

AGREEMENT

BETWEEN

COMMONWEALTH OF AUSTRALIA

AND

LEGAL AID NEW SOUTH WALES

AND

[insert name of Organisation]

**Relating to the provision of community legal services
1 July 2010 – 30 June 2013**

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1. PARTIES

This Agreement is made between

COMMONWEALTH OF AUSTRALIA represented by and acting through the Attorney-General's Department ABN 92 661 124 436 (the Commonwealth)

and

LEGAL AID NSW ABN 81 173 463 438 (the State)

and

(name and ABN of Organisation) (the Organisation)

2. DEFINITIONS

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| ABN | has the same meaning as in section 41 of the <i>A New Tax System (Australian Business Number) Act 1999</i> . |
| ALAP funding | means funding that is provided for projects that form part of the Aboriginal Legal Access Program (ALAP). |
| Agreement | means this document and includes any schedules, annexures and documents attached or incorporated by reference, if any. |
| Allowable Surplus | means up to 15% of Annual Funds which may, without seeking approval, be carried over to the next Financial Year. The calculation of the amount of the Allowable Surplus will exclude any one-off funds that may have been provided under this Agreement, unless any such funds have been substantially unspent over the majority of the Service Period. |
| Annual Budget | means the financial report submitted via CLSIS for each Financial Year of the Service Period detailing the projected income and expenditure of funds provided under this Agreement, required by the CLSIS reporting template. |
| Annual Funds | means in a financial year the combined Commonwealth funds, State funds and funds from the Public Purpose Fund, if applicable, as specified in Schedule 1. |
| Annual Activity Targets | means the Organisation's annual planned activity levels in relation to Core Service Activities, in accordance with the strategies outlined in the Organisation's CLSP Plan. |

- Assets has the same meaning as given in the Australian Accounting Standards, but is limited to those acquired with funding provided under this Agreement or Service Generated Income.
- Audited Financial Statements means an Organisation's financial statements for a Financial Year which have been prepared in accordance with the Australian Accounting Standards, and certified by a Registered Auditor and which include:
- a. a Statement of Financial Position in respect of the Organisation for that Financial Year including required Notes to the Accounts
 - b. a Statement of Comprehensive Income (previously known as a Statement of Financial Performance) in respect of the Organisation that clearly identifies the Annual Funds and Service Generated Income for that Financial Year
 - c. a Cash Flow Statement in respect of the Organisation for that Financial Year. (However if the Organisation is a non-reporting entity [as defined in the Australian Accounting Standards], and is not otherwise required to prepare a Cash Flow Statement, Special Purpose Financial Reports [as defined in the Australian Accounting Standards] will be accepted without a Cash Flow Statement), and
- for the purposes of this Agreement, Audited Financial Statements shall also include:
- d. a cumulative and accruals-based CLSIS Funds Report (being the final fourth quarter Funds Report required under this Agreement) in respect of all funds provided under this Agreement and Service Generated Income for all Funding Categories in that Financial Year
 - e. within a Statement of Financial Position, Cash Flow Statement or Notes to the Accounts, clearly identified changes to written down values of Community Legal Services Program (CLSP) Assets held, including totals of Asset purchases, disposals and depreciation; details of any legally enforceable commitments beyond the current financial year; Allowable and Excess Surpluses, and

- f. where the Services are not the major business of the Organisation, a separate Statement of Financial Position covering the funds provided under this Agreement or Previous Agreement.

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| Australian Accounting Standards | refers to the standards of that name maintained by Australian Accounting Standards Board, created by section 226 of the <i>Australian Securities and Investments Commission Act 2001</i> . |
| Business Day | means, any day other than a Saturday or Sunday or a public holiday in the place where an action occurs. |
| CCLSP Website | means the website maintained by the Commonwealth Attorney-General's Department at www.ag.gov.au/cclsp . |
| CL SIS | means the Community Legal Services Information System, the data collection and reporting system provided by the Commonwealth for the Community Legal Services Program. |
| CL SIS Data Dictionary | means the dictionary, as amended from time to time, containing the CL SIS data flow model, the data items and the data groupings, as well as an explanation of the definitions and usage of the data items and data groupings, and which is available on the CCLSP Website. |
| CL SIS Financial Reporting Guide | means the guide provided on the CCLSP website providing information on how to complete the CL SIS Annual Budget and Funds Reports |
| CLSP Plan | means the plan which sets out the objectives of the Organisation in relation to the use of funding provided or held under this Agreement and Service Generated Income, its strategies and associated actions designed to meet these objectives, in the format set out in the CLSP Plan template available on the CCLSP Website. |
| Commonwealth funding | means funding that is administered by the State Funding Body on behalf of the Commonwealth Attorney-General's Department, as specified in Schedule 1. |
| Core Service Activities | means information, advice, casework, community legal education and law reform and legal policy activities undertaken by the Organisation in provision of the Services. |
| Excess Surplus | means any surplus in excess of the Allowable Surplus. |

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| Existing Services Material | means all Material produced in whole or in part by the Organisation through the investment or use of monies provided by the Funding Bodies under a Previous Agreement and in existence prior to the Commencement Date. |
| Financial Year | means each period from 1 July to the following 30 June occurring during the Service Period. |
| Funding Body | means the Commonwealth or State Funding Body; Funding Bodies means both these Parties. |
| Funding Body Material | means any Material provided by a Funding Body for the purposes of this Agreement or which is copied or derived from Material so provided except for Services Material. |
| Funding Category | means a sub-program of the Community Legal Services Program that is specified in Schedule 1 and for which funds are provided as specified in that Schedule. |
| Funds Reports | means the financial reports submitted via CLSIS each quarter detailing year to date income and expenses in respect of Annual Funds on an accrual basis, and other financial information specified in the CLSIS Financial Reporting Guide. |
| Guidelines | means the Community Legal Services Program Guidelines issued by the Funding Bodies as amended or updated from time to time, at the discretion of the Funding Bodies. |
| Intellectual Property Rights | includes all copyright (including rights in relation to phonograms and broadcasts), all rights in relation to inventions, plant varieties, trademarks (including service marks), designs and circuit layouts; and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields, but does not include: <ul style="list-style-type: none"> a. Moral Rights b. the non-proprietary rights of performers, or c. rights in relation to confidential information. |
| Management Committee | means a body that governs, or is responsible for the management of, the Organisation. |
| Material | includes documents, information and data stored by any means and all copies and extracts of the same, software (including licensed software), databases and website material, but does not include any information, held in any form, that is the subject of client legal privilege. |

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| Moral Rights | <p>means the following non-proprietary rights of an author of copyright Material:</p> <ol style="list-style-type: none"> the right of attribution of authorship the right of integrity of authorship, and the right not to have authorship falsely attributed. |
| Other Income | <p>means any income the Organisation receives from</p> <ol style="list-style-type: none"> any person or organisation (other than funding provided under this Agreement), and membership fees, donations, bequests and any fundraising activities, <p>but excludes Service Generated Income.</p> |
| Party | means a Party to this Agreement. |
| Performance Improvement Plan | <p>means the plan described in clause 13.1.9 that identifies:</p> <ol style="list-style-type: none"> areas for improvement in the Organisation's performance, and the actions that the Organisation needs to take to improve those areas. |
| Personal Information | has the same meaning as in section 6 of the <i>Privacy Act 1988</i> (Cth), namely, information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion. |
| Previous Agreement | means a previous written agreement between the Organisation and the Funding Bodies, under which the Funding Bodies provided funding to the Organisation for the purpose of the Community Legal Services Program (or another program with a substantially similar purpose). |
| Progress Reports | means the progress reports against the CLSP Plan required to be provided by the Organisation to the Funding Bodies each Financial Year in the format set out in the Progress Report template available on the CCLSP Website, and in accordance with the timetable set out in Schedule 2. |
| PPF | means the Public Purpose Fund (PPF) that is established under the <i>Legal Profession Act</i> . Funding provided by the Public Purpose Fund is |

administered by the State Funding Body as specified in Schedule 1, if relevant.

