousand dollars (\$600,000.00) excluding GST from the Commencement Date for the period of one year only.

If the first year extension is agreed to by ~~both parties~~ the Department, the funding for the First Extension Period will be fixed for an amount of six hundred thousand (\$600,000.00) excluding GST or such other amount as determined by the Department.

If the second and final year extension is agreed to by ~~both parties~~ the Department, the funding for the Second Extension Period will be fixed for an amount of six hundred thousand dollars (\$600,000.00) excluding GST or such other amount as determined by the Department.

3.3 Conditions precedent to Payment of Funding

The payment of Funding (or any part of it) under this Agreement is conditional on:

- (a) the New South Wales Parliament making all necessary appropriations;
- (b) the Provider satisfying every obligation under this Agreement to the Department's satisfaction; and
- (c) the Provider achieving the KPIs to the Department's satisfaction.

4. Use of Funding

4.1 Use of Funding

The Provider must

- (a) use the Funding solely for the Specified Purpose and in accordance with this Agreement;
- (b) not enter into any arrangement or commitment in relation to the Services that is incompatible or inconsistent with the Specified Purpose; and
- (c) only use the Funding within the Term of this Agreement.

4.2 Table of Proposed Expenditure

- (a) The Provider must use the Funding in accordance with the Table of Proposed Expenditure, unless prior written approval is granted by the Department.
- (b) The Table of Proposed Expenditure covers expenditure over one (1) year and must be complied with during that period.

- (c) Once approved by the Department, the Provider must comply with the Table throughout that year.

4.3 Repayment of Funding

- (a) If the Department reasonably determines that any part of the Funding has been spent on purposes not in accordance with the Specified Purpose or the Table of Proposed Expenditure approved by the Department, within three months of the end of financial year of the Department's request or such other timeframe as notified by the Department, the Provider must repay to the Department that part of the Funding.
- (b) Without limiting the Department's rights under this Agreement, the Department reserves the right to withhold or suspend all or any of the Funding if the Department, within its sole discretion, determines that there is significant Unexpended Funding by the Provider.
- (c) Where sub-clause (b) applies, the Provider must:
 - (i) provide an audited financial acquittal to the Department at the end of the relevant financial year, or at any other time upon reasonable notice, in the form approved by the Department; and
 - (ii) within thirty (30) days' notice or upon the earlier termination of the Agreement, repay to the Department all Unexpended Funding.

4.4 Right to withhold Funding

Without limiting the Department's rights under this Agreement, if:

- (a) the Provider fails to achieve one or more of its KPIs to the Department's satisfaction;
- (b) the Department has a reasonable basis to believe that a KPI will not be achieved; or
- (c) the Provider has not satisfied any of its other obligations under this Agreement,

the Department may, upon reasonable notice, withhold Payment of the Funding (or any part of it) until:

- (d) the Provider achieves each and every KPI to the Department's satisfaction within the period specified in the relevant notice;
- (e) the Department is otherwise satisfied that the KPI will be achieved by the Provider in accordance with this Agreement;
- (f) the Provider complies with each and every obligation under this Agreement;
- (g) all other conditions precedent to the payment of Funding are otherwise met to the Department's satisfaction; or
- (h) this Agreement is terminated by the Department.

5. Goods and Services Tax (GST)

5.1 GST wording

Words defined in the GST Law have the same meaning in clauses concerning GST, unless it is clear that a different meaning is intended.

5.2 Registered for GST

The Provider must be registered under the GST Law at the time of making any Supply under this Agreement on which GST is imposed, and proof of registration must be promptly provided upon request by the Department.

5.3 Consequences of non-registration

If the Provider is not registered under the GST Law as required under clause 5.2 (Registered for GST'), the Provider will not be entitled to receive any additional amount as provided under this clause 5 ('Goods and Services Tax').

5.4 GST gross-up

If GST is or will be imposed on a Supply made under or in connection with this Agreement, to the extent that the consideration otherwise provided for that Supply under this Agreement is not stated to include an amount in respect of GST on the Supply:

- (a) the consideration otherwise provided for that Supply under this Agreement is increased by the amount of that GST; and
- (b) the recipient must make payment of the increase as and when the consideration otherwise provided for, or relevant part of it, must be paid or provided or if the consideration has already been paid or provided, within seven (7) days of receiving a written demand from the Provider.

5.5 Tax Invoices

The right of the supplier to recover any amount of GST under this Agreement on a Supply is subject to the issuing of the relevant correctly rendered Tax Invoice or adjustment note to the recipient.

5.6 Reimbursements

- (a) If a Party has a Claim under or in connection with this Agreement for a cost on which that Party must pay an amount of GST, the Claim is for the cost plus the amount of GST.
- (b) If an amount under or in connection with this Agreement depends on actual or estimated revenue or a loss of revenue, revenue must be calculated without including any amount received or receivable as reimbursement for GST (whether or not that amount is separate or included as part of a larger amount).

5.7 If the Department pays too much

If for any reason the Department pays to the Provider an amount under this clause 5 that is more than the GST imposed on the Supply, the Provider must repay the excess to the Department on demand or the Department may set off the excess against any other amounts due.

5.8 Supply is GST exclusive

Unless otherwise indicated, all consideration for any Supply under this Agreement is exclusive of GST imposed in relation to the Supply.

6. Performance Obligations

6.1 Provision of Services

In providing the Services the Provider must comply with:

- (a) the provisions of this Agreement, including Schedule 5 (Service Delivery Specifications);
- (b) the Table of Proposed Expenditure in Schedule 21 (Table of Proposed Expenditure);
- (c) such reasonable instructions and directions from the Department Representative and/or any Authorised Representative of the Department;
- (d) any Government and Departmental Policies as notified by the Department from time to time; and
- (e) any relevant laws.

6.2 Services Standard

- (a) The Provider must perform the Services:
 - (i) safely;
 - (ii) in a diligent, careful, skilful and competent manner;
 - (iii) in accordance with the standards and level of care, skill, knowledge and judgment generally applicable to such Services;
 - (iv) in a proper and reputable manner; and
 - (v) except as otherwise expressly provided in this Agreement, entirely at the Provider's own risk.
- (b) The Provider acknowledges that the standard of delivery of the Services must be in accordance with Schedule 5 (Service Delivery Specifications), and in full satisfaction of the KPIs.

6.3 Provider's Staff

The Provider must ensure that:

- (a) only suitably qualified, trained and experienced Staff are recruited by the Provider to and carry out obligations under this Agreement; and
- (b) all staff obtain and keep current any qualifications or licences required in order for them to carry out their obligations under this Agreement.
- (c) all staff are adequately trained in victimisation and related issues to ensure the service can fulfil the agreed service levels.
- (d) Non-indigenous staff receive training in cultural awareness to ensure their competence in working with local Aboriginal communities.
- (e) staff with supervisory roles will have a sufficient level of qualifications or equivalent experience to enable them to lead best practice approaches to client service for victims of crime.
- (f) The Chief Executive Officer will determine other training requirements.

- (g) Supervision arrangements for your staff are to be determined by the Chief Executive Officer VOCAL's Victim Support Unit - Hunter.
- (h) All staff are to be made aware of their reporting requirements with respect to children and young people who may be at risk of harm.

6.4 No employee, partner or agency relationship

The Provider's Staff are not, by virtue of this Agreement, an employee, partner or agent of the Department.

7. Child Protection

7.1 Compliance with law

The Provider is responsible for:

- (a) complying with the provisions of the *Children & Young Persons (Care and Protection) Act 1998 (NSW)*, *Ombudsman Act 1974 (NSW)*, *Child Protection (Working with Children) Act 2012 (NSW)* and any other laws which applies to child protection; and
- (b) identifying its child protection responsibilities, as required by law and establishing systems for ensuring that the Provider meets its child protection responsibilities.

7.2 Working with Children Checks

- (a) According to the *Child Protection (Working with Children) Act 2012 (NSW)*, all employees engaged in child-related work must have a Working with Children Check Clearance (WWCC).
- (b) Where Staff of the Provider are engaged in child-related work under this Agreement, the Provider, as an employer, is required to verify the status of all Staff, volunteers and students before placing them in contact with children. The Provider must only commence engaging or continue to engage Staff, volunteers or students for child-related work who have the appropriate WWCC.
- (c) It is the responsibility of the Provider to maintain Records of the WWCC of all Staff, volunteers and students engaged in child-related work under this Agreement and to provide a copy of such Records to the Department.

7.3 Reporting of significant risk of harm

- (a) It is the Provider's responsibility to ensure that in providing Services under this Agreement:
 - (i) it complies with the provisions of the *Children & Young Persons (Care and Protection) Act 1998 (NSW)* to the extent that its provisions are applicable; and
 - (ii) the Department of Family and Community Services (or equivalent body) is notified immediately in the event that:

- a. a Client makes an allegation of abuse or assault against the Provider or any of its Staff, volunteers or students; and/or
 - b. where a child or young person is considered by the Provider to be at 'risk of significant harm'.
- (b) A Report must be made to the Community Services Child Protection Helpline where there is suspected 'risk of significant harm' (ROSH) as opposed to 'risk of harm' ('ROSH Report'). For Reports that do not meet the ROSH Report threshold, it is the Provider's responsibility to ensure that mandatory reporters:
- (i) identify potential responses within its own organisation; or
 - (ii) make a referral to other services to provide support to the family, including the Family Referral Service, with the consent of the family.

8. Subcontracting

8.1 Prior approval

The Provider must not subcontract the whole or any part of the Services or any obligation to be performed under this Agreement except:

- (a) with the prior written consent by the Department; and
- (b) on such conditions as advised by the Department.

8.2 Surviving liabilities

An approval to subcontract all or any part of the Provider's obligations under this clause 8 will not relieve the Provider of any of its liabilities or obligations under this Agreement.

