

# YOUR EXPERIENCE OF SERVICE COMMUNITY MANAGED ORGANISATIONS (YES CMO) SURVEY

## NON- EXCLUSIVE SUB-SUB-LICENCE AGREEMENT FOR THE NON-COMMERCIAL USE OF THE 'YOUR EXPERIENCE OF SERVICE COMMUNITY MANAGED ORGANISATIONS' SURVEY

Your Experience of Service Community Managed Organisations (YES CMO) Survey Licence Agreement is made between you and the Commonwealth of Australia as represented by the Department of Health, as represented by the Australian Mental Health Outcomes and Classification Network (AMHOCN), acting through the Health Education and Training Institute (HETI), ABN: 82 914 196 002, Locked Bag 2030, St Leonards NSW 1590. By clicking on the "I accept the terms and conditions set out in the licence Agreement" button you are indicating your acceptance of this YES CMO Survey Sub-sub-licence Agreement and agree to be legally bound by it.

### RECITALS

- A. The Secretary to the Department of Health (Vic) owns the Intellectual Property Rights in the Sub-sub-licensed Material and has allowed the Commonwealth to grant the Sub-sub- licensee access to, and certain rights to use, the Sub-licensed Material.
- B. The Commonwealth has agreed to provide the Sub-sub- licensee with access to, and certain rights to use, the Sub-sub-licensed Material on the terms and conditions set out in this Agreement.
- C. The Sub-sub- licensee agrees to access and use the Sub-sub-licensed Material only in accordance with the terms and conditions set out in this Agreement.

### OPERATIVE PROVISIONS

#### 1. DEFINITIONS AND INTERPRETATION

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1.1 In this Agreement, unless the contrary intention appears:

**Adapted Material** means Material that is:

- (a) derived from or based upon the Sub-sub-licensed Material;
- (b) translated or adapted from the Sub-sub-licensed Material; or
- (c) any alteration, enhancement, improvement, arrangement, transformation or other modification of the Sub-licensed Material, but does not include the Results or changes permitted under clause 4.1;

**Additional Service Organisation** means an entity approved as an additional service organisation under clause 5;

**Agreement** means the terms and conditions set out in this document, including its schedules;

**'Intellectual Property'** means all rights in relation to copyright (excluding Moral Rights), inventions (including patent rights), registered and unregistered designs, circuit layouts, plant varieties, registered and unregistered trademarks (including service marks and goodwill associated with trademarks), and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields;

**Material** means any matter or thing which contains Intellectual Property Rights, including data, extracts of data and any other information reduced in writing;

**Moral Rights** has the same meaning as given to it in the *Copyright Act 1968* (Cth);

**Non-Commercial** means not intended for, or directed towards, commercial advantage, financial benefit (including profit-making and cost recovery) or monetary compensation;

**Parties** means the Commonwealth, AMHOCN and the Sub-sub-licensor of the YES CMO Survey Material, and **Party** means any one of them;

**Results** means the Material obtained as a direct result from using and completing the Sub-sub-licensed Material;

**Secretary to the Department of Health (Vic)** means the Secretary to the Department of Health (Vic) established as a body corporate under the *Public Health and Wellbeing Act 2008* (Vic);

**Service Organisation** means the entities that are listed in the online application; and

**Sub-sub-licensed Material** means the 'Your Experience of Service Community Managed Organisations' survey set out in Schedule A.

1.2 In this Agreement, unless the contrary intention appears:

- (a) words importing a gender include any other gender;
- (b) words in the singular include the plural and vice versa;
- (c) clause headings are inserted for ease of reference only and are not an aid to interpretation;
- (d) a reference to legislation or a legislative provision (whether primary or sub-ordinate) includes a reference to any amendment, substitution or re-enactment of that legislation or provision;
- (e) where any word or phrase is given a defined meaning or is to be interpreted or construed in accordance with this clause 1.2, any other part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning, interpretation or construction;
- (f) the word 'includes' is not to be construed or interpreted as a word of limitation;

- (g) any uncertainty or ambiguity in the meaning of a provision of this Deed will not be interpreted against a Party just because that Party prepared the provision;
- (h) a reference to 'Sub-sub-licensee' and 'Additional Service Organisation' includes its officers and employees; and
- (i) a reference to 'Commonwealth' means the Commonwealth of Australia as represented by the Department of Health or any other department or agency responsible for the granting of the non-exclusive sub-sub-licence under this Agreement.