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| Records | means all Material stored by any means and all copies and extracts of the same, including the Organisation's financial accounts and related source data, such as bank records, receipts, invoices, cheque books, wages records and petty cash documents. |
| Registered Auditor | means a person registered as an auditor under the <i>Corporations Act 2001</i> . |
| Reports | means: <ol style="list-style-type: none">Funds ReportsProgress ReportsAnnual Activity Targetsan annual Certificate of Compliance according to the detail included in Schedule 3Audited Financial Statementsan Annual Report, andan Annual Budget. |
| Service Generated Income | means any income generated by the Organisation's investment of funding provided under this Agreement or by the provision of Services funded under this Agreement, including but not limited to bank interest, proceeds from the sale of Assets, client contributions, fees for Community Legal Education activities, costs recovered and retained. |
| Service Standards | refers to the standards, as amended from time to time, available on the CCLSP website. |
| Services | means the provision of community legal services as described in the CLSP Plan, which include: <ol style="list-style-type: none">the Core Service Activities that aim to fulfil the objectives of the CLSP as provided in the Guidelinesthe provision of Services Material, andcommunity and sector development activities. |
| Services Material | means all Material (including Reports and Records) paid for in whole or in part with funding provided under this Agreement or a Previous Agreement or by Service Generated Income accrued during the Service Period and: |

- a. produced for the purpose of performing the Services
- b. incorporated in, supplied or required to be supplied along with the Material referred to in paragraph a, or
- c. copied or derived from Material referred to in paragraph b

but does not include Material that is properly the subject of client legal privilege.

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| State Funding | means funding that is administered by the State Funding Body on behalf of the State Government and/or the Public Purpose Fund, as specified in Schedule 1. |
| State Funding Body | means the State agency or authority that, on behalf of the State, has responsibility for administering the funding provided under this Agreement to the Organisation. |
| State Program Manager (SPM) | means the Director or Chief Executive Officer of the State Funding Body, or where there is no State Party, the Director or Chief Executive Officer of the Commonwealth Funding Body, or their delegate who, on behalf of the Commonwealth, the State and the Public Purpose Fund (where applicable), administers this Agreement. |
| Surplus Funds | means any amount of funds the Organisation has accumulated from: <ul style="list-style-type: none"> a. funding provided under this Agreement and Service Generated Income received in a Financial Year and, as at 1 July of the next Financial Year, has not used or committed, or b. funds received under a Previous Agreement with a Funding Body and, as at the Date of this Agreement, has not used or committed. |
| Term of this Agreement | means the period described in clause 7.1.1. |
| Termination Date | means the date specified in a notice of termination on which the Agreement is terminated. |

3. RECITALS

- 3.1.1. The Parties recognise that the provision of high quality community legal services for the disadvantaged in the Australian community is an important element in facilitating access to justice.
- 3.1.2. In order to support the provision of these services, the Commonwealth operates the Commonwealth Community Legal

Services Program (CCLSP) and the State operates the State Community Legal Services Program (SCLSP). Together, these programs constitute the Community Legal Services Program (CLSP).

- 3.1.3. The Commonwealth is committed to ensuring a consistent national approach to the planning, management and ongoing development of the CCLSP. The Commonwealth and States are negotiating a National Partnership Agreement for Legal Assistance Services to support a holistic approach to the management and administration of the delivery of legal assistance services generally. This Agreement is intended to operate in a manner consistent with the objectives and outcomes of the National Partnership Agreement.
- 3.1.4. Under this Agreement the Commonwealth and/or the State agree to provide funding to the Organisation for the provision of community legal services. These services are to be provided in accordance with this Agreement, the Guidelines and the CLSP Service Standards.

4. INTERPRETATION

- 4.1.1. This Agreement records the entire agreement between the Parties in relation to its subject matter.
- 4.1.2. In this Agreement, unless the contrary intention appears:
- a. all references to dollars are to Australian dollars
 - b. reference to any statute or other legislation (whether primary or subordinate) is to a statute or other legislation of the Commonwealth or State as amended or replaced from time to time
 - c. words of inclusion are not words of limitation
 - d. in the event of inconsistency between the following documents, the order of priority for the purpose of resolving any conflict shall be the order set out below, the documents higher in the list taking precedence over the documents lower in the list:
 - i. the terms and conditions of this Agreement
 - ii. any part of a Schedule (and annexures and attachments if any), and
 - iii. the Guidelines.
 - e. where any conflict arises between any part of a Schedule and any part of an annexure, the Schedule prevails and where any conflict arises between any part of an annexure and any part of an attachment, the annexure prevails, and
 - f. reference to a Schedule (or an annexure or attachment) is a reference to a Schedule (or an annexure or attachment) to this

Agreement, including as amended or replaced from time to time by agreement in writing between the Parties.

4.1.3. A heading is for reference only and does not affect the meaning or interpretation of this Agreement.

4.1.4. Any reading down or severance of a particular provision does not affect the other provisions of this Agreement.

5. UNDERTAKINGS IN RELATION TO ADVOCACY ACTIVITIES

5.1.1. The Commonwealth is committed to ensuring that its agreements do not contain provisions that could be used to stifle legitimate debate or prevent organisations engaging in advocacy activities. In order to avoid any doubt about the interpretation of provisions in this agreement, the Commonwealth gives the following undertakings:

- a. no right or obligation arising under this Agreement will be read or understood by the Commonwealth as limiting the Organisation's right to enter into public debate or criticism of the Commonwealth, its agencies, employees, servants or agents, and
- b. the Commonwealth will not require the Organisation to obtain advance approval of any public debate or advocacy activities in relation to this Agreement.

6. BASIS OF AGREEMENT

6.1.1. This Agreement deals with the expenditure of public monies and is subject to the appropriation of those monies by the respective Parliaments of the Funding Bodies.

6.1.2. A Funding Body may review the operation, or conduct evaluations, of its Community Legal Services Program from time to time and the Organisation will participate in and co-operate with such reviews and evaluations as and when requested by a Funding Body.

6.1.3. The Organisation is only eligible to receive Annual Funds under this Agreement if it is an Australian company, an association incorporated under the legislation of the State or Territory in which it operates or an Aboriginal association incorporated under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (CATSI Act).

7. TERM OF AGREEMENT AND SERVICE PERIOD

7.1. Term and Commencement Date

7.1.1. The Term of this Agreement commences on the Commencement Date and ends on the Completion Date.

- 7.1.2. The Commencement Date is the later of 1 July 2010, or the date written on the execution page of this Agreement, and if no date or more than one date is written there, then the date on which this Agreement is signed by the last Party to do so.
- 7.1.3. The Completion Date is the day after the Organisation has done all that it is required to do under this Agreement to the satisfaction of the Funding Bodies.
- 7.2. **Service Period**
- 7.2.1. The Service Period commences on 1 July 2010 and ends on 30 June 2013, unless terminated earlier, or extended under clause 7.3.1.
- 7.3. **Extension of Service Period**
- 7.3.1. The Service Period may be extended by written agreement of the Parties.
- 7.4. **Replacement Agreement**
- 7.4.1. The Parties may agree to terminate this Agreement and enter into a new Agreement at any time during the Term of this Agreement. The operation of this clause is not affected in any way by the provisions of clause 25.