8.3 Liability for subcontractors

Notwithstanding any approval to subcontract given by the Department under clause 8.1 ('Prior approval'), the Provider will be liable for the acts, defaults and neglect of any subcontractor or any employee or agent of the subcontractor as fully as if they were the acts, defaults or neglect of the Provider or the officers, employees or agents of the Provider.

8.4 Liability for performance of work

Notwithstanding any approval given by the Department under this clause 8, the Provider will be responsible for ensuring the suitability of a subcontractor for the work proposed to be carried out and that the work performed by the subcontractor meets the requirements of this Agreement.

8.5 Terms and conditions

The Provider must ensure that each subcontractor is aware of and bound by all of the terms and conditions of this Agreement relevant to the subcontractor's part in the performance of the Services.

8.6 No contractual relationship with subcontractors

Nothing in this Agreement creates any contractual relationship between the Department and any subcontractor or supplier to the Provider.

9. Performance Monitoring

9.1 Appraisal and monitoring

- (a) The Provider acknowledges that it will be subject to continual appraisal and monitoring of its performance against:
- (i) the KPIs set out in Schedule 6 (Key Performance Indicators);
 - (ii) the Expenditure Report in Schedule 3 (Expenditure Report); and
 - (iii) compliance with the terms of this Agreement,
- at a level determined by the Department.
- (b) The costs involved in such appraisal and monitoring will be borne by the Department except where the action or inaction of the Provider results in increased appraisal or monitoring costs to the Department, in which case the Provider will bear the increased costs.

9.2 Cooperation

The Provider must cooperate with the Department in relation to the appraisal and monitoring of the Services.

10. Acknowledgement of funding

- (a) The Provider must acknowledge the Funding provided by the Department in its annual report or equivalent publication, and in any other publication that makes reference to, or arises from, the Services.
- (b) The Provider must give the Department prior notice of announcements, launches and public events relating to the Services.
- (c) The Provider may not make any press or other announcements or releases relating to this Agreement or the Services without the prior approval of the Department (which approval will not be unreasonably withheld) unless that announcement or release is required to be made by law.
- (d) The Provider must refer all media inquiries relating to this Agreement or the Services to the Department Representative.
- (e) The Provider must comply with any relevant Government and Departmental Policy in relation to the media and the provision of media statements.

11. Warranties

11.1 General

As at the Commencement Date, the Provider:

- (a) makes the representations and warranties set out in clause 11.2 ('Provider's representations and warranties') for the benefit of the Department; and
- (b) acknowledges that the Department has entered into this Agreement relying on those representations and warranties.

11.2 Provider's representations and warranties

The Provider makes the following representations and warranties:

- (a) the Provider has the power to enter into and carry out this Agreement and observe and perform the Provider's covenants;
- (b) the Provider has taken all necessary action to authorise the entry into and the observance and performance of this Agreement;
- (c) each Authorisation required in relation to:
 - (i) the execution, delivery or observance and performance by the Provider of;
 - (ii) the validity and enforceability of; or
 - (iii) the transactions contemplated by,this Agreement has been obtained or effected and is in full force and effect;
- (d) this Agreement is valid, subject to the payment of appropriate duty, binding and enforceable in accordance with its terms;
- (e) the execution, observance and performance of this Agreement by the Provider will not violate:
 - (i) any laws binding on the Provider; or
 - (ii) any other document or agreement which is binding on the Provider;and does not and will not result in:
 - (iii) the occurrence of any Insolvency Event; or
 - (iv) anything which constitutes, or would with the giving of notice or lapse of time constitute, an event which enables a creditor of the Provider under any document or security to declare that the money secured by that document or security is immediately due and payable;
- (f) all documents or agreements to which the Provider is a Party, and all facts known or thought to be known to the Provider which are material to this Agreement and which have or might have the effect of varying this Agreement, have been disclosed to the Department; all information provided to the Department by the Provider in relation to this Agreement is true and complete in all material respects as at the Commencement Date and is not, by the omission of information or otherwise, misleading;
- (g) no litigation, arbitration, Claim, dispute or administrative proceeding is current or pending or, to the Provider's knowledge, threatened against the Provider which has not been disclosed to the Department either prior to the Commencement Date or during its currency under this Agreement and which is material to the performance of the Provider of the Services;
- (h) the Provider has obtained and relied on appropriate legal, financial and other advice as to matters specified in this Agreement; and
- (i) the Provider has no professional or contractual obligations that, as at the date of this Agreement or during the Term, will create a Conflict of Interest with its obligations to perform the Services.

11.3 Survival of Provider's representations and warranties

The Provider acknowledges that all representations and warranties given by the Provider will survive the execution of this Agreement and the expiry of the Term.

11.4 The Department's representations and warranties

The Department represents and warrants that:

- (a) each Authorisation required in relation to:
 - (i) the execution, delivery or observance and performance by the Department of;
 - (ii) the validity and enforceability of; and
 - (iii) the transactions contemplated by,this Agreement has been obtained or effected and is in full force and effect; and
- (b) this Agreement is, subject to the payment of appropriate duty, valid, binding and enforceable in accordance with its terms.

12. Indemnities

12.1 Indemnity by Provider

- (a) The Provider will indemnify and hold harmless the Department and its employees and agents from and against any Claim, Loss, damage or liability arising from any suit, action or proceeding where such loss, damage or liability was caused by any wilful, unlawful or negligent act or omission of the Provider, its employees or agents or subcontractors in the performance of obligations arising under this Agreement.
- (b) The indemnity in this clause 12 will be reduced to the extent that the Loss is caused by the neglect, fraud, dishonesty or reckless act of the Department or its Staff.

12.2 Recovery of indemnity

The Department may recover a Payment under the indemnity in this clause 12 before it makes the Payment in respect of which the indemnity is given.

12.3 Continuing obligations

The obligations of the Provider under this clause 12 will continue after the Term in respect of any occurrence prior to the termination or expiry of this Agreement.

13. Change of Control or Change of Management

- (a) The Provider must not permit a Change of Control of the Provider without the prior written consent of the Department (such consent not to be unreasonably withheld or delayed).
- (b) The Provider must advise the Department in writing immediately after it becomes aware of a Change of Management.

14. Suspension

14.1 Suspension of Services

- (a) At any time during the Term, the Department may, by written notice, require the Provider to suspend delivery of the Service, or part of the Service if:

- (i) the Provider has failed, or in the Department's reasonable opinion, is likely to fail, to deliver the Services in accordance with this Agreement;
 - (ii) the Provider has committed an Event of Default and notice has been given to the Provider by the Department under clause 15.1 (Event of Default); or
 - (iii) The Provider or its officer, board member, employee, member, volunteer, subcontractor, representative, or agent has breached, or is suspected to have breached any law material to the Service or its obligations under this Agreement.
- (b) The Provider must suspend delivery of all or part of the Services at the request of the Department under clause 14.1(a) in the time frame advised by the Department.
 - (c) The Provider agrees that the Department may fund a third party to deliver all or part of the Services that have been suspended under clause this clause 14.1.

14.2 Suspension of Funding

The Provider acknowledges that the Department may reduce any payments due under this Agreement to reflect the suspension of all or part of the Services under clause 14.1 ('Suspension of Services').

15. Default by Provider

15.1 Event of Default

Each of the following will constitute an Event of Default on the part of the Provider:

- (a) any failure to perform or comply with any material obligation under this Agreement;
- (b) materially failing to comply with the Service Delivery Specifications;
- (c) an Insolvency Event affecting the Provider occurs; or
- (d) where the Provider assigns its rights and/or obligations, or novates this Agreement or subcontracts the Agreement, except in accordance with this Agreement.

15.2 Default Notice

- (a) If an Event of Default occurs, the Department may give the Provider a Default Notice.
- (b) On receipt of a Default Notice the Provider must remedy the defect within the time specified in that notice.
- (c) If the Provider does not remedy the defect within that time frame, this constitutes an Event of Default.

15.3 Immediate Termination for cause by Department

- (a) The Department may terminate this Agreement by notice in writing to the Provider if:
 - (i) the Provider has failed to remedy an Event of Default that is capable of being remedied within the time specified in the Default Notice and the

Provider has failed to satisfy the Department on being required to show cause that termination is not warranted;

- (ii) an Event of Default that is not capable of remedy has occurred and the Provider has failed to satisfy the Department on being required to show cause that termination is not warranted;
 - (iii) the Provider repeatedly commits or permits the commission of Events of Default, whether or not the Provider has been issued with a Default Notice in respect of each Event of Default and has not satisfied the Department or been required to show cause that termination is not warranted;
 - (iv) where proceedings or investigations are commenced or threatened by the Independent Commission Against Corruption or similar public body against the Provider;
 - (v) the Provider commits or acts or does anything that is contrary to prevailing community standards, or is otherwise regarded by the Department as unacceptable or which brings the reputation of the Provider and/or the Department into disrepute and, as a consequence, the Department believes that its continued association with the Provider will be prejudicial or otherwise detrimental to the reputation of the Department;
 - (vi) where, in the Department's opinion a Conflict of Interest exists for the Provider that prevents the proper performance of the material obligations of this Agreement and cannot be managed; or
- (b) Termination will come into effect fourteen (14) days after the issue of a notice under this clause 15.

16. Termination for the Department's convenience

16.1 Termination for convenience

The Department in its sole discretion may terminate this Agreement in whole or in part, at any time by giving 20 days written notice, if anyone or more of the following occurs:

- (a) In the Department's opinion, the Provider is not carrying out VOCAL's Victim Support Unit service diligently and competently;
- (b) The Provider have not achieved any performance measure;
- (c) The Department is of the opinion that the Provider used or are using the funding or part of the funding for purposes other than those for which the funding is made;
- (d) Funding for the VOCAL 's Victim Support Unit is no longer available;
- (e) The Department consider, in their absolute discretion, that continuation of VOCAL's Victim Support Unit is no longer aligned with the Department's business objectives or strategies; or that VOCAL's Victim Support Unit is no longer viable;
- (f) The Department considers that there has been a material change in the Provider's circumstances, the Provider's financial position, the Provider's structure, or the Provider's identity.