## **2. TERM OF THIS AGREEMENT**

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- 2.1 This Agreement will commence on the date on which the Sub-sub-licensee clicks and accepts the "I accept the terms and conditions set out in the licence Agreement". There is no expiration date.

## **3. SUB-SUB-LICENCES**

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### **Scope**

- 3.1 The Sub-sub-licensee must not use the copyright subsisting in the Sub-sub-licensed Material (whether in whole or in part), except as expressly permitted by this Agreement. For the avoidance of doubt, this Agreement does not grant any implied licence of any kind.

### **Grant of Sub-sub-licence**

- 3.2 Subject to the terms and conditions of this Agreement, the Sub-licensor grants the Sub-sub-licensee a royalty-free, licence fee-free, world-wide and non-exclusive Sub-sub-licence:
- (a) to use the copyright in the Sub-sub-licensed Material for the purpose of undertaking regular or ad hoc surveys of the experience of consumers of the Service Organisations and Additional Service Organisations;
  - (b) to produce Results derived from such surveys for the purpose of internal or external reporting and publication; and
  - (c) to make changes to the Sub-sub-licensed Material as permitted under clause 4.1 of this Agreement.

### **Acknowledgment**

- 3.3 The Sub-sub-licensee acknowledges and agrees that the Intellectual Property Rights in the Sub-sub-licensed Material are owned by the Secretary to the Department of Health (Vic), and that the Intellectual Property Rights in any permitted changes to the Sub-sub-licensed Material made by the Sub-sub-licensee will be owned by the Secretary to the Department of Health (Vic).

#### 4. CONDITIONS

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- 4.1 The Sub-sub-licensee must exercise its rights under clause 3.2 subject to the following conditions:
- (a) the Sub-sub-licensee may either use the Sub-sub-licensed Material in its existing form layout (as set out in Schedule A) or place it within a different form created by the Sub-sub-licensee, but only if no changes are made to:
    - (i) the wording of individual items;
    - (ii) the name of the survey, in particular the heading 'Your Experience of Service Community Managed Organisations' survey must be retained;
    - (iii) the ordering of items; or
    - (iv) the response options to each item;
  - (b) the Sub-sub-licensee may also make any of the following changes to the Sub-sub-licensed Material:
    - (i) remove items that are not relevant to the service setting in which the Sub-sub-licensed Material is used;
    - (ii) add a local or jurisdictional logo or other form of agency identification;
    - (iii) add items that are of interest to the Sub-sub-licensee under an identifiable 'additional questions heading'; and
    - (iv) make technical and formatting changes that are necessitated by the choice of medium chosen by the Sub-sub-licensee;
  - (c) the Sub-sub-licensee must include an acknowledgment with the Sub-sub-licensed Material by adding the following words to each instance of use of the Sub-licensed Material:

"© 2016 The Secretary to the Department of Health (Vic) developed with funding from the Australian Government Department of Health";
  - (d) the Sub-sub-licensee agrees:
    - (i) to maintain communication; and
    - (ii) to share its experiences regarding its use of the Sub-licensed Material, with the Sub-licensor. The Sub-sub-licensee agrees to promptly provide the Sub-licensor with copies of any published reports prepared from use of the Sub-sub-licensed Material;
  - (e) the Sub-sub-licensee must use the Sub-sub-Licensed Material for Non-Commercial purposes only;
  - (f) the Sub-sub-licensee will ensure that its officers and employees, who will be using the Sub-sub-licensed Material, are made aware of this Agreement and its contents; and
  - (g) the Sub-sub-licensee has no rights to further sub-sub-sub-license the Sub-sub-licensed Material to a third party, but may give copyright permission to any Service Organisation and Additional Service Organisation:

- (i) to make copies of;
  - (ii) to reproduce and download; and
  - (iii) to make accessible to participants in a survey (whether in electronic form, hard copy or both),
- the Sub-sub-licensed Material.