8. CONDUCT OF SERVICES & PAYMENT OF FUNDS

- 8.1. **Provision of Services**
- 8.1.1. The Parties agree to use their best endeavours to collaborate and cooperate to enhance links with relevant service providers, having regard to the National Partnership Agreement on Legal Assistance.
- 8.1.2. The Organisation must:
- a. conduct the Services in accordance with the Guidelines and the Organisation's approved CLSP Plan, and
 - b. minimise unnecessary duplication of services in a local community or area of specialisation.
- 8.2. **Service Standards**
- 8.2.1. The Organisation must comply with the Service Standards during the Service Period.
- 8.2.2. A Funding Body may undertake Service Standards audits with the Organisation during the term of this Agreement to monitor the Organisation's compliance with clause 8.2.1.

- 8.2.3. A Funding Body will provide reasonable notice in writing to the Organisation about any audit to be conducted pursuant to clause 8.2.2.
- 8.2.4. The SPM or other person nominated by a Funding Body will conduct a Service Standards audit.
- 8.2.5. The Funding Body or SPM will consult with the Organisation on arrangements for conduct of the Service Standards audit and any site visit will be made at an agreed mutually convenient time.
- 8.2.6. A report on the results of any Service Standards audit will be made available to the Organisation within 30 Business Days of the completion of the report, and the Organisation will be provided with a reasonable opportunity to comment before the Funding Bodies make any decision on the report's recommendations.
- 8.2.7. A report made under clause 8.2.6 will.
- a. identify any Standard that the audit finds is not being met
 - b. the reasons why the audit has found that a Standard is not being met and/or the manner in which it is not being met, and
 - c. the steps that the Organisation is required to take to meet that Standard.
- 8.3. **CLSP Plan, Annual Budget and Activity Targets**
- 8.3.1. The Organisation will submit a CLSP Plan prior to the commencement of this Agreement. Annual Budgets and Annual Activity Targets are to be submitted to the SPM according to the timetable in Schedule 2.
- 8.3.2. The CLSP Plan, Annual Budget and Annual Activity Targets, must be approved by the SPM.
- 8.3.3. If the Organisation proposes to make any significant changes to the approved CLSP Plan, the organisation must submit the proposed changes to the SPM for approval before implementing those changes.
- 8.4. **Payment of Annual Funds**
- 8.4.1. Subject to parliamentary appropriation, and compliance by the Organisation with this Agreement, the Funding Bodies agree to provide the Organisation, through the SPM, the monies specified in Schedule 1 as varied as required in each Financial Year during the Service Period.

- 8.4.2. Without limiting the Funding Bodies' rights, a Funding Body may suspend any payment in whole or in part until the Organisation has performed its obligations under this Agreement.
- 8.4.3. Before any payments can be made to the Organisation:
- a. the Organisation must provide its valid ABN to the SPM and, if requested by the SPM, provide proof of its GST registration status, and
 - b. a correctly rendered tax invoice must be produced by the Organisation or a Recipient Created Tax Invoice by the Funding Body.
- 8.4.4. Subject to clause 8.4.1 of this Agreement, for each Financial Year of the Service Period, each Funding Body must use its best endeavours to ensure the following:
- a. the first quarterly instalment payable to the Organisation is paid by the 10th Business Day after the commencement of this Agreement, and
 - b. each subsequent quarterly instalment payable by the Funding Body is paid by the 10th Business Day of the Financial Year quarter to which the payment relates.
- 8.4.5. The Funding Bodies will not meet any expenditure incurred by the Organisation in excess of the Annual Funds provided under this Agreement.
- 8.4.6. All taxes, duties and government charges imposed or levied in Australia or overseas in connection with this Agreement, if any, will be borne by the Organisation.
- 8.4.7. Any additional one-off funding which may be provided to the Organisation by a Funding Body will be covered by the terms and conditions of this Agreement. The Organisation may be required to provide an appendix to the CLSP Plan detailing the proposed use of this funding.

9. USE OF FUNDS COVERED BY THIS AGREEMENT

9.1. Use and Management of Funds

- 9.1.A This clause 9 applies to all monies received by the Organisation that are covered by this Agreement ('funds').
- 9.1.1. The Organisation will use the funds efficiently and effectively in accordance with the approved Annual Budget and CLSP Plan to provide the Services, and will report the use of these funds in accordance with the terms and conditions of this Agreement.
- 9.1.2. The Organisation will:

- a. expend the funds only in connection with the provision of Services, or the acquisition or replacement of assets to enable the Organisation to provide those services, and the compilation of Reports, in accordance with Schedule 5 and the terms and conditions of this Agreement and for no other purpose
 - b. ensure that the funds held as cash are held in an account in the Organisation's name, and which the Organisation solely controls, with a deposit-taking institution authorised under the *Banking Act 1959* to carry on business in Australia
 - c. keep proper accounts and records of the funds and their use in accordance with Australian Accounting Standards
 - d. prudently manage the investment of any funds not needed for the immediate provision of the Services so that interest is recognised as revenue on these funds, and
 - e. not make a loan, gift or donation from the funds.
- 9.1.3. The Organisation will not use the funds or this Agreement or any of the obligations of the Funding Bodies under this Agreement as any form of security for the purpose of borrowing money.
- 9.1.4. Subject to clause 9.2, any unused funds may be recovered by the relevant Funding Body. The relevant Funding Body may recover those funds:
- a. by deducting them from the Organisation's next quarterly instalment or
 - b. by requiring the Organisation to immediately repay them.
- 9.2. **Surplus Funds**
- 9.2.1. At the end of any Financial Year, the Organisation may, without seeking approval, carry over an amount up to the Allowable Surplus amount to the next Financial Year.
- 9.2.2. At the end of any Financial Year, the Organisation may submit a proposal to the relevant Funding Body to carry over an amount in excess of the Allowable Surplus to the next Financial Year (Excess Surplus).
- 9.2.3. Use of the Excess Surplus must be approved by the relevant Funding Body in accordance with the requirements and procedures set out in Schedule 6.
- 9.2.4. Where the relevant Funding Body does not approve the carry-over of an Excess Surplus:
- a. the amount in question may be recovered by deducting it from the Organisation's next quarterly payment, or

- b. requiring the Organisation to immediately repay it.
- 9.2.5. The Organisation will be given reasonable advance notice of any recovery action to be undertaken pursuant to clause 9.2.4.
- 9.3. **Use of Funds in Legal Proceedings**
- 9.3.1. If any legal proceedings are commenced against the Organisation, the Funding Bodies must be notified immediately, through the SPM, of the other party or parties to the proceedings and the nature of the proceeding against the Organisation.
- 9.3.2. Subject to clause 9.3.3, the Organisation may spend funds provided under this Agreement or Service Generated Income in any legal proceedings brought against it only in respect of proceedings that directly relate to the provision of Services.
- 9.3.3. The Organisation must not, without prior written approval of the SPM spend in excess of 5% or \$10,000 of Annual Funds (whichever is the lesser), to defend itself against any litigation in accordance with Schedule 5.
- 9.3.4. Before giving approval under clause 9.3.3 the SPM may impose any conditions it considers appropriate, including requiring the Organisation to provide periodic updates on legal proceedings.
- 9.3.5. Following the conclusion of the legal proceedings, the Organisation will provide to the SPM a report noting the outcome of the proceedings and an itemised account of expenditure from funds provided under this Agreement or Service Generated Income.
- 9.3.6. The requirements to provide notification, updates and reports in clauses 9.3.1, 9.3.3 and 9.3.5, shall be subject to the Organisation's obligation to protect any client legal privilege in relation to matters the subject of the proceedings.
- 9.3.7. Any expenditure under clause 9.3 must be identified in the Organisation's audited financial statements.