16.2 Effect of termination on notice by Department

Where the Department issues a notice under clause 16.1 ('Termination for convenience') the Department will reimburse the Provider its unavoidable costs directly incurred as a result of termination provided that any claim by the Provider:

- (a) is supported by written evidence of the costs claimed; and
- (b) will be in total satisfaction of the liability of the Department to the Provider in respect of this Agreement and its termination.

16.3 Consequential Loss

The Department will not, in any circumstance, be liable for any consequential Loss suffered by the Provider as a result of the termination of this Agreement under this clause 16.

17. Obligations on termination

17.1 Handover

The Provider must do all things reasonably required of the Provider by the Department to ensure there is a smooth and efficient transfer of responsibility for the performance of the Services from the Provider to any other person the Department nominates.

17.2 Rights of the Department preserved

The termination of this Agreement will not affect any of the Department's rights against the Provider in respect of anything occurring prior to termination of this Agreement.

17.3 Delivery of Report and Return of Confidential information

The Provider must, except to the extent agreed between the Department and the Provider in writing, provide to the Department within seven (7) days of termination or expiry of this Agreement:

- a. Any reports due to the Department under this Agreement or otherwise requested by the Department; and
- b. All the Department's Confidential Information used by the Provider or the Provider's employees, agents or contractors or otherwise in their possession and all copies of such information.

17.4 No entitlement to further payment

For the avoidance of doubt, upon termination or expiry of this Agreement, the Provider will not be entitled to any further payments under this Agreement, notwithstanding that the amount paid to the Provider could be less than the funding specified in this Agreement

17.5 Delivery of Assets

If this Agreement is terminated by the Department under clause 16 (Termination for the Department's Convenience) before the end of the Term, the Provider must deliver to the Department or the Department's representative all capital equipment purchased or leased by the Provider using the funding.

17.6 Transfer Investments

Upon the termination or expiry of this Agreement, the Provider must transfer to the Department, free of charge, all investments made by the Provider using the funding if requested to do so by the Department.

17.7 The Department's rights and remedies not prejudiced

Any termination of this Agreement by the Department is without prejudice to any of the Department's accrued rights or remedies.

18. Force Majeure

18.1 Notice and suspension of obligations

- (a) If a Party to this Agreement is affected or likely to be affected by a Force Majeure Event, that Party must immediately give the other prompt written notice of that fact, including:
 - (i) full particulars of the Force Majeure Event;
 - (ii) an estimate of its likely duration;
 - (iii) the obligations affected by it and the extent of its effect on those obligations; and
 - (iv) the steps taken to rectify it.
- (b) Except for the Payment of money, the obligations under this Agreement of the Party giving the notice are suspended to the extent to which they are affected by the relevant Force Majeure Event for so long as the Force Majeure Event continues.

18.2 Effort to overcome

A Party claiming a Force Majeure Event must use reasonable endeavours to remove, overcome or minimise the effects of that Force Majeure Event as quickly as possible.

19. Industrial Relations and provisions of Services

- (a) The Provider must use reasonable endeavours to maintain good industrial relations while performing the Services and, in relation to such industrial relations matters:
- (i) pay such wages or rates and observe and perform such terms or conditions as will apply from time to time to any persons employed or engaged by the Provider by virtue of any award or any industrial agreement applicable to the Services and binding on the Provider or arising by virtue of any law;
 - (ii) if an industrial dispute is threatened or occurs with any person, notify the Department of the dispute as a matter of urgency;
 - (iii) take all reasonable steps necessary to bring the existence of the dispute to an end, including notifying the dispute to the relevant Industrial Relations Commission (or equivalent body); and
 - (iv) take all reasonable steps to minimise the disruption to the performance of the Provider's obligations under this Agreement.
- (b) The Provider must indemnify and keep indemnified the Department for the consequences of failing to comply with this clause 19.

20. Insurances

20.1 Insurances requirements

Without limiting the Provider's obligations under this Agreement the Provider must, at its own expense, maintain with a reputable insurance company throughout the Term:

- (a) a broad form public liability policy of insurance in the amount of not less than the insured amount as specified in Schedule 1 (Agreement Details) in respect of each and every occurrence and unlimited in the number of such occurrences over any one period of cover during the Term;
- (b) workers' compensation insurance in accordance with applicable legislation.
- (c) Professional liability or "errors and omissions" insurance (including but not limited to an extension of cover in respect of trade practices legislation and intellectual property) in the amount of not less than the insured amount in respect of each and every occurrence and unlimited in the number of such occurrences over anyone period of cover during the Term and for an additional period after expiry or termination of this Agreement.

20.2 Evidence of policies

The Provider must, before the Commencement Date and upon request at any time during the Term, provide the Department with acceptable proof of currency and coverage for the insurances referred to in this clause 20.

20.3 Subcontractors

Despite any other provision of this Agreement, the Provider must use reasonable endeavours to ensure that its subcontractors, agents and consultants are insured as required by this clause 20, as is appropriate, given the nature of the services or work to be performed by them, as if they were the Provider.

20.4 Other insurance

The Provider must also take out and maintain:

- (a) any other insurance required by law; and
- (b) such other insurance reasonably required by the Department,

for the Term of this Agreement or such other period as is reasonably required by the Department.

20.5 Periods of insurance

The Provider must ensure that all insurances referred to in this clause 20 ('Insurances') are in force by the Commencement Date and are maintained throughout the Term of this Agreement.

20.6 The Department's insurance

The Provider must not knowingly do anything that may invalidate any insurance policy held by the Department and/or any indemnity to which the Department may be entitled from the New South Wales Treasury Managed Fund.

20.7 Use of insurance proceeds

The Provider will use the proceeds of all insurance policies relating to the Services provided under this Agreement received by it to otherwise discharge the relevant liability or to make good the relevant Loss covered by the insurance policy.

21. Record keeping obligations

21.1 Provider to keep records

- (a) The Provider must keep the following true and particular records:
 - (i) financial records, in accordance with Australian Accounting Standards; and
 - (ii) records of all Payments made under this Agreement, including all supporting materials used to generate and substantiate Payments.
- (b) The Provider must retain financial records for a period of seven (7) years after the Term of the Agreement.
- (c) The Provider must do everything necessary and/or reasonably requested by the Department to enable the Department to comply with applicable laws, including the *State Records Act 1998* (NSW), in relation to the records.

21.2 Provider's financial records

Within three (3) months of the end of each financial year, the Provider, at its own cost, must arrange for an independent audit report to be carried out in accordance with Australian Auditing Standards certifying that all payments are in accordance with the Agreement.

21.3 Rights to access and audit

- (a) Any Authorised Representative of the Department will have the right upon reasonable notice, at any time during Business Hours to inspect and audit the accounts and records of the Provider relating to the Services.

- (b) The Department may take copies of or extracts from such records.

21.4 Availability of records

Upon reasonable notice, the Provider must make all records under this Agreement available to the Department for inspection and/or copying.

21.5 Legible reproductions

If any information or thing referred to in this clause 21 is stored or recorded in a medium:

- (a) other than paper; or
- (b) in the Provider's computer system,

the Provider must, immediately on the Department's request, make available to the Department such facilities as the Department may require and to give to the Department legible reproduction of that information or thing.

21.6 Exercise of rights

- (a) The rights under this clause 21 may be exercised by the Department at any time during the Term or in the seven (7) year period following the Term.
- (b) The Department will be solely responsible for the costs in exercising its rights under this clause 21.

21.7 Ownership of intellectual property

- (a) The Department will own all Intellectual Property Rights in any data, information or Records created by the Provider under this Agreement, regardless of the form in which it is recorded and/or stored, and such rights will vest in the Department immediately on creation.
- (b) To the extent that the Provider may at any time acquire any right, title or interest in any of the materials or works referred to in this clause, the Provider, by this document, assigns to the Department all such right, title and interest.
- (c) The Provider warrants that the Department's use of any of the materials or works referred to in this clause will not infringe any Intellectual Property rights of any person nor give rise to any liability to make royalty or other payments to any person.
- (d) The Provider must give the Department all information and assistance it requests to facilitate any application for registration or protection of any Intellectual Property in any of the materials or works referred to in this clause and must execute and deliver any documents required in connection with any such application.

21.8 Provider's assistance

The Provider must give to the Department all reasonable assistance to enable the Department to fully exercise its powers under this clause 21.

22. Reports

22.1 Compliance with Service Delivery Specifications

The Provider must ensure it complies with all the reporting requirements contained in the Agreement and in Schedule 5 (Service Delivery Specifications).

22.2 Key Performance Indicators and Funding

- (a) The Provider must, provide an Annual Report to the Department, relating to its compliance with the Key Performance Indicators and use of Funding.
- (b) The Annual Report must be in the form advised by the Department.
- (c) The Department may from time to time request that information relating to the Provider's compliance with Schedule 5 (Service Delivery Specifications) be included in the Annual Report.

22.3 Expenditure Report

On an annual basis the Provider must submit to the Department an Expenditure Report in the form attached to Schedule 3 (Expenditure Report).

22.4 Reporting standards

All Reports on expenditure must comply with Australian Accounting Standards issued by the Australian Accounting Standards Board.

22.5 Annual Report

At the end of year, the Provider must provide the Department with a copy of the Provider's Annual Report.

22.6 Other information

The Provider must promptly provide to the Department any further documents or information that are requested by the Department in relation to this Agreement.

22.7 Reports to be current

The Provider agrees to keep all Reports referred to in this clause 22 regularly updated.

23. Notification

23.1 Notification requirements

The Provider must notify the Department in writing of the following:

- (a) Serious Misconduct by the Provider's Staff who are deployed to engage the Services;
- (b) all serious WHS incidents; and
- (c) any other Serious Incident.

23.2 Written Report

If requested by the Department, the Provider must ensure that a comprehensive Report of any incident notified under clause 23.1 ('Notification requirements') is forwarded to the Department Representative.