## **5. ADDITIONAL SERVICE ORGANISATIONS**

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- 5.1 If the Sub-sub-licensee wishes to include a third party as a service organisation, and that third party is not listed as a Service Organisation on the online application, the Sub-sub-licensee may request the Sub-licensor to give approval for that service organisation to become an Additional Service Organisation.
- 5.2 Following receipt of a request for approval under clause 5.1, the Sub-licensor may decide to give, or refuse to give (without having to provide reasons), its approval for a third party to be an Additional Service Organisation.
- 5.3 If the Sub-licensor has given its approval, the Sub-licensor will notify the Sub-sub-licensee in writing that the third party has been approved as an Additional Service Organisation. Following receipt of approval, the Sub-sub-licensee may give copyright permission to the Additional Service Provider in accordance with clause 4.1(g).

## **6. RESTRICTIONS**

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- 6.1 This Agreement is a sub-sub-licence in respect of copyright in the Sub-sub-licensed Material only. All other Intellectual Property Rights are expressly reserved and excluded from this Agreement.
- 6.2 All commercial rights in the Sub-sub-licensed Material are expressly reserved and excluded from this Agreement.
- 6.3 This Agreement grants no rights of sub-sub-sub-licence to a third party except for a limited right of use given to a Service Organisation and Additional Service Organisation under clause 4.1(g).
- 6.4 This Agreement grants no rights to create Adapted Material.

## **7. RISK**

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### **No risk to Commonwealth**

- 7.1 The Sub-sub-licensee agrees to accept the Sub-sub-licensed Material on an 'as-is' basis, without requiring the Sub-licensor or the Secretary to the Department of Health (Vic):
- (a) to make any improvements, enhancements or modifications to it;
  - (b) to provide support services or updates in relation to it; or
  - (c) to remove errors or defects from it.

- 7.2 The Sub-sub-licensee accepts all risk and consequences resulting from its use of the Sub-sub-licensed Material.

**No Liability to Commonwealth**

- 7.3 The Sub-sub-licensee acknowledges and accepts that the Sub-licensor is not the owner of the Intellectual Property Rights in the Sub-sub-licensed Material and is making it available to the Sub-sub-licensee for free.
- 7.4 In consideration for making it available for free, the Sub-sub-licensee agrees to release (and on execution of this Agreement does release) the Sub-licensor from any and all liability incurred by the Sub-sub-licensee as a result of its use of the Sub-sub-licensed Material, including any costs, expenses, losses or damages suffered or incurred by the Sub-sub-licensee, a Service Organisation or an Additional Service Organisation as a result of the corruption or loss of Results.

**No warranty or representation by the Commonwealth unless expressly stated**

- 7.5 The Sub-sub-licensee acknowledges that it has not relied on any warranty or representation made by the Commonwealth, other than those which are expressly stated in clause 7.7.
- 7.6 To the extent permitted by law, the Sub-sub-licensee acknowledges that the Sub-licensor does not give any warranty (whether express, implied or statutory) or representation in respect of the Sub-sub-licensed Material, including representations and warranties as to:
- (a) fitness for a particular purpose;
  - (b) non-infringement of copyright or Moral Rights;
  - (c) the absence of latent or other defects;
  - (d) its performance or accuracy; or
  - (e) the presence or absence of errors, whether or not known or discoverable.

**Mutual representation**

- 7.7 Each Party represents to the other Party that:
- (a) the person agreeing to this Agreement on its behalf is fully authorised to enter into this Agreement; and
  - (b) this Agreement will be legally binding on and from the date on which the Sub-sub-licensee clicks and accepts the “I accept the terms and conditions set out in the licence Agreement”.