10. REPORTING REQUIREMENTS

- 10.1. **Reports**
- 10.1.1. The Organisation must provide the Reports to the Funding Bodies through the SPM.
- 10.1.2. The Reports (except for Annual Reports) must be submitted electronically using CLSIS where CLSIS provides a facility for submitting the Reports, or otherwise in an electronic format that

complies with the relevant template, by the dates specified in Schedule 2.

10.2. Failure to provide Reports

10.2.1. If the Organisation does not provide the Reports by the due dates, the relevant Funding Body may exercise its rights under clause 23.1.

10.2.2. The Organisation may, in advance of the due date, seek an extension of time from the SPM to submit a Report.

10.3. Audit Requirements

10.3.1. The Organisation must maintain financial records that comply with the Australian Accounting Standards.

10.3.2. At the end of each Financial Year, the Organisation must provide to the SPM:

- a. a certificate from a Registered Auditor in the format set out at Attachment A to Schedule 5 stating that the funds covered by this Agreement have been used for the purpose of providing the Services in accordance with the terms and conditions of this Agreement, and
- b. the Organisation's Audited Financial Statements for the Financial Year.

10.4. Failure to provide Audited Financial Statements

If the Organisation does not provide the Audited Financial Statements by the due date, either or both of the Funding Bodies may exercise their rights under clause 23.1.

11. NOTIFICATION TO SPM

11.1.1. The Organisation must provide the SPM with contact details for the Chair of the Organisation that are separate to the Organisation's address and telephone details.

11.1.2. The Organisation must notify the SPM within 5 Business Days of any:

- a. changes of addresses where Services are provided
- b. changes to contact details for the Organisation
- c. changes in the occupants of the positions of Coordinator (or equivalent positions such as Manager or Administrator), and Principal Solicitor including, cessations or appointments, and changes to their hours of employment
- d. changes to contact details for the Chair of the Management Committee of the Organisation, and

e. changes to the Organisation's constitution.

11.1.3. The Organisation must notify the SPM within 10 business days of any position funded under this Agreement that has been vacant for a period of 8 weeks.

11.1.4. The Organisation must provide the SPM with written notice of the Organisation's Annual General Meeting at least 10 Business Days prior to the meeting.

12. DATA COLLECTION

12.1. CLSIS

12.1.1. The Organisation must collect and record into CLSIS accurate, comprehensive and timely data on the provision of the Services across the Core Service Activities.

12.1.2. The data specified in clause 12.1 must be submitted to the National Processing Centre by the 21st of the month following the month in which provision of the Services occurred.

12.1.3. The Parties and the SPM will have access to and the right to use and reproduce all data about the Organisation that is submitted to the National Processing Centre in accordance with clause 12.1.1, subject to the rules and access restrictions in the CLSIS Data Dictionary.

12.2. Client Satisfaction Survey

12.2.1. The Organisation will conduct a client satisfaction survey at least once during the Service Period and provide information on the key results of the survey in its next Progress Report following the conduct of the survey.

13. ORGANISATION PERFORMANCE MONITORING

13.1.1. A Funding Body may use information provided by the Organisation to monitor the performance of the Organisation in meeting its obligations under this Agreement.

13.1.2. The Funding Bodies will provide feedback to the Organisation on its performance on an annual basis.

13.1.3. In compiling feedback for the Organisation on its performance, a Funding Body may seek input from relevant organisations, in accordance with the procedure set out in the Guidelines.

13.1.4. A Funding Body may conduct a review of the Organisation with respect to:

a. the Organisation's provision of Services, and/or

- b. the Organisation's compliance with its obligations under this Agreement.
- 13.1.5. A Funding Body will provide reasonable notice in writing to the Organisation about the form and scope of any review to be conducted pursuant to clause 13.1.4.
- 13.1.6. When conducting a review of the Organisation in accordance with notice given under clause 13.1.5, the Funding Body will:
 - a. use their best endeavours to minimise interference to the Organisation's employees and to any and all of the Organisation's services, and
 - b. not access or require the production or disclosure of any information or material that is subject to client legal privilege.
- 13.1.7. A report on the results of any review undertaken pursuant to this clause will be made available to the Organisation within 30 Business Days of the completion of that report, and the Organisation will be provided with a reasonable opportunity to comment before the Funding Bodies make any decision on the report's recommendations.
- 13.1.8. A report made under clause 13.1.7 will:
 - a. identify any performance obligation/s that the review finds are not being met, and
 - b. the reasons why the review has found that an obligation is not being met and/or the manner in which it is not being met.
- 13.1.9. If a review identifies that the Organisation's performance has not, in the Funding Body's opinion, been satisfactory, a Funding Body will discuss with the Organisation and may agree on, or, absent agreement, may issue the Organisation with, a Performance Improvement Plan that sets out actions for improvement and may require some or all of those actions to be taken in a reasonable time.
- 13.1.10. Failure to meet the requirements set out in the Performance Improvement Plan will constitute a breach of this Agreement.
- 13.1.11. Nothing in this clause 13 affects the rights a Funding Body may have under clause 23.1.

14. FINANCIAL AUDITS BY FUNDING BODIES

- 14.1.1. At its discretion, a Funding Body may appoint an auditor to conduct financial audits of the Organisation in relation to this Agreement.

- 14.1.2. The Funding Body will provide reasonable prior notice in writing to the Organisation of any audit to be conducted (except where there is reasonable belief that there is an actual or apprehended breach of the law) and consult with the Organisation on arrangements for the conduct of the audit.
- 14.1.3. The cost of any audit conducted under clause 14 will be met by the relevant Funding Body, unless the Organisation is found to be non-compliant with this Agreement, in which case the Organisation may be required to contribute to or meet the cost of the audit.

15. ACCESS TO PREMISES AND RECORDS

15.1. Financial Audit

- 15.1.1. For the purposes of any financial audit conducted pursuant to clause 14, the Organisation will give 'those permitted':
- a. access to premises at which Services Material is held or stored by the Organisation or at which work in relation to the provision of Services is undertaken by the Organisation, at all reasonable times
 - b. permission to inspect and copy such Material, in the Organisation's possession or control, and
 - c. access to any Assets acquired with funds provided under this Agreement or previous Funding Agreements, wherever they may be located.
- 15.1.2. For the purposes of clause 15.1.1, 'those permitted' are:
- a. an auditor appointed by a Funding Body, or
 - b. any person authorised in writing by a Funding Body to represent them for purposes associated with a financial audit.
- 15.1.3. The Organisation will provide all reasonable assistance requested by 'those permitted' when they exercise the rights under clause 15.1.1.
- 15.1.4. The rights referred to in clause 15.1.1 are subject to:
- a. the provision of reasonable prior notice in writing by 'those permitted' (except where there is reasonable belief that there is an actual or apprehended breach of the law)
 - b. protection of Personal Information in relation to the Organisation's clients
 - c. protection of information and/or material that is the subject of client legal privilege
 - d. protection of information and/or material where the Organisation has a legal obligation of confidence, and

- e. the Organisation's reasonable security procedures.
- 15.1.5. When accessing the premises in accordance with notice given under clause 14.1.2, 'those permitted' will use their best endeavours to minimise interference to the Organisation's employees and to any and all of the Organisation's services.
- 15.2. **Auditor-General**
- 15.2.1. The Organisation agrees:
- a. to give the Commonwealth Auditor-General and State Auditor-General, or any persons authorised in writing by either of them, access to premises where obligations under this Agreement are being carried out, and
 - b. to permit those persons to inspect and take copies of any Services Material relevant to this Agreement.
- 15.2.2. The rights referred to in clause 15.2.1 are subject to:
- a. the auditor or authorised person providing reasonable prior notice
 - b. protection of Personal Information in relation to the Organisation's clients
 - c. protection of information and/or material that is the subject of client legal privilege
 - d. protection of information and/or material where the Organisation has a legal obligation of confidence
 - e. the reasonable security procedures in place at the premises, and
 - f. where appropriate, execution of a deed of confidentiality by the persons to whom access is given.
- 15.2.3. This clause does not detract from the statutory powers of the Commonwealth Auditor-General or State Auditor-General or any other bodies with statutory powers.