23.3 Supplementary Report

If the Provider becomes aware that any information notified or reported to the Department under this clause 23 is inaccurate or if further information comes to hand, the Department Representative must be immediately notified and a supplementary report or updated information provided in the manner instructed.

23.4 Timeliness and accuracy

In complying with the notification and reporting requirements in this clause, the Provider must provide timely and accurate reports and information to the Department.

24. Assets

- (a) All Assets purchased with the Funding must be used to provide the Services.
- (b) The Provider is responsible for and will bear all risks, expenses and running costs for all Assets, including insurance and registration costs.
- (c) If the Provider ceases to deliver all or part of the Services (for whatever reason), the Provider agrees to comply with any request of the Department for the Provider to:
 - (i) transfer ownership of and deliver each Asset to the Department or to a third party as the Department directs; or
 - (ii) reimburse the Department with an amount equal to the depreciated value of that asset.
- (d) The Provider must maintain an Assets Register listing and containing the details of each Asset and provide a copy to the Department upon request.
- (e) The Provider will not dispose of any Asset at the time of purchase which is listed (or that should be listed) on the Asset Register without the Department's prior written consent.
- (f) If the Provider disposes of, loses, damages, destroys, or sells any asset listed or that should be listed on the Asset Register, unless otherwise agreed in writing by the Department, the Provider must repair or replace it at its own expense and record details of the repair or replacement in the Asset Register.

25. Compliance with laws

- (a) The Provider must comply, and must ensure that all of the Provider's Staff comply, with all applicable laws, Authorisations and notices in particular relating to performance of the Provider's obligations under this Agreement.
- (b) The Provider must immediately notify the Department in writing of any failure by the Provider or its Staff to comply with any law.

26. Variation to Agreement

Subject to clause 27 ('Variation to Services') this Agreement can only be varied by written agreement of the Parties.

27. Variation to Services

27.1 Variation to Services

- (a) The Parties agree to meet annually to review the delivery of Services and to consider whether any variation to Services is required.
- (b) A variation in Services includes variation to:
 - (i) the Services and/or the nature or purpose of the Services;
 - (ii) the Location or Locations at which the Services are being provided;
 - (iii) the way in which the Services are to be carried out and completed; and/or
 - (iv) the KPIs.
- (c) The Provider acknowledges that the Department may undertake a variation to Services to improve Service delivery or to reflect change in Government and Departmental Policies.
- (d) The Department may, by providing a specific written direction to the Provider vary the Services.
- (e) The Department agrees to keep the Provider informed in relation to any proposed variation to Services.
- (f) The Department must provide a minimum of three months written notice to the Provider, of any variation to Services.
- (g) The Provider must not undertake a variation to Services, without the prior written consent of the Department.

27.2 Failure to agree

If the Parties cannot agree the amount of any increase or decrease in cost, or the Provider does not agree to the proposed variation to the Services, the provisions of clause 31 ('Dispute resolution') apply.

28. Representatives of the Parties

28.1 Appointment of Representatives

- (a) By the Commencement Date:
 - (i) the Department will appoint a person to be the Department Representative; and
 - (ii) the Provider will appoint a person to be the Provider's Representative.
- (b) Both Parties will notify each other in writing of the name and contact details of the person appointed as soon as practicable after any appointment, reappointment or replacement.

28.2 Power and authority of Representatives

The Department Representative and the Provider's Representative:

- (a) are the agent of the respective Party for the purposes of doing anything to be under this Agreement; and

- (b) have the authority to make and give, or accept, on the Party's behalf, any approvals, acceptances, directions, notice and other decisions that the Party may make and give, or accept, under this Agreement.

28.3 Provider to comply with directions

The Provider must comply with all lawful directions given by the Department Representative or any Authorised Representative in respect of the Services or any matter arising under this Agreement as if that direction had been given by the Department.

29. Relationship management

29.1 Cooperation

In carrying out its respective obligations under this Agreement, the Parties agree to co-operate in a timely and effective manner with each other and to act in good faith.

29.2 Meetings

The Department Representative and the Provider's Representative agree to meet on a as needs basis to discuss any Issues or matters relating to this Agreement.

29.3 Issues

- (a) Each Party will keep the other informed as to any Issues.
- (b) The Provider must record all Issues arising under this clause 29 in an Issues Register, and keep an ongoing record of the status of each Issue so recorded including, if applicable, when and how the Issue was resolved.
- (c) The Department must be provided with access to the Issues Register upon request at all reasonable times.

30. Conflict of Interest

- (a) The Provider must notify the Department in writing, immediately upon becoming aware of the existence or potential of a Conflict of Interest.
- (b) The Provider agrees to comply with any reasonable direction of the Department to appropriately manage the Conflict of Interest within the timeframe stipulated by the Department.

31. Dispute resolution

31.1 Obligation to act in good faith

Both Parties agree to attempt to resolve any dispute in good faith.

31.2 Notice by a Party

Upon receiving notice by a Party of a dispute, the Parties agree to meet to discuss the dispute within one (1) week of receipt of that notice.

31.3 Escalation Process

The escalation process as detailed in Schedule 7 (Escalation Process) must be followed in relation to any dispute arising under this Agreement.

31.4 Referral of dispute

The Parties may, by agreement, refer a dispute to mediation or conciliation at any time in the escalation process outlined in Schedule 7 (Escalation Process).

31.5 Place of arbitration or conciliation

If a dispute is referred to mediation or conciliation by agreement of the Parties, it is to be held at a place agreed to in writing between the Parties.

31.6 Continuing performance

Despite the existence of a dispute, the Parties must continue to perform their respective obligations under this Agreement to the extent practical to do so.

31.7 Summary or urgent relief

Nothing in this clause 31 prevents either Party from instituting court proceedings to seek urgent injunctive, interlocutory or declaratory relief in respect of a Dispute.

32. Confidentiality

32.1 Obligations of confidentiality

- (a) Subject to clause 32.2 ('Exceptions'), the Party to which Confidential Information is given ('Recipient') must not:
- (i) disclose Confidential Information directly or indirectly in any form to any person; or
 - (ii) use or make a copy of any Confidential Information, except to perform any of its obligations under this Agreement or in relation to any of the transactions contemplated by it;
- (b) If requested by the Department, the Provider must ensure that the permitted recipient of the Department's Confidential Information execute a confidentiality deed (in such form as may be required by the Department) relating to the Department's Confidential Information and promptly provide such Deed to the Department.

32.2 Exceptions

Either Party may disclose Confidential Information of the other Party:

- (a) if the disclosure is necessary for the purpose of this Agreement and;
- (b) if it is with the prior consent of the Disclosing Party; or
- (c) to the extent of any law.

32.3 Use of Confidential Information

The Provider:

- (a) must use the Confidential Information solely for the purposes of carrying out the Services and for no other purpose;

- (b) must not permit the Confidential Information to be copied or reproduced without the express prior written permission of the Disclosing party, except for such copies or reproductions as may be reasonably required to perform the Services;
- (c) must take all necessary precautions to prevent loss, unauthorised access to, copying, misuse, modification or disclosure of the Confidential Information;
- (d) must comply with any of the Disclosing Party's directions about the safekeeping and storage of Confidential Information; and
- (e) must comply with any applicable Obligations under *the State Records Act 1988* (NSW) in relation to the Confidential Information.

32.4 Return of Confidential Information

- (a) Within 7 days of the termination of the Agreement, the Provider must, as directed by the Department:
 - (i) deliver to the Department all Records, documents and other materials containing, recording or referring to Confidential Information which are in its possession, power or control;
 - (ii) ensure that any person who receives the Confidential Information by the Provider's authority returns the Confidential Information (in any form in which it is held) to the Department; and/or
 - (iii) after delivering of the Confidential Information to the Department, delete or destroy all copies of the Confidential Information retained including on the Receiving Party's computer system in a manner such that the Confidential Information cannot be retrieved.
- (b) The obligations imposed by this clause 32.4 will survive termination of this Agreement.

32.5 Notification of breach

The Provider must immediately notify the Department in writing upon becoming aware of any breach of this clause 32.5.

33. Privacy

- (a) In carrying out its obligations under this Agreement:
 - (i) the Provider must comply, and ensure that its Staff comply, with Privacy Legislation; and
 - (ii) do all that is reasonably necessary on its part to enable the Department to comply with Privacy Legislation.
- (b) The Provider agrees to follow such reasonable direction as to privacy measures as the Department advises the Provider in writing from time to time.
- (c) The Provider must immediately notify the Department in writing upon becoming aware of any breach of this clause 33.

34. Access to information

To enable the Department to fulfil its obligations under the *GIPA Act*, the Provider agrees to:

- (a) assist the Department to meet its obligations under the *GIPA Act*, including providing access to Records;
- (b) assist the Department to identify information which has been requested either informally or in a formal access application or which is required or may be required to be released under the *GIPA Act* within the requested timeframe or as otherwise agreed;
- (c) upon request by the Department, conduct reasonable searches for all Records it holds within the scope of an access application under the *GIPA Act*;
- (d) provide access to and copies of all Records located within the scope of an access application to the Department within the requested timeframe;
- (e) not alter or destroy any information or Records that it holds that is subject to the *State Records Act 1998 (NSW)* and/or the *GIPA Act* and
- (f) comply with the applicable Obligations of the *State Records Act 1998 (NSW)* in relation to Personal Information.

35. Notices

35.1 General

Any notice, demand, certification or other communication in this Agreement:

- (a) must be given in writing and in the English language; and
- (b) may be given by an Authorised Representative of the Parties.

35.2 Method of service

In addition to any means authorised by law, any communication may be given by:

- (a) being personally served on a Party;
- (b) being left at the Party's current address for service;
- (c) being sent to the Party's current address for service by pre-paid ordinary mail or if the address is outside Australia, by pre-paid airmail; or

35.3 Address for service

The addresses for service are contained in Schedule 1 (Agreement Details):

35.4 Service by post

A communication given by post will be deemed received:

- (a) if posted within Australia to an Australian address, on the third (3rd) Business Day after posting; and
- (b) in any other case, on the tenth (10th) Business Day after posting.