**8. TERMINATION**

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**Termination by notice**

- 8.1 If a Party breaches a term or condition of this Agreement, and either:
- (a) indicates in writing that it is not able, or willing, to remedy the breach; or
  - (b) after receiving a notice to remedy the breach, fails to remedy the breach within thirty (30) days (or such other longer period stipulated in the notice),

then the other Party may give the Party in breach a notice terminating this Agreement with immediate effect on and from the date on which the notice is given.

- 8.2 If the Sub-licensor no longer has a licence from the Secretary to the Department of Health (Vic) to grant a sub-licence under this Agreement, the Sub-licensor may give the Sub-sub- licensee a notice terminating this Agreement with immediate effect on and from the date on which the notice is given.

#### **Return or destruction of Software and Documentation**

- 8.3 If this Agreement has expired or is terminated by a Party, the Sub-sub- licensee must:
- (a) immediately stop exercising its rights granted under this Agreement;
  - (b) must advise each Service Organisation and Additional Service Organisation (who have been given copyright permission under clause 4.1(g)) that they no longer have any copyright permission and must stop using the Sub-sub-licensed Material;
  - (c) within thirty (30) days after this Agreement has ended, either:
    - (i) deliver up and return the Sub-sub-licensed Material in its possession, custody or control to the Sub-licensor; or
    - (ii) destroy or otherwise deal with the Sub-sub-licensed Material in its possession, custody or control as directed by the Sub-licensor.

## **9. DISPUTE RESOLUTION**

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### **Procedure for dispute resolution**

- 9.1 In the event of a dispute, the Parties agree to follow the procedures set out in this clause 9 in order to resolve the dispute

### **Direct negotiation**

- 9.2 If a Party wishes to resolve a dispute, it must give notice to the other Party of the existence of a dispute. The Parties must meet, in person or via teleconference, as soon as possible (but in any event no later than thirty (30) days after the receiving Party has received a dispute notice) to endeavour, in good faith, to resolve the dispute by direct negotiation.

- 9.3 If the Parties cannot resolve the dispute under clause 9.2, the Parties must, within fourteen (14) days, refer the dispute to their principal executive officers (or equivalent) who will endeavour, in good faith, to resolve the dispute by direct negotiation within a further thirty (30) days, or such other longer period as they may agree in writing between themselves.

### **Costs**

- 9.4 Each Party will bear its own costs and expenses of complying with this clause 9.

## **10. NOTICES**

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### **How addressed and sent**

- 10.1 Any notice given under this Agreement is only effective if it is in writing, and:
- (a) if given by the Sub-sub- licensee to the Sub-licensor, addressed in accordance with:

- (i) the Sub-licensor's address details found on page 1; or
- (ii) the details as notified to the Sub-sub-licensee by the Sub-licensor from time to time;

or

- (b) if given by the Sub-licensor to the Sub-sub-licensee, addressed in accordance with:
  - (i) the Sub-sub-licensee's address details provided to the Sub-licensor by the Sub-sub-licensee; or
  - (ii) in accordance with the details as notified to the Sub-licensor by the Sub-sub-licensee from time to time.

10.2 A notice must be signed by the person giving the notice and must be:

- (a) delivered by hand;
- (b) sent by pre-paid post;
- (c) transmitted electronically by facsimile transmission; or
- (d) transmitted electronically via email.

**When deemed to be received**

10.3 A notice is deemed to be received:

- (a) if delivered by hand – upon delivery at the relevant address;
- (b) if sent by post – upon delivery to the relevant address;
- (c) if transmitted electronically by facsimile – upon successful transmission to the addressee; or
- (d) if transmitted electronically via email – upon successful receipt by the addressee of the email.

10.4 A notice delivered, sent or transmitted:

- (a) after 5.00 pm on a business day; or
- (b) on a day that is not a business day,

is deemed to be received on the next business day.

## **11 GENERAL PROVISIONS**

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### **Variation**

11.1 No variation of this Agreement is legally binding unless it is in writing and signed by both Parties.



### **Essential Terms**

- 11.2 Clauses 3.3, 4.1, 6, 7 and 8.2 are essential terms without which the Sub-licensor would not have entered into this Agreement.

