



Australian Government

Terms and Conditions Standard Funding Agreement

For Agreements entered into from 11 May 2011

© Commonwealth of Australia 2011

ISBN – 978-1-921647-92-5

This work is copyright. You may download, display, print and reproduce this material in unaltered form only (retaining this notice) for your personal, non-commercial use or use within your organisation. Apart from any use as permitted under the *Copyright Act 1968*, all other rights are reserved. Requests for further authorisation should be directed to the Commonwealth Copyright Administration, Attorney General's Department, Robert Garran Offices, National Circuit, Canberra ACT 2600 or posted at: www.ag.gov.au/cca

CONTENTS

DEFINITIONS AND DURATION	1
1 Definitions	1
2 Duration of the Agreement and Activity	1
WHAT YOU MUST DO	1
3 Your obligations in carrying out the Activity	1
4 Your obligation to acknowledge our support	2
5 Your obligation to keep records and provide reports	2
ABOUT THE FUNDING	4
6 Paying the Funding	4
7 Financial Security	4
8 When can we withhold payment?	4
9 Spending the Funding	5
10 Acquitting the Funding	5
11 Repaying the Funding	6
12 GST – Goods and Services Tax	7
ASSETS	8
13 Assets	8
MATERIAL AND INFORMATION	8
14 Intellectual Property Rights	8
15 Safekeeping and return of Commonwealth Material	9
16 Privacy issues	9
17 Confidential Information	10
18 Confidentiality deeds	11
WORKING WITH VULNERABLE PERSONS	11
19 Vulnerable Persons, Police Checks and Criminal Offences	11
DEALING WITH RISK	15
20 Indemnity	15

21	Insurance	16
----	-----------	----

TERMINATING THE AGREEMENT **16**

22	Our right to terminate, or reduce the scope of, the Agreement	16
23	Our right to terminate for your default or financial circumstances	17
24	Dispute Resolution	18
25	Exceptions to clause 24	19
26	Obligation to perform despite dispute	19

OTHER LEGAL MATTERS **19**

27	Relationship between the parties	19
28	Subcontractors	20
29	Use of Specified Personnel	20
30	Entire agreement	20
31	Governing law	20
32	Variation of this Agreement	20
33	Enforcement of part does not prevent enforcement of another part	21
34	You must not assign your rights	21
35	Effect of invalidity of part	21
36	Certain clauses continue after this Agreement ends	21
37	Priority of documents	22
38	Notices	22
39	Interpretation: General	23
40	Defined terms	23

DEFINITIONS AND DURATION

1 Definitions

- 1.1 In this Agreement, certain words and phrases have defined meanings. They are indicated by initial capital letters (eg, Activity and Activity Period). However, “we” and “you” are not capitalised in this way.
- 1.2 Where a defined word or phrase is used in one clause only, it is usually defined in that clause. Otherwise, the definitions are in clause 40.

2 Duration of the Agreement and Activity

- 2.1 This Agreement starts on the Commencement Date and ends on the Completion Date, unless terminated earlier.
- 2.2 The Activity starts and ends on the dates specified in Item B of the Schedule, unless terminated earlier.

WHAT YOU MUST