35.5 Service after hours

If a communication to a Party is received by it:

- (a) after 5.00 pm; or
- (b) on a day which is not a Business Day,

it will be deemed to have been received on the next Business Day.

35.6 Change of notice details

Each Party must, by notice in writing, advise the other Party of any changes to the notice requirements contained in this clause 35 (Notices').

36. Miscellaneous

36.1 Legal costs

Subject to any express provision in this Agreement to the contrary, each Party must bear its own legal and other costs and expenses relating directly or indirectly to the preparation of, and performance of its obligations under, this Agreement.

36.2 Relationship

Neither Party is an employee, agent or partner of the other for any purpose.

36.3 Amendment

All amendments to the Agreement and all consents, approvals, waivers and agreements made under this Agreement must be evidenced in writing.

36.4 Inconsistency

In the event of inconsistency between the terms of this Agreement, for the purpose only of resolving the inconsistency, the following order of decreasing priority applies:

- (a) operative provisions of this Agreement;
- (b) Schedules; and
- (c) other attachments (if any).

36.5 Entire Agreement

This Agreement constitutes the entire Agreement and understanding between the Parties as to the subject matter of this Agreement. Any prior arrangements, representations or undertakings as to the subject matter of this Agreement are superseded.

36.6 Waiver and exercise of rights

A right may only be waived in writing, signed by the Party giving the waiver, and:

- (a) no other conduct of a Party (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right;
- (b) a waiver of a right on one or more occasions does not operate as a waiver of that right or as an estoppel precluding enforcement of that right if it arises again; and
- (c) the exercise of a right does not prevent any further exercise of that right or of any other right.

36.7 Rights cumulative

Subject to any express provision in this Agreement to the contrary, the rights of a Party under this Agreement are cumulative and are in addition to any other rights of that Party.

36.8 Operation of indemnities

- (a) Each indemnity in this document survives the expiry or termination of this Agreement.
- (b) A Party may recover a payment under an indemnity in this Agreement before it makes the payment in respect of which the indemnity is given.

36.9 Severability

If any part of this Agreement is prohibited, void, illegal or unenforceable, then that part is severed from this Agreement but without affecting the continued operation of the remainder of the Agreement.

36.10 Survival

Clauses 10 ('Acknowledgement of Funding'), 11 ('Warranties'), 12 ('Indemnities'), 15 ('Default by Provider'), 17 ('Obligations on Termination'), 20 ('Insurances'), 21 ('Record keeping obligations'), 31 ('Dispute resolution'), 32 ('Confidentiality'), 33 ('Privacy'), 34 ('Access to information'), 36.8 (Operation of indemnities) and clause 36.12 ('Governing law and jurisdiction') survive the expiry or termination of this document.

36.11 Further assurance

Each Party must promptly execute all documents, and do all things that any other Party from time to time reasonably requires of it, to effect, perfect or complete the provisions of this Agreement and any transaction contemplated by it.

36.12 Governing law and jurisdiction

- (a) This Agreement is governed by, and is to be construed in accordance with, the laws in force in New South Wales.
- (b) Each Party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

36.13 Assignment

The Provider must not dispose of or encumber any or all rights under this Agreement without the prior written consent of the Department.

36.14 Counterparts

This Agreement may consist of a number of counterparts and if so the counterparts taken together constitute one and the same instrument.

Schedule 1 Agreement Details

Item 1. Term

Commencement Date 1 July 2016

Term 1 year

Item 2. Extension

First Extension Period 1 year

Second Extension Period 1 year

Item 3. Department Representative

Name Mahashini Krishna

Title Commissioner of Victims Rights,
Victims Services NSW

Telephone 02 8688 8181

Address 160 Marsden Street, Parramatta NSW 2150

Email address Mahashini.Krishna@justice.nsw.gov.au

Item 4. Provider Representative

Name Robyn Cotterell-Jones OAM

ABN 99 422 394 085

Title Chief Executive Officer,
VOCAL's Victim Support Unit

Telephone 02 4926 2711

Address Level 1, 432 Hunter Street, Newcastle NSW 2300

Email address ceo@vocal.org.au

Item 5. Insurance requirements

Broad Form Public Liability Insurance

Insurance company and policy number

Amount (\$AUD)

Workers Compensation Insurance (as required)

Insurance company and policy number

Amount (\$AUD)

Professional Indemnity Insurance

Insurance company and policy number

Amount (\$AUD)



Item 6. Specified Purpose

The Department funds the Provider to provide support to victims of crime in the Hunter region and to achieve the objectives stated at Clause 2 of this Agreement.

Item 7. Address for Service: Department

Address 160 Marsden Street, Parramatta NSW, 2150

Attention Mahashini Krishna

Item 8. Address for Service: Provider

Address Level 1, 432 Hunter Street, Newcastle NSW 2300

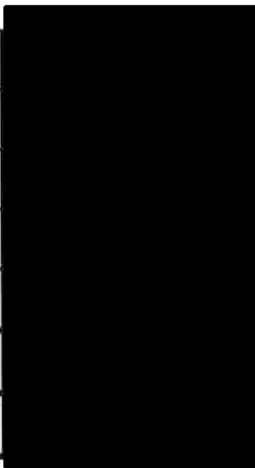
Attention Robyn Cotterell-Jones OAM

Schedule 2 Table of Proposed Expenditure

ITEM	AGREED COST
A. INCOME	\$ Per Annum
TOTAL INCOME	
B. STAFF SALARIES	\$ Per Annum
Salaries and Wages	
Salaries and Wages on Costs <i>(including annual leave expense, sick leave expense, fringe benefits tax, salary sacrifice, superannuation, workers' compensation)</i>	
On costs	
Superannuation	
Payroll Tax	
Workers Compensation	
Leave Loading	
Shift Penalties	
Other Award Allowances (weekend Penalty Rates)	
Overtime	
Sleepover Allowance	
First Aid	
Public Holidays	
Provision for Long Service Leave	
Provision for Annual Leave	
Annual Leave Replacement Cost	

(cost of casuals)		
Sick Leave Replacement Costs (Cost Of casuals)		
TOTAL STAFF SALARIES		
C. OPERATING COSTS		\$ Per Annum
Computer Expenses		
Depreciation		
Employment Support and Supervision Costs		
Insurance		
Motor Vehicle Expenses		
Rent		
Repairs & Maintenance		
Telephone & Fax Charges & Internet		
Training & Development (Staff)		
Travel & Accommodation		
Printing and Stationery		
Postage, Freight and Courier		
Utilities		
Other External Group facilitators		
Transport		
TOTAL OPERATING COSTS		
D. SERVICE COSTS		\$ Per Annum
Client Support Services (Header Account Including Costs Associated with Below Detail Accounts)		
- Residents Activities and Resources		
- E Entertainment expenses		
- Family Support		
Advertising and promotion		
Business Planning, Reporting and Evaluation Costs		
TOTAL SERVICE COSTS		
E. MANAGEMENT COST		\$ Per Annum
Management Fees		

Accounting Fees	
Audit Fees	
Auspicing Fees	
Fees and Permits	
Board/Governance Expenses	
	TOTAL MANAGEMENT COST
	TOTAL BUDGET excl GST (=B+C+D+E)



Schedule 3 Expenditure Report

ITEM							AGREED COST	ACTUAL EXPENDITURE
A. INCOME							\$ Per Annum	
TOTAL INCOME							\$	
B. STAFF SALARIES							\$ Per Annum	
Salaries and Wages								
Position	Award	Grade	Hours per week	Rate per hour	Weeks per year	Annual salary		
Salaries and Wages on Costs <i>(including annual leave expense, sick leave expense, fringe benefits tax, salary sacrifice, superannuation, workers' compensation)</i>								
On costs			% of Salary	\$				
Superannuation								
Payroll Tax								
Workers Compensation								
Leave Loading								
Shift Penalties								
Other Award Allowances (weekend Penalty Rates)								
Overtime								
Sleepover Allowance								
First Aid								
Public Holidays								
Provision for Long Service Leave								
Provision for Annual Leave								
Annual Leave Replacement Cost (cost of casuals)								
Sick Leave Replacement Costs (Cost Of Casuals)								
TOTAL STAFF SALARIES							\$	

C. OPERATING COSTS	\$ Per Annum	
Computer Expenses		
Depreciation		
Employment Support and Supervision Costs		
Insurance		
Motor Vehicle Expenses		
Rent		
Repairs & Maintenance		
Telephone & Fax Charges & Internet		
Training & Development (Staff)		
Travel & Accommodation		
Printing and Stationery		
Postage, Freight and Courier		
Utilities		
Other External Group facilitators		
Transport		
TOTAL OPERATING COSTS	\$	
D. SERVICE COSTS	\$ Per Annum	
Client Support Services <i>(Header Account Including Costs Associated with Below Detail Accounts)</i>		
- Residents Activities and Resources		
- Transport Assistance Costs		
- Family Support		
Advertising and promotion		
Business Planning, Reporting and Evaluation Costs		
TOTAL SERVICE COSTS	\$	
E. MANAGEMENT COST	\$ Per Annum	
Management Fees		
Accounting Fees		
Audit Fees		
Auspicing Fees		
Fees and Permits		
Board/Governance Expenses		
TOTAL MANAGEMENT COST	\$	

C. OPERATING COSTS	\$ Per Annum	
TOTAL BUDGET excl GST (=B+C+D+E)	\$ 600,000.00	

Schedule 4 Payment Details

Payment

Lump Sum \$600,000.00

1 July 2016

If first extension agreed

Lump Sum \$600,000.00 or such

1 July 2017

other amount determined by the Department

If second extension agreed

Lump Sum \$600,000.00 or such

1 July 2018

other amount determined by the Department

Schedule 5 Service Delivery Specifications

Key Result Area: 1 Culturally Appropriate Service Provision

Item 1. Premise

The VOCAL Victim Support Unit Hunter provides support, advice and referrals to victims of crime in the Hunter Region.