16. PROTECTION OF PERSONAL INFORMATION

16.1. Interpretation

- 16.1.1. This clause 16 applies only to the extent that the Organisation deals with Personal Information in providing the Services.

16.2. Organisation's obligation in relation to Privacy

- 16.2.1. The Organisation will:

- a. comply with:
 - i. the Information Privacy Principles set out in the *Privacy Act 1988* (Cth), and

- ii. any applicable State or Territory privacy legislation, when doing any act or engaging in any practice in relation to Personal Information for the purposes of this Agreement as if they were an agency as defined in that Act, and
- b. deal with Personal Information received, created or held by the Organisation for the purposes of this Agreement only to fulfil their obligations under this Agreement.

17. INTELLECTUAL PROPERTY RIGHTS

17.1. Funding Body Material

17.1.1. Ownership of all Funding Body Material, including Intellectual Property Rights in that Material, remains vested at all times in the Funding Body.

17.1.2. The Funding Body grants to the Organisation a licence to use, reproduce, adapt and exploit the Funding Body Material for the purposes of this Agreement.

17.2. Services Material

17.2.1. Intellectual Property Rights in the Services Material vests immediately in the Organisation.

17.2.2. Clause 17.2.1 does not affect the ownership of Intellectual Property in any Material in existence on the date this Agreement is made.

17.2.3. The Organisation grants to each Funding Body a licence to use and reproduce, with appropriate attribution, the Services Material for the purposes of this Agreement.

17.2.4. The Organisation warrants that it is entitled, or will be entitled at the relevant time, to deal with the Intellectual Property Rights in the Services Material in accordance with this clause.

18. CONFIDENTIALITY

18.1. Confidential Information

18.1.1. The Parties will not, without the prior written consent of the relevant Party, disclose to a third party any information or Material that a Party claims to be confidential (Confidential Information) except where the Confidential Information is:

- a. disclosed to the responsible Minister in response to a request or required by a House or a Committee of the Parliament of the Commonwealth of Australia or relevant State
- b. authorised or required by law to be disclosed, or

- c. in the public domain otherwise than due to a breach of this clause 18.

18.2. Funding Body Information

- 18.2.1. In this clause 18.2, Funding Body Information means any information developed, received or collected by or on behalf of a Funding Body to which the Organisation gains access under or in connection with this Agreement.
- 18.2.2. The Organisation agrees to secure all Funding Body Information against loss and unauthorised access, use, modification or disclosure.

19. NO POWER TO BIND

- 19.1.1. The Organisation will not represent itself, and will ensure that its employees, partners and agents do not represent themselves as being able to bind or represent the Funding Bodies.

20. SUBCONTRACT OR OTHER SERVICE PROVIDER

- 20.1.1. The Services to be provided by the Organisation under this Agreement may not be provided by any other entity whether under an agreement, subcontract or any other arrangement with the Organisation unless prior written approval is obtained from the SPM.

21. RECOGNITION OF FUNDING

- 21.1.1. The Organisation will acknowledge the financial and other support it has received from the Funding Bodies under this Agreement for the provision of Services by incorporating a statement acknowledging the funding:
 - a. in the Organisation's Annual Report
 - b. in publications providing information relating to the Organisation and/or provision of Services, wherever practicable, and
 - c. on the Organisation's website.

22. NOTIFIABLE EVENT

- 22.1.1. If, for any reason, the Organisation forms the opinion that it is unable to or will not continue to provide Services or cannot comply with any term of this Agreement, it must immediately notify the Funding Bodies in writing.

23. DEFAULT

23.1. Default by Organisation

23.1.1. Where a Funding Body considers that the Organisation has failed to fulfil or is in breach of any of its obligations under this Agreement, the

Funding Body may:

- a. require the Organisation to outline details of the omission or breach
- b. require the Organisation to provide further information or explanation from the Organisation about the activities causing the breach
- c. notify the Organisation, in writing, of the remedial action required to overcome the omission or breach
- d. advise the Organisation that if remedial action notified under clause 23.1.1.c is not implemented within 20 Business Days of receipt of the notice provided under clause 23.1.1.c, or such other time as agreed by the parties, the Funding Body may exercise its rights under either clause 23.1.1.e, or clause 25.1.1
- e. either:
 - i. suspend the payment of funding or
 - ii. withhold (in whole or in part) payment of funding, until any deficiencies in the Organisation's performance have been rectified
- f. use the failure to fulfil, or breach of, an obligation, to trigger a review, audit or investigation under clauses 8.2 or 13
- g. appoint an administrator or
- h. exercise their discretion under clause 25.1 and 25.2.

24. DISPUTE RESOLUTION

24.1. Procedure for Dispute Resolution

24.1.1. Any dispute arising under this Agreement which cannot be resolved by informal discussions between the Parties will be dealt with as follows:

- a. the Party claiming there is a dispute will give written notice to the other Party or Parties setting out the nature of the dispute
- b. the Parties in dispute will try to resolve the dispute through direct negotiation
- c. if there is no resolution of the dispute within 20 Business Days or such other agreed time from the receipt of the notice, the parties

will undertake a mediation or conciliation process. The appropriate process and a suitable and independent mediator or conciliator will be determined:

- i. by agreement of the parties in writing or
- ii. failing agreement, by the President or Chapter Chair of the Institute of Arbitrators and Mediators, Australia.

24.1.2. The parties will use their best endeavours to resolve any dispute within 40 Business Days of the notice. Despite the existence of a dispute, the Organisation will continue to perform its obligations under this Agreement unless requested in writing by the relevant Funding Body not to do so.

24.1.3. This clause 24 does not apply, at a Funding Body's discretion to the following circumstances:

- a. action by a Funding Body to suspend or withhold payment under clause 23.1.1.e
- b. the exercise of rights under clause 15 or
- c. where notice of termination has been given by a Funding Body under clause 25.1.1 except clause 25.1.1.b.

24.1.4. This clause 24 does not preclude either Party from commencing legal proceedings for urgent interlocutory relief.

25. TERMINATION OR EXPIRY OF AGREEMENT

25.1. Termination at Funding Body's discretion

25.1.1. In the case of either of the following events, a Funding Body may give notice to the other Parties to terminate this Agreement:

- a. where the Organisation ceases to carry on business or exist, or
- b. where the Organisation is in breach of its obligations under this Agreement and:
 - i. the Funding Body considers the Organisation is not capable of remedying the breach, or
 - ii. the Organisation has been notified in writing by the Funding Body of that breach and the breach has not been remedied within 20 Business Days or such other agreed time of receiving a notice in writing from the Funding Body to do so.