### **Assignment and novation**

- 11.3 The Sub-sub-licensee must not:
- (a) assign its rights under this Agreement; or
  - (b) novate its rights and obligations under this Agreement,
- without obtaining the prior written approval of the Sub-licensor to do so.

### **Costs and expenses**

- 11.4 Each Party must pay its own costs and expenses of negotiating, preparing, reviewing and executing this Agreement.

### **Counterparts**

- 11.5 This Agreement may be executed in counterparts.

### **Entire agreement**

- 11.6 This Agreement constitutes the entire agreement, and supersedes all previous agreements or understandings, between the Parties in connection with its subject matter.

### **Further action**

- 11.7 Each Party must at its own cost and expense do everything reasonably necessary or desirable to give full effect to this Agreement and any transaction contemplated by it, including executing documents.

### **Severability**

- 11.8 A term or condition, or part of a term or condition of this Agreement that is illegal or unenforceable may be severed from this Agreement and the remaining terms and conditions, or parts of the terms and conditions of this Agreement shall continue in force.

### **Waiver**

- 11.9 Waiver of any provision of, or right under, this Agreement:
- (a) must be in writing signed by the Party entitled to the benefit of that provision or right; and
  - (b) is effective only to the extent set out in any written waiver.

### **Relationship**

- 11.10 The Parties must not represent themselves, and must ensure that their employees, and officers do not represent themselves, as being an officer, employee or agent of the other Party, or as otherwise able to bind or represent the other Party.
- 11.11 This Agreement does not create a relationship of employment, an agency, a joint venture or a partnership between the Parties.

### **Governing law and jurisdiction**

- 11.12 This Agreement is governed by the laws of the Australian Capital Territory, and each Party agrees to submit to the non-exclusive jurisdiction of the courts of the Australian Capital Territory.

### **Survival**

- 11.13 The expiry or termination of this Agreement will not affect the continued operation of:
- (a) any accrued rights of a Party accrued prior to the date on which this Agreement ended; and
  - (b) any provisions which by their nature survive this Agreement, and all clauses required to give effect to those clauses, including clause 7, 8 and 9.

## **SCHEDULE A**

### **'YOUR EXPERIENCE OF SERVICE COMMUNITY MANAGED ORGANISATIONS (YES CMO)' SURVEY**





As a result of your experience with the service in the last 3 months or less please rate the following:

24.The effect of the service on your hopefulness for the future

Poor

Fair

Good

Very Good

Excellent

25.The effect of the service on your ability to manage your day to day life

26.The effect of the service on the management of your physical health

27.The effect of the service on your overall well-being

28.Overall, how would you rate your experience with this service in the last 3 months?

**Please provide any extra comments**

29. My experience would have been better if...

30. The best things about this service were ...

The information in this section helps us to know if we are missing out on feedback from some groups of people. It also tells us if some groups of people have a better or worse experience than others. Knowing this helps us focus our efforts to improve services. No information collected in this section will be used to identify you.

What is your gender?

Male  Female  Other

What is the main language you speak at home?

English  Other

Are you of Aboriginal or Torres Strait Island origin?

No  
 Yes - Aboriginal  
 Yes - Torres Strait Islander  
 Yes - Aboriginal and Torres Strait Islander

What is your age?

Under 18 years  18 to 24 years  
 25 to 34 years  35 to 44 years  
 45 to 54 years  55 to 64 years  
 65 years and over

How long have you been receiving support or care from this service?

Less than 24 hours  3 to 4 weeks  
 1 day to 2 weeks  4 to 6 months  
 1 to 3 months  More than 6 months

Did someone help you complete this survey?

No  
 Yes - family or friend  
 Yes - language or cultural interpreter  
 Yes - consumer worker or peer worker  
 Yes - another staff member from the service  
 Yes - someone else

*This area would be modified depending on state/territory or organisation, to add*  
*- Instructions for where to send completed questionnaire*  
*- Contact details for extra information*