Item 2. Outcome

VOCAL Victim Support Unit Hunter offers and provides needs-based, free, personal, comprehensive range of information, guidance, support, referral, positive strategies, court preparation, court support, assistance with writing and delivering Victim Impact Statements, understanding sentencing, the parole process, Mental Health Tribunal matters, restorative justice processes and advocacy if things are not going well.

Item 3. Specific service requirements

The Victim Support Unit Hunter contributes to the overall objectives of the Victims Support Fund and must:

1. Provide support to victims of crime, including alcohol and/or drug related crimes and/or anti-social behaviour.
2. Provide assistance and referral advice to Victims Services for counselling and financial assistance, and any Charter matters.
3. Provide support and advocacy to victims of crime regarding a police investigation, or decision not to investigate.
4. Provide court preparation and/or support to victims of crime, including pre-trial, trial, sentencing, appeals and restorative justice processes.
5. Provide assistance and support to victims of crime who wish to prepare a Victim Impact Statement (may include delivering the statement on behalf of the victim).
6. Provide support and assistance to victims of crime in following the relevant complaints processes when lodging a complaint about a service or service provider.
7. Provide victims of crime with advice and assistance with the media.
8. Provide victims of crime with advocacy when dealing with the Parole Authority and Mental Health Tribunals.
9. Provide community education and training to service providers and victims of crime in the Hunter region.
10. Facilitate positive working relationships with relevant agencies to promote the rights of victims of crime and improve their access to local services.
11. Ensure that the VOCAL's Victim Support Unit - Hunter provides services to clients with particular emphasis on:
 - a) A timely and direct response to all referrals;
 - b) Support, relevant information and referral for clients through the criminal justice process;
 - c) High quality case management that meets clients' identified needs.
 - d) The safety of victims and children, clients and staff

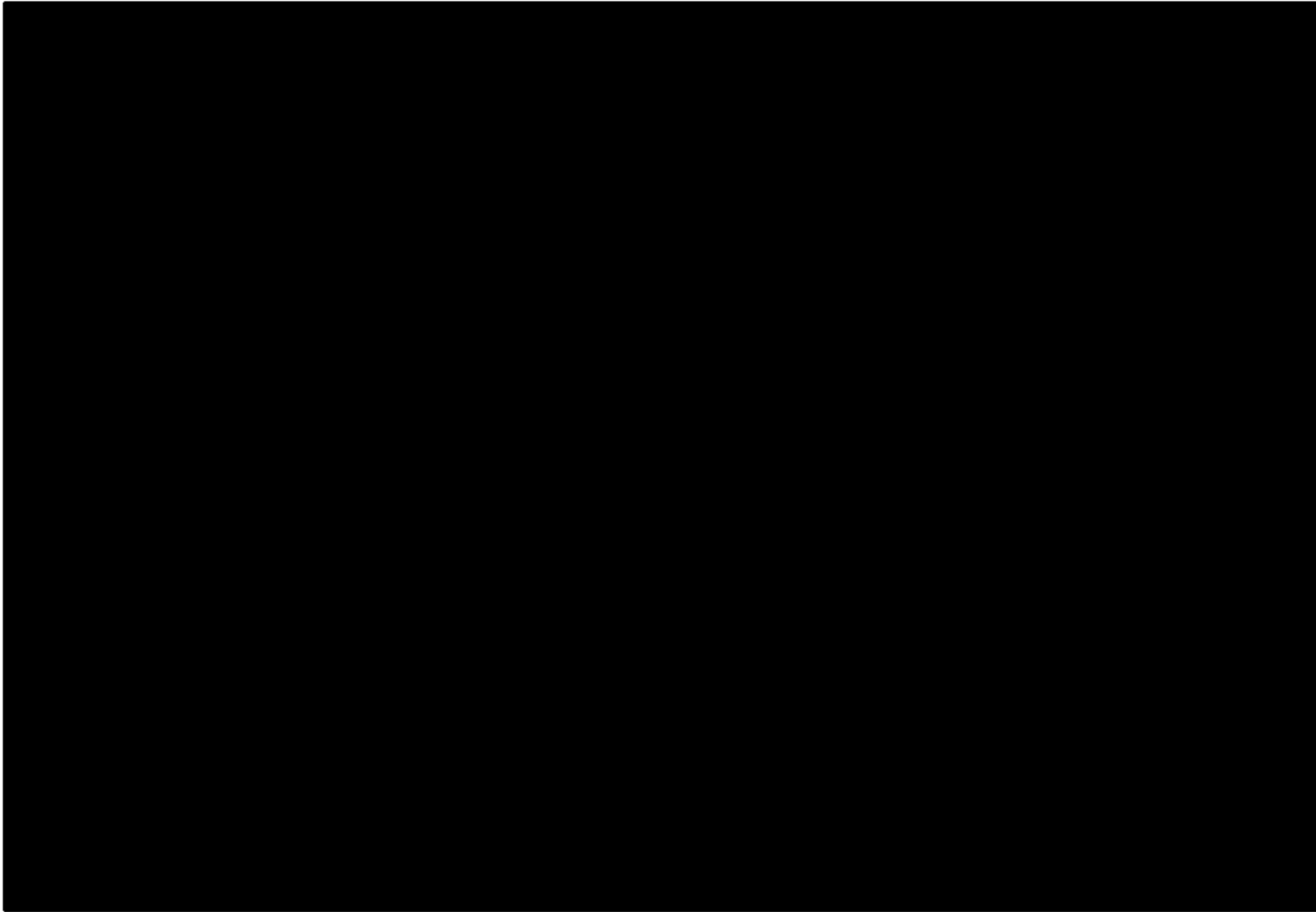
Schedule 6 Key Performance Indicators

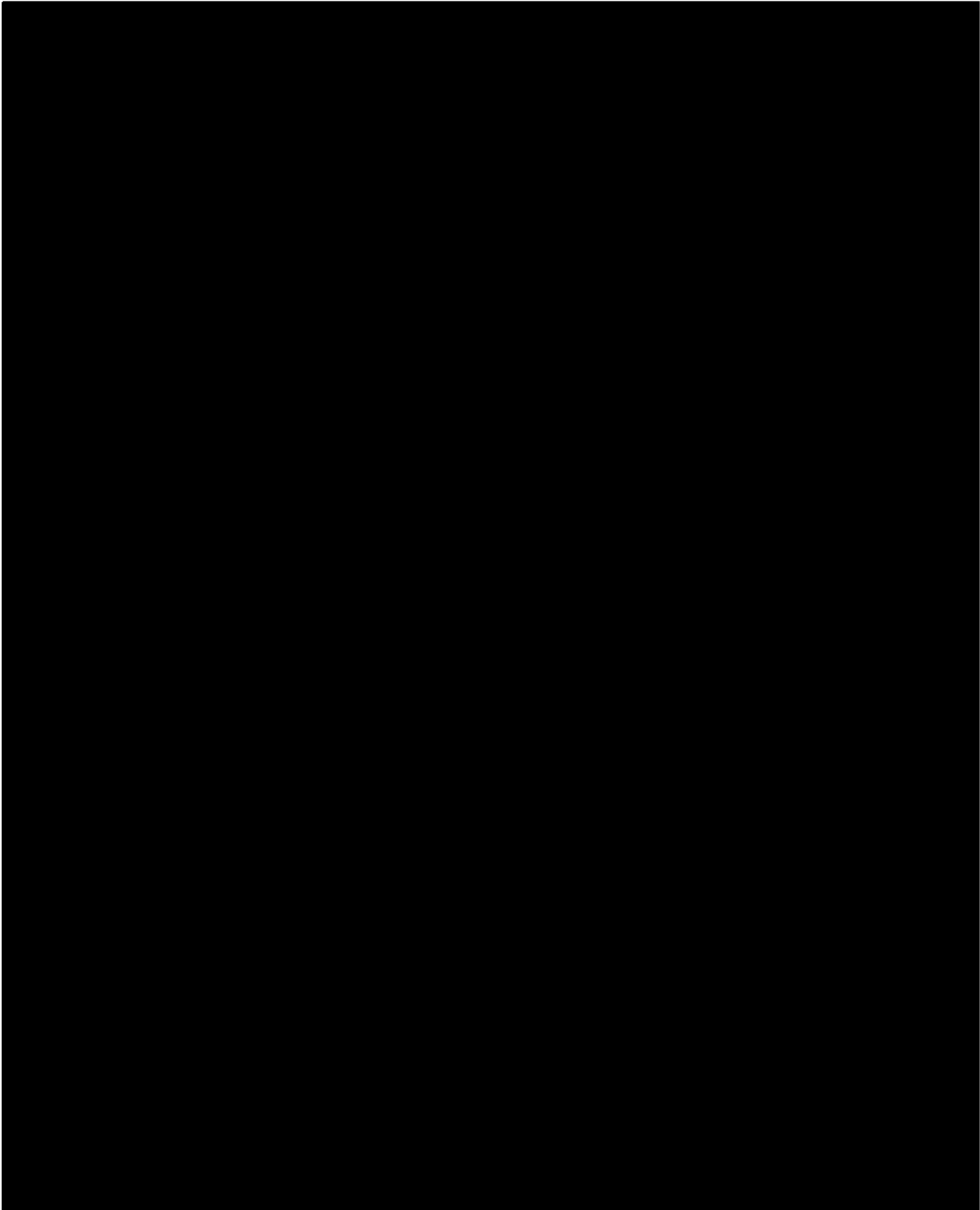
1. Provide the Department with a copy of VOCAL's Victim Support Unit annual report and a 6-monthly report.
2. Provide the Department with a report regarding services provided in accordance with funding agreement, including
 - a. an Expenditure Report of how funding is utilised on a yearly basis using Schedule 3
3. Keeps data / monitoring and evaluating.
4. Provide support to victims of crime, including alcohol and/or drug related crimes and/or anti-social behaviour.
5. Provide assistance and referral advice to Victims Services for counselling and financial assistance, and any Charter matters.
6. Provide support and advocacy to victims of crime regarding a police investigation, or decision not to investigate.
7. Provide court preparation and/or support to victims of crime, including pre-trial, trial, sentencing, appeals and restorative justice processes.
8. Provide assistance and support to victims of crime who wish to prepare a Victim Impact Statement (may include delivering the statement on behalf of the victim).
9. Provide support and assistance to victims of crime in following the relevant complaints processes when lodging a complaint about a service or service provider.
10. Provide victims of crime with advice and assistance with the media.
11. Provide victims of crime with advocacy when dealing with the Parole Authority and Mental Health Tribunals.
12. Provide community education and training to service providers and victims of crime in the Hunter region.
13. Facilitate positive working relationships with relevant agencies to promote the rights of victims of crime and improve their access to local services.
14. Ensure that the VOCAL's Victim Support Unit - Hunter provides services to clients with particular emphasis on:
 - a) A timely and direct response to all referrals;
 - b) Support, relevant information and referral for clients through the criminal justice process;
 - c) High quality case management that meets clients' identified needs.
 - d) The safety of victims and children, clients and staff