25.2. Termination by any Party

25.2.1. Any Party may terminate this Agreement at any time during the Term of this Agreement or any extended Term of this Agreement by giving notice to the other Parties.

25.2.2. Any termination of this Agreement will be without prejudice to the rights, liabilities, or obligation of the Parties accruing prior to the date of receipt of the notice of termination.

25.2.3. If notice of termination is given under clause 25.2.1, the termination will take effect:

- a. six months after receipt of the notice of termination by a Party, or
- b. such other time as agreed in writing by the Parties.

25.3. **Organisation's liabilities and obligations**

25.3.1. On receipt of a notice of termination under clause 25.1.1 or regardless of which Party gives the notice, the Organisation will:

- a. if directed to do so by a Funding Body, cease the performance of its obligations under this Agreement
- b. do everything possible to mitigate all losses, costs, and expenses arising from the termination, unless otherwise directed in writing by the relevant Funding Body, and
- c. return to the relevant Funding Body any funds provided under this Agreement and not legally committed, as directed by that Funding Body.

25.3.2. Clause 25.3.1.c will also apply where the Parties to this Agreement do not enter into a new agreement or do not extend the Service Period.

25.4. **Funding Body's liabilities and rights**

25.4.1. Unless otherwise agreed in writing by the Parties, if this Agreement is terminated under clause 25.1 or 25.2 a Funding Body will only be liable:

- a. to pay any amount of the Annual Funds for Services provided before the Termination Date, and
- b. for any reasonable costs incurred by the Organisation that are directly attributable to the termination of this Agreement and for which the Organisation has inadequate funds provided under this Agreement, including:
 - i. payments to be made in relation to reassignment or retrenchment of the Organisation's employees
 - ii. costs or penalties incurred in relation to the Organisation's necessary accommodation changes, and
 - iii. any loss incurred on premature retirement of the Funding Body's portion of Assets.

- 25.4.2. A Funding Body's liabilities under clause 25.4 are subject to the Organisation's:
- a. compliance with clause 25.3, and
 - b. satisfactory written substantiation of any amount claimed under clause 25.4.1.
- 25.4.3. Unless otherwise agreed in writing by the relevant Funding Body, where this Agreement is terminated under clause 25.1, or the Parties to this Agreement do not enter into a new agreement or do not extend the Service Period under clause 7.2, the Funding Body will be entitled to recover from the Organisation the net realisable value of CLSP Assets attributable to the Funding Body, regardless of any Organisation liabilities not related to the provision of Services. The amount to be recovered will be determined, as at the date specified in the notice of termination or the end of the Service Period, on the basis of audited financial statements prepared by an approved auditor.
- 25.5. **Payment of monies owing**
- 25.5.1. Any monies owing to a Funding Body under this clause 25 will be paid to the Funding Body within three months of the date of effect of the notice of termination or within three months of the end of the Service Period, or as otherwise agreed in writing by the Parties.

26. COMPLIANCE WITH LAWS

- 26.1.1. The Organisation must, in carrying out its obligations under this Agreement, comply with the provisions of all relevant statutes, regulations, by-laws and requirements of the Commonwealth and/or a State or a Territory or local authority.

27. VARIATION OF AGREEMENT AND NO WAIVER

27.1. Variation

- 27.1.1. A Funding Body may review the operation of this Agreement at any time in consultation with the other Parties.
- 27.1.2. The provisions of this Agreement may be varied from time to time, in writing, signed by the Parties.

27.2. No Waiver

- 27.2.1. Failure or omission by a Funding Body at any time to enforce or require strict or timely compliance with any provision of this Agreement, will not affect or impair that provision in any way or the rights of the Funding Body to avail itself of the remedies it may have in respect of any such provision.

28. SEVERANCE AND SURVIVAL

28.1. Severance

28.1.1. Any reading down or severance of a particular provision does not invalidate any other provision of this Agreement.

28.2. Survival

28.2.1. The operation of each of clauses 9, 10.2, 10.4, 12.1.2, 14, 15, 16, 17, 18, 25, and 31 survives the expiration or earlier termination of this Agreement.

29. NOTICE

29.1. Manner of Giving Notice

29.1.1. Any notices or other formal communications given under this Agreement or responses to notices or other formal communication will be:

- a. in writing
- b. directed to the recipient's address in accordance with clause 29.3, and
- c. hand delivered or sent by registered post and transmitted by facsimile or email to the Organisation's advised contact addresses.

29.2. Receipt of Notice

29.2.1. The recipient of a notice given under this Agreement is taken to have received the notice:

- a. if hand delivered, on delivery
- b. if sent by registered post, three Business Days after the date of posting
- c. if sent by facsimile transmission, on the Business Day following the time recorded on a transmission result report; or
- d. if sent by email to the address of the recipient, when the email is actually received by the recipient.

29.3. Address for Notices

29.3.1. The address of the Commonwealth is:

Social Inclusion Division
Attorney-General's Department
3-5 National Circuit
BARTON ACT 2600

Attention: Assistant Secretary
Indigenous and Community Legal Services Branch

Facsimile: (02) 6141 4926

29.3.2. The address of State is:

Community Legal Centres Program
Legal Aid NSW
PO Box K847
HAYMARKET NSW 1238

Attention: Manager, Community Legal Centres Program

29.3.3. The address of the Organisation is:

(insert relevant Organisation contact details)

30. CONFLICT OF INTEREST

30.1. Conflicts

- 30.1.1. The Organisation must ensure that it has appropriate and effective policies and procedures in place to identify and avoid potential conflicts of interest and that all staff, both paid and voluntary, and Management Committee members, are fully aware of the relevant policies and procedures.
- 30.1.2. The Organisation warrants that, to the best of its knowledge after making diligent inquiry, at the date of signing this Agreement no conflict of interest exists, or is likely to arise, in the performance of its obligations under this Agreement by itself or by any of its employees, volunteers, agents or sub-contractors.
- 30.1.3. If, during the Term of this Agreement a conflict of interest arises, or appears likely to arise, that may affect the Organisation performing its obligations under the Agreement, the Organisation undertakes to notify the SPM immediately in writing, make full disclosure of all relevant information relating to the conflict and to take such steps as the SPM may reasonably require to resolve or otherwise deal with the conflict. If the Organisation fails to notify the SPM or is unable or unwilling to resolve or deal with the conflict as required, a Funding Body may terminate this Agreement in accordance with the provisions of clause 25.
- 30.1.4. The Organisation must not (and must use its best endeavours to ensure that any member of the Management Committee, employee, volunteer, agent or subcontractor of the Organisation does not) engage in any activity or obtain any interest during the course of this Agreement that is likely to conflict with or restrict the Organisation in

fulfilling its obligations to either Funding Body under this Agreement, fairly and independently.

31. INSURANCE

- 31.1.1. The Organisation will, for as long as any obligations remain in connection with this Agreement, maintain proper and adequate insurance including:
- a. workers compensation insurance as required by law
 - b. public liability insurance to the value of \$10 million per claim
 - c. buildings and contents insurance as required by any lease entered into by the Organisation
 - d. contents insurance over Assets for burglary, fire, storm damage or other accidental loss
 - e. adequate insurance to cover directors and volunteers
 - f. 'run off' insurance in the event of closure of the service, and
 - g. professional indemnity insurance as required by law.
- 31.1.2. If requested, the Organisation will provide the SPM with evidence satisfactory to the SPM that the Organisation has complied with the obligations to insure under clause 31.1.1.