Schedule 7 Escalation Process

Step	Responsibility
Report issue	Provider / Commissioner of Victims Rights
Acknowledgment of dispute	Provider / Commissioner of Victims Rights
Meeting arranged with Provider	Commissioner of Victims Rights
If dispute not resolved then escalation process to be followed	
Escalated to Secretary, NSW Department of Justice	Commissioner of Victims Rights
Feedback on outcome to Provider within fourteen (14) days	

Schedule 8 Assets and Equipment Register



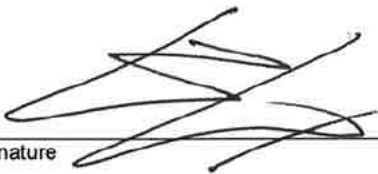


This Deed of Agreement is executed on

Execution by Secretary, Department of Justice

For and on behalf of the Crown in Right of the State of New South Wales, but not so as to incur personal liability

Andrew Cappie-Wood
Secretary, Department of Justice

Signature 

In the presence of:

ALICIA PELTHOUSE
Name of witness

Signature of witness 

Execution by the Provider:

The COMMON SEAL of Victims of Crime Assistance League Inc
ABN 99 422 394 085

was duly affixed hereto at Newcastle in the State of New South Wales:

by:

Robyn Cotterell-Jones, Chief Executive Officer

Signature 


In the presence of:

Secretary or other permanent officer>
<insert officer's position>

X J. Heath
Signature
Juliana Heath



Justice

The Crown in Right of the State of New South Wales
acting through the
Department of Justice, Victims Services

and

Victims of Crime Assistance League Inc NSW (VOCAL)

DEED OF EXTENSION AND VARIATION

Funding Deed of Agreement

DEED OF EXTENSION AND VARIATION

PARTIES

1. **The Crown in Right of the State of New South Wales acting through the Department of Justice, Victims Services NSW**, ABN 64 782 244 502 of 160 Marsden Street, Parramatta NSW 2150 ('the Department');

And

2. **Victims of Crime Assistance League Inc NSW**, ABN 99 422 394 085 of 432 Hunter Street, Newcastle NSW 2300 ('the Provider').

BACKGROUND

- A. The Department and the Provider entered into a Funding Deed of Agreement ('the Agreement') which commenced on 1 July 2017. The Agreement set out the terms and conditions on which the Provider is to provide support to victims of crime in the Hunter region. A copy of the Agreement is attached as Annexure A.
- B. Clause 2.2 of the Agreement provides for an extension of the Term of the Agreement by variation if agreed in writing by the Department and the Provider.
- C. The Parties wish to extend the Agreement as set out in the Schedule of this Deed.

TERMS AND CONDITIONS

1 VARIATION

- 1.1 The Agreement is amended in accordance with the Schedule of this Deed.
- 1.2 The Agreement otherwise continues in full force and effect in accordance with its terms.

2 MISCELLANEOUS

- 2.1 This Deed may be executed in counterparts.
- 2.2 This Deed is governed by the laws in force in the State of New South Wales.
- 2.3 Each party submits to the exclusive jurisdiction of the Courts exercising jurisdiction in the State of New South Wales and the courts of appeal from these Courts.

SCHEDULE

1. Clause 3 Funding

Clause 3.2 ('Fixed Funding') is amended at paragraph 3 to read as follows:

'If the second, third and fourth year extensions are agreed to by the Department, the funding for the Second, Third and Fourth Extension Periods will each be fixed for an amount of six hundred thousand dollars (\$600,000.00) excluding GST or such other amount as determined by the Department'.

2. Schedule 1 Agreement Details

Item 2 of Schedule 1 is deleted and inserted with the following:

<i>'First Extension Period</i>	<i>1 Year</i>
<i>Second Extension Period</i>	<i>1 Year</i>
<i>Third Extension Period</i>	<i>1 Year</i>
<i>Fourth Extension Period</i>	<i>1 Year</i>

3. Schedule 4 Payment Details

'Payment' is deleted and inserted with the following:

'Payment

Lump Sum \$600,000.00	1 July 2016
------------------------------	--------------------

If first extension agreed

Lump Sum \$600,000.00 or such	1 July 2017
--------------------------------------	--------------------

other amount determined by the Department

If second extension agreed

Lump Sum \$600,000.00 or such	
--------------------------------------	--

other amount determined by the Department	1 July 2018
--	--------------------

'If third extension agreed:

Lump sum \$600,000.00 or such	1 July 2019
--------------------------------------	--------------------

other amount as determined by the Department

SCHEDULE

If fourth extension agreed:

Lump sum \$600,000.00 or such

1 July 2020

other amount as determined by the Department'

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EXECUTED BY THE PARTIES AS A DEED

Execution by the Department:

Signed, sealed and delivered for and on behalf of the Crown in Right of the State of New South Wales acting through the Department of Justice, Victims Services NSW but not so as to incur personal liability

Michael Coutts-Trotter
Secretary, Department of Justice


Signature

In the presence of:

DEBORAH LOVELL
Name of witness


Signature of witness

Date: *24.5.19*

Execution by the Provider:

The COMMON SEAL of Victims of Crime Assistance League Inc
ABN 99 422 394 085

was duly affixed hereto at Newcastle in the State of New South Wales:


by:

Kerrie Thompson
Chief Executive Officer




Signature

In the presence of:

Hannah Penston

Signature

Secretary

Date:



**Communities
& Justice**

The Crown in Right of the State of New South Wales acting through the
Department of Communities and Justice, Victims Services

and
Victims of Crime Assistance League Inc NSW (VOCAL)

DEED OF EXTENSION AND VARIATION

Funding Deed of Agreement

Deed of Extension and Variation of Funding Deed is dated as of the 1st day of July 2021

Parties:

The Crown in Right of the State of New South Wales acting through the Department of Communities and Justice, Victims Services NSW, ABN 64 782 244 502 of 160 Marsden Street, Parramatta NSW 2150 (**'the Department'**)

and

Victims of Crime Assistance League Inc NSW, ABN 99 422 394 085, of 432 Hunter Street, Newcastle NSW 2300 (**'the Provider'**)

Background

1. The former Department of Justice (**'DOJ'**), now the Department of Communities and Justice (**'DCJ'**) and the Provider entered into a Funding Deed of agreement (**'the Agreement'**) which commenced on 1 July 2016. The Agreement set out the terms and conditions on which the Provider is to provide support to victims of crime in the Hunter region. A copy of the Agreement is attached as **Annexure A**.
2. Clause 2.2 of the Agreement provides for an extension of the Term of the Agreement by variation by the Department.
3. Pursuant to Clause 2.2, the Parties extended the agreement by way of a Deed of Variation and Extension (**'First Variation'**). A copy of the First Variation is attached as **Annexure B**.
4. The funding advanced under the First Variation is shortly to be exhausted and the term of the Principal Agreement will expire on 30 June 2021.
5. The Parties wish to extend the Agreement and First Variation as set out in the Schedule of this Deed.

Operative Provisions

1. INTERPRETATION

1.1 Definitions

In this Deed, except where a contrary intention appears:

“**Agreement**” means the Funding Deed of Agreement entered into by the Parties, on or about 1 July 2016, as subsequently varied by way of the First Variation by the Parties on or around 24 May 2019.

“**Agreement Details**” means Schedule 1 (as amended by this Deed) to the Agreement.

“**Deed**” means this Deed of Extension and Variation.

“**Effective Date**” means as of 1 July 2021.

1.2 Terms defined in Agreement

A term (other than a term defined in clause 1.1 or 1.4) that is defined in the Agreement, has the same meaning as in this Deed.

1.3 Effective Date

This Deed shall be deemed to have taken effect on the Effective Date.

1.4 Rules for interpreting this Deed

On and from the Effective Date, all references in the Agreement to:

“**Agreement**” shall be deemed to be references to the Agreement, as varied by this Deed;

“**Department of Justice**” shall be deemed to be references to “**Department of Communities and Justice**”; and

“**Schedule 1**” shall be deemed to be varied and construed in accordance with clause 2.5 of this Deed.

“**Schedule 3**” shall be deemed to be varied and construed in accordance with clause 2.6 of this Deed.

“**Schedule 4**” shall be deemed to be varied and construed in accordance with clause 2.7 of this Deed.

“**Schedule 5**” shall be deemed to be varied and construed in accordance with clause 2.8 of this Deed.

“**Schedule 6**” shall be deemed to be varied and construed in accordance with clause 2.9 of this Deed.

“**Schedule 9**” shall be construed in accordance with clause 2.10 of this Deed.

“**Schedule 10**” shall be construed in accordance with clause 2.11 of this Deed.