32. INDEMNITY

32.1. General indemnity

- 32.1.1. The Organisation indemnifies (and agrees to keep indemnified) each of the Funding Bodies against any:
- a. cost or liability incurred by a Funding Body, or
 - b. loss of or damage to property of a Funding Body, or loss or expense incurred by a Funding Body in dealing with any claim against it, including legal costs and expenses on a solicitor/own client basis and the cost of time spent, resources used, or disbursements paid by a Funding Body, arising from:
 - i. any act or omission by the Organisation or the Organisation's personnel, in connection with this Agreement, where there was fault on the part of the person whose conduct gave rise to that cost, liability, loss, damage, or expense
 - ii. any breach by the Organisation of the Agreement, or
 - iii. the use by the Organisation of the Services Material, including any claims by third parties about the ownership or right to use Intellectual Property Rights or Moral Rights in the Services Material.

32.2. **Reduction of scope**

32.2.1. The Organisation's liability to indemnify each of the Funding Bodies under this clause will be reduced proportionally to the extent that any act or omission involving fault on the part of a Funding Body or its personnel contributed to the relevant cost, liability, loss, damage or expense.

32.3. **Preservation of other rights**

32.3.1. The right of a Funding Body to be indemnified under this clause is in addition to, and not exclusive of, any other right, power or remedy provided by law, but a Funding Body is not entitled to be compensated in excess of the amount of the relevant cost, liability, loss, damage or expense.

EXECUTION PAGE

SIGNED by the Parties

SIGNED for and on behalf of the)
COMMONWEALTH OF AUSTRALIA)

by)

)

in the presence of

.....

Date: _____

SIGNED for and on behalf of the)
LEGAL AID NSW [State funding body])

by)

)

in the presence of

.....

Date: _____

SIGNED for and on behalf of the)
[Organisation])

by)

)

in the presence of

.....

Date: _____

SCHEDULE 1 - Payment Schedule

**TOTAL COMMONWEALTH, STATE AND PUBLIC PURPOSE FUND
ANNUAL FUNDS PAYABLE**

The amounts specified in this Schedule 1 are GST exclusive.

2010 - 2011:

| Funding Category: | <u>Commonwealth</u> \$ | <u>State</u> \$ | <u>PPF</u> \$ | <u>Total</u> \$ |
|---|--|--|--|--|
| {insert 1 st Funding Category eg, Generalist} | \$(insert amount for July '10 to June '11} | \$(insert amount for July '10 to June '11} | \$(insert amount for July '10 to June '11} | \$(insert amount for July '10 to June '11} |
| {insert 2 nd Funding Category eg, Child Support, etc.} | \$(insert amount for July '10 to June '11} | \$(insert amount for July '10 to June '11} | \$(insert amount for July '10 to June '11} | \$(insert amount for July '10 to June '11} |
| Etc. | | | | |

Quarterly Commonwealth and State Payments

| Funding Category: | <u>Commonwealth</u> \$ | <u>State</u> \$ | <u>Total</u> \$ |
|---|--|--|--|
| {insert 1 st Funding Category eg, Generalist} | \$(insert amount per quarter for this Funding Category } | \$(insert amount per quarter for this Funding Category } | \$(insert amount per quarter for this Funding Category } |
| {insert 2 nd Funding Category eg, Child Support, etc.} | \$(insert amount per quarter for this Funding Category } | \$(insert amount per quarter for this Funding Category } | \$(insert amount per quarter for this Funding Category } |

Half Yearly PPF Payments

| Funding Category: | <u>Public Purpose Fund</u> \$ | <u>Total</u> \$ |
|--------------------------|---|---|
| Public Purpose Fund | \$(insert amount per six months for this Funding Category } | \$(insert amount per six months for this Funding Category } |

NOTES

1. Notification of changes in funding shall be made in writing by the SPM. Any such notification will provide an updated Schedule 1 for the relevant Financial Year of this Agreement. Receipt of Notice as per clause 29.2 of this Agreement will be deemed to be acceptance of the change in funding and the updated Schedule 1.
2. Schedule 1 funding (subject to availability of appropriation) may be indexed after the first year of the agreement.

SCHEDULE 2 - Timetable for Reports

TIMETABLE FOR SUBMISSION OF REPORTS

This Schedule is established in respect of the 2010-11, 2011-12 and 2012-13 Financial Years.

The following Reports are due for submission as follows:

| <u>Reports</u> | 2010-11 Financial Year | 2011-12 Financial Year | 2012-13 Financial Year |
|---|--|--|--|
| | Submission Date | Submission Date | Submission Date |
| CLSP Plan* for agreement period | Already submitted | Not Required | Not Required |
| Annual Accrual Budget | 31 July 2010 | 31 July 2011 | 31 July 2012 |
| Excess Surplus Spending Proposal | 31 October 2010 | 31 October 2011 | 31 October 2012 |
| Annual Targets* | Already submitted | 31 May 2011 | 31 May 2012 |
| Funds Report for 1 st quarter | 31 October 2010 | 31 October 2011 | 31 October 2012 |
| Progress Report 1** for 6 months | 31 January 2011 | 31 January 2012 | 31 January 2013 |
| Funds Report for 2 nd quarter (6 months) | 31 January 2011 | 31 January 2012 | 31 January 2013 |
| Funds Report for 3 rd quarter (9 months) | 30 April 2011 | 30 April 2012 | 30 April 2013 |
| Progress Report 2 for 12 months | 31 July 2011 | 31 July 2012 | 31 July 2013 |
| Interim Funds Report for 4 th quarter (12 months) | 31 July 2011 | 31 July 2012 | 31 July 2013 |
| Annual Report | 31 October 2011 | 31 October 2012 | 31 October 2013 |
| Audited Financial Statements including final Funds Report for 4 th quarter (12 months) | 31 October 2011 | 31 October 2012 | 31 October 2013 |
| Certificate of Compliance (to be lodged after all other annual reports) | 31 October 2011 | 31 October 2012 | 31 October 2013 |
| Data submission – EVERY MONTH | by 21 st of the following month | by 21 st of the following month | by 21 st of the following month |

* The CLSP Plan for 2010-13 and Annual Activity Targets for 2010-2011 were due on 31 May 2010.

** Not required for Organisations receiving up to \$100,000 of Schedule 1 funds per Financial Year, excluding any one-off funds.

SCHEDULE 3 - Certificate of Compliance

Certificate of Compliance

This Schedule is established in respect of the ____/____ Financial Year

Organisation:

Contact Officer: Telephone:

The above-named Organisation certifies that:

- i. The funds provided under the Terms and Conditions of the CLSP Service Agreement for 2010-13 have been used for the purpose for which they were provided
- ii. The Terms and Conditions of the CLSP Service Agreement for 2010-13 have been met and
- iii. The Audited Financial Statements in respect of the funds provided under the Terms and Conditions of the CLSP Service Agreement for 2010-13 have been certified by a person who is registered as an auditor in accordance with the Corporations Act 2001 and are attached, and
- iv. Salaries and allowances paid to people employed using the Funds are in accordance with award salary rates or employment agreements.

SIGNED for and on behalf of [Organisation])

by the Chairperson)

.....)

Name)

.....)

Signature)

in the presence of

.....)

Name of witness)

.....)

Signature)

SCHEDULE 4 - Annual Report Requirements

The Organisations must provide the SPM with two [three in Victoria] copies of its Annual Report by no later than 31 October of the Financial Year immediately following the Financial Year to which the Annual Report relates.

The Annual Report must acknowledge all of the funding provided by the Funding Bodies under this Agreement and include:

- a. a description of the Services provided
- b. hours of operation
- c. details of the numbers of Core Service activities undertaken
- d. at least two case studies demonstrating the outcomes achieved for clients
- e. details of outreach activities
- f. acknowledgement and extent of volunteer and pro bono work
- g. an overview of cooperative/collaborative activities with other local service providers
- h. source, amount and purpose of any income received from other bodies
- i. the names of the members of the Management Committee of the Organisation and the names and brief description of the roles of the staff involved in the provision of the Services, and
- j. Audited Financial Statements for the relevant financial year.

SCHEDULE 5 - Use of Funds and Assets and Specific Financial Reporting Requirements

USE OF FUNDS AND ASSETS AND SPECIFIC FINANCIAL REPORTING REQUIREMENTS

1. The Organisation must:

- a. ensure that a minimum of two signatories are required to operate any account in which the Organisation deposits funds pursuant to clause 9.1.2.b;
- b. maintain separate financial records in respect of the receipt and expenditure for each Funding Category of all funds covered by this Agreement;
- c. compile and submit Funds Reports on an accrual basis;
- d. where the Organisation wishes to have a deficit budget approved, satisfy the SPM that there are unusual or special circumstances that necessitate the approval of a deficit budget and that there are strategies in place to make up this deficit, resulting in a balanced actual Funds Report in the last year of the Term of this Agreement;
- e. where the Organisation receives Other Income, ensure that costs are apportioned appropriately across all funding sources;
- f. where the Organisation receives Other Income and uses CLSIS to record activities funded from Other Income, disclose in its Reports the details of:
 - i. the full amount, source and purpose of the Other Income (irrespective of the amount of Other Income received per annum)
 - ii. the Funding Category to which the Other Income applies, and
 - iii. the extent to which the activities resourced by the Other Income are recorded in CLSIS;
- g. where the Organisation receives Other Income and does not use CLSIS to record activities relating to this income, disclose in its Reports the total amount of Other Income, relevant to the delivery of the Services, for each Financial Year of the Service Period. The total amount is irrespective of the number of different funding sources or Funding Categories to which the income might apply;
- h. provide supporting documentation to the SPM in sufficient detail to justify the charging of any management fee in excess of 10% of Annual Funds, and any other additional overhead or other costs proposed to be charged to the CLSP;
- i. maintain an Assets Register and provide access to it to the SPM on request;
- j. manage and depreciate Assets according to Australian Accounting Standards;

- k. retain an amount of cash equivalent to the annual amount of depreciation reported on CLSIS, to be used for the future replacement of Assets;
- l. when a depreciable Asset is disposed of, ensure that any proceeds from the disposal in excess of the written down value of the Asset are accounted for as Service Generated Income;
- m. following completion of an audit by a Registered Auditor, provide the SPM with a certificate in the format at Attachment A, completed by the Organisation's Registered Auditor;
- n. if its Registered Auditor qualifies the Organisation's accounts or financial reports with any irregularity or disclaimer, provide the SPM with a full version of the Registered Auditor's report within 5 Business Days of the report being provided to the Organisation; and
- o. if the Organisation has received specific funding, including one-off funding under this Agreement to assist victims of family violence, set aside an appropriate amount to help clients meet the costs of disbursements, such as medical reports, associated with the lodging of victims' compensation claims.

2. The Organisation must not, without prior written approval of the SPM:

- a. transfer funds between Funding Categories;
- b. spend in excess of 5% or \$10,000 of Annual Funds (whichever is the lesser), to defend itself against any litigation in accordance with clause 9.3;
- c. spend in excess of 10% or \$10,000 of Annual Funds (whichever is the lesser), on Assets in any Financial Year; or
- d. sell, transfer or write-off any Asset after receiving a notice of termination of the Agreement.

Auditor's Certification

Name of Organisation: _____

Financial Year Period: / / to / /

I hereby certify that:

- a. I am not a principal, member, shareholder, officer, employee or accountant of the Organisation or of a related body corporate as defined in section 9 of the Corporations Act 2001
- b. In my opinion, the attached financial statements which comprise a Statement of Financial Position, a Statement of Comprehensive Income (previously known as a Statement of Financial Performance) and Notes to the Financial Statements of the above-mentioned Organisation ("the Organisation"), and, if general purpose reports are provided, a Statement of Cash Flows, for the stated Financial Year Period are:
 - i. based on proper accounts and present a true and fair view of the Organisation's financial position and financial performance in accordance with applicable Accounting Standards and other mandatory professional reporting requirements in Australia, and
 - ii. in accordance with the terms and conditions of the Agreement [**Insert Names of Parties and Date of Agreement**], a copy of which has been made available to me, in relation to the provision of community legal services.
- c. The fourth quarter CLSIS Funds Report, containing details of the Organisations transactions for the financial year, including audit adjustments, and the Organisation's grant position at the beginning and end of the financial year is provided in respect of funds provided in accordance with the Terms and Conditions of the Agreement referred to in b.ii. above for all Funding Categories.

This is a qualified/unqualified audit report [**Deleted whichever is not applicable**]. **If the report is a qualified report, the qualified audit report must be attached.**

Unless written under separate cover, I hereby further certify that, in my opinion, there is no conflict of interest between myself and the Organisation or its Management Committee.

AUDITOR DETAILS

Full Name: _____

Name of Company (if applicable): _____

ACN or ABN Number: _____

Registered Auditor:

Yes No

If Yes:

Registration No.:

Signature: _____

Date: / /

SCHEDULE 6 - Proposal to Retain Excess Surplus

Pursuant to clause 9.2 of this Agreement, the Organisation may submit a proposal to the relevant Funding Body through the SPM to spend or retain its Excess Surplus in the Financial Year following that in which the Excess Surplus arose.

In considering requests to carry-over an Excess Surplus, the Funding Body will take into account the SPM's recommendation and any exceptional circumstances of the Organisation.

In making its decision, the Funding Body will take into account a range of factors including: the merits of the proposal, both on an individual basis and against competing national priorities; whether the Organisation has demonstrated that the Allowable Surplus has been committed in an appropriate way to support continued service provision; and any exceptional circumstances identified in support of the proposal.

Any proposals to retain an Excess Surplus should be submitted to the State Program Manager by **31 October**, unless otherwise agreed. The Funding Bodies recognise that this deadline is a tight one, particularly given the need for end-of-year financial reports to be audited. Where a full proposal cannot be submitted within the required timeframe, the Organisation should at least advise the SPM of its intention to submit a proposal and provide an indication of the proposed use of the Excess Surplus. Where the Organisation has not provided this information by 31 October, or as otherwise agreed with the SPM, the Funding Body will be unlikely to approve the carry-over of those funds.

In submitting a proposal to the SPM to retain Excess Surplus Funds, the Organisation must use the format provided on the CCLSP Website and should address the following matters:

1. Commitment of the Allowable Surplus

Proposals should detail how the Allowable Surplus has been committed to demonstrate why this is not available to cover the costs of the proposed expenditure.

2. Proposed Use of the Excess Surplus

Proposals should provide details of how the Excess Surplus would be used including an explanation of any exceptional circumstances leading to the accumulation of the Excess Surplus, a breakdown of costs, the timeframe proposed for full utilisation of the Excess Surplus and anticipated outcomes.

3. Implications of Non – Approval

Proposals should clearly set out any implications that might arise from a decision not to approve carry-over of the Excess Surplus.