2. AMENDMENTS

2.1 Clause 3 Funding

Clause 3.2 ('Fixed Funding') is amended after paragraph 3 to insert a fourth paragraph to read as follows:

'If the sixth and/or seventh year extensions are agreed to by the Department, the funding for the Sixth and Seventh Extension Periods will each be fixed for an amount of six hundred thousand dollars (\$600,000) excluding GST or such other amount as determined by the Department, paid in accordance with Schedule 4 of the Agreement.'

2.2 Clause 6 Performance Obligations

Clause 6.1(b) is to be amended to read:

'the Table of Proposed Expenditure in Schedule 2 (Table of Proposed Expenditure);'

2.3 Clause 22 Reports

Clause 22.2 Key Performance Indicators and Funding is to be amended to include, under 22.2(c), the following:

(d) The Provider must, in the form advised by the Department, provide the Department with all Reports required under item 2 to Schedule 6 (Key Performance Indicators)

2.4 Clause 27 Variation to Services

Clause 27.1(b) is amended to replace 27.1(b)(iii) – 27.1(b)(iv) inclusive with the following:

(iii) the way in which the Services are to be carried out and completed;

(iv) the KPIs; and/or

(v) the reports that the Provider is required to prepare under the Agreement.

**2.5 Schedule 1 Agreement
Details**

Schedule 1 of the Agreement shall be varied by amending the following items contained within Schedule 1 as prescribed below:

i. Item 2. Extension is to be amended to insert the following:

Fifth Extension Period 1 Year

Sixth Extension Period 1 Year

Seventh Extension Period 1 Year

ii. Item 3. Department Representative is to be amended to:

delete the existing representative details and insert the following:

Name: Michelle Vaughan

*Title: Commissioner of Victims Rights,
Victims Services, Department of
Communities and Justice.*

Email: michelle.vaughan@dcj.nsw.gov.au

iii. Item 4. Provider Representative is to be amended to:

delete: "Name *Robyn Cotterell-Jones OAM*" and

insert: "Name *Kerrie Thompson*"

iv. Item 6. Specified Purpose is to be varied to delete the existing Specified Purpose and insert the following:

The Department funds the provider to provide support to victims of crime in the Hunter region and to achieve the following objectives:

1. *To support victims of acts of violence who experience unique barriers to access their rights under the Charter of Victims' Rights*
2. *To provide community-based support services to victims of crime.*

v. Item 7. Address for Service: Department is to be amended to:

delete: "Attention *Mahashini Krishna*"

insert: "Attention *Michelle Vaughan*"

vi. Item 8. Address for service: Provider is to be amended to:

Delete: "Attention *Robyn Cotterell-Jones OAM*" and

Insert: "Attention *Kerrie Thompson*"

2.6 **Schedule 3 Expenditure Report**

Schedule 3 is to be replaced with the document entitled "*Expenditure Report*" appearing at **Annexure C** to this Deed of Variation

2.7 **Schedule 4 Payment Details**

Schedule 4 is to be amended to delete 'Payment' and insert the following:

Payment:

If fifth extension agreed:

Instalment 1: \$300,000.00 30 July 2021

Instalment 2: \$300,000.00 30 January 2022

If sixth extension agreed:

Instalment 1: \$300,000.00 30 July 2022

Instalment 2: \$300,000.00 30 January 2023

If seventh extension agreed:

Instalment 1: \$300,000.00 30 July 2023

Instalment 2: \$300,000.00 30 January 2024

2.8 **Schedule 5 Service Delivery Specifications**

Item 3. Specific Service requirements is to be amended to:

Delete: *“The Victim Support Unit Hunter contributes to the overall objectives of the Victims Support Fund and must:”* and

Insert: *“The VOCAL Victim Support Unit Hunter contributes to the objectives as stated at item 6 to Schedule 1 of the Agreement and must:”*

2.9 **Schedule 6 Key Performance Indicators**

Schedule 6 is to be amended as follows:

Items 1 and 2 are to be deleted, and replaced with the following

1. *Provide the Department with a six-monthly report regarding services provided in accordance with the Agreement using the document entitled “Victims Support Funding – Biannual Report” which forms Schedule 9 to the Agreement.*
2. *On an annual basis, provide the Department with the following reports regarding services provided in accordance with the Agreement:*
 - a. *An Expenditure report of how funding is utilised on a yearly basis using the document entitled “Expenditure report” which forms Schedule 3 to the Agreement;*
 - b. *A Table of Proposed Expenditure in the format set out in Schedule 2*
 - c. *An Audited Financial Statement showing the activity and funding of VOCAL;*
 - d. *An Asset Register recording all capital items in the format set out in Schedule 8; and*
 - e. *A completed Compliance Checklist using the document entitled “Compliance Checklist” which forms Schedule 10 to the Agreement.*

Items 3 – 14 inclusive of Schedule 6 are to be deleted.

The following is to be inserted below item 2.

3. *Services provided contribute to the following outcomes:*
 - a. *Participants are connected with support services that meet their immediate needs arising from the crime. These supports help prevent practical and psychological needs from escalating and secure the participant's safety and well-being.*

- b. Participants are empowered to navigate support services to meet their particular needs. They are taking positive steps toward recovery from any impacts of violent crime and are active participants in justice processes that affect them.*
- c. Participants are able to heal from traumatic impacts of crime. They are empowered to regain control over their lives and make decisions about their future.*
- d. Services provided are sustainable, accessible and meet clients' needs."*

2.10 Schedule 9 Six-Monthly report:

The Agreement is to include Schedule 9. The document entitled "Victims Support Funding – Biannual Report" attached to this Deed and marked "**Schedule 9**" will form Schedule 9 of this Agreement.

2.11 Schedule 10 Compliance Checklist

The Agreement is to include Schedule 10. The document entitled "Compliance Checklist" attached to this Deed and marked "**Schedule 10**" will form Schedule 10 to the Agreement.

2.12 General

With effect from the Effective Date the Parties agree that all terms (including all rights and obligations) contained in the Agreement (as varied by this Deed) shall apply to and be binding upon the Parties and any undertakings or commitments expressed to be given or made by a Party at a certain time under the Agreement shall, unless expressly provided otherwise in this Deed or the context otherwise requires, also be deemed to be repeated, given or made (as the case may be) by the Party on the Effective Date. Furthermore, all obligations of the Provider that have accrued prior to the Effective Date shall remain in force and effect on and subject to the terms of the Principal Agreement despite this Deed.

3. MISCELLANEOUS

3.1 Notices

A notice, consent or other communication under this Deed is only effective if it is given in accordance with the Agreement, as varied by this Deed.

3.2 Legal costs

Subject to any express provision in this Deed to the contrary, each Party must bear its own legal and other costs and expenses relating directly or indirectly to the preparation of, and performance of its obligations under, this Deed.

3.3 Amendment

All amendments to the Deed and all consents, approvals, waivers and agreements made under this Deed must be evidenced in writing.

3.4 Entire Agreement

This Deed and the Agreement (as varied by this Deed), constitutes the entire agreement and understanding between the Parties as to the subject matter of this Deed. Save as aforesaid, any prior arrangements, representations or undertakings as to the subject matter of this Deed are superseded.

3.5 **Waiver and exercise of rights**

A right may only be waived in writing, signed by the Party giving the waiver, and:

- a) No other conduct of a Party (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right;
- b) a waiver of a right on one or more occasions does not operate as a waiver of that right or as an estoppel precluding enforcement of that right if it arises again; and
- c) the exercise of a right does not prevent any further exercise of that right or of any other right.

3.6 **Further assurance**

Each Party must promptly execute all documents and do all things that any other Party from time to time reasonably requires of it, to effect, perfect or complete the provisions of this Deed and any transaction contemplated by it.

3.7 **Governing Law and Jurisdiction**

- a) This Deed is governed by, and is to be construed in accordance with, the laws in force in New South Wales.
- b) Each Party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

3.8 **Assignment**

The Provider must not dispose of or encumber any or all rights under this Deed without the prior written consent of the Department.

3.9 **Counterparts**

This Deed may be executed in one or more counterparts, both by electronic or inked signature, each of which will be deemed an original and all of which together will constitute one and the same instrument. Signed originals may be exchanged in hardcopy, via facsimile, or .pdf file by email and any such form will be deemed an original.

SIGNED AS A DEED

Execution by the Department

Signed, sealed and delivered for and on behalf of **The Crown in Right of the State of New South Wales acting through the Department of Communities and Justice, Victims Services NSW** but not so as to incur personal liability.

Mark Herrero

Chief Procurement Officer, Department of Communities and Justice

Signed using DocuSign – Refer to last page

Signature

Signed using DocuSign – Refer to last page

Date

In the presence of

Signed using DocuSign – Refer to last page

Name of witness

Signature of witness

Signed using DocuSign – Refer to last page

Date:

Execution by the Provider

The COMMON SEAL of **Victims of Crime Assistance League Inc**
ABN 99 422 394 085

Was duly affixed hereto at Newcastle in the State of New South Wales:

by:

Kerrie Thompson,
Chief Executive Officer

Signed using DocuSign – Refer to last page

Signature

Signed using DocuSign – Refer to last page

Date:

In the presence of:

Secretary

Signed using DocuSign – Refer to last page

Signature

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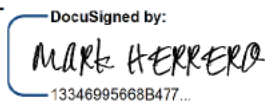
Date

Signature Area

Organisation Name:
The NSW Department of Communities and Justice

Role/Title:
Chief Procurement Officer

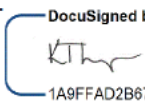
Name:
MARK HERRERO

Signature:  DocuSigned by:
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Organisation Name:
Victims Of Crime Assistance League Incorporated
NSW

Role/Title:
Chief Executive Officer

Name:
Kerrie Thompson

Signature:  DocuSigned by:
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Organisation Name:
The NSW Department of Communities and Justice

Role/Title:
Executive Assistant to Chief Procurement Officer

Name:
SOPHIA KOIMTSIDIS

Signature:  DocuSigned by:
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Organisation Name:
Victims Of Crime Assistance League Incorporated
NSW

Role/Title:
Administration Assistant

Name:
Lily Thomas

Signature:  DocuSigned by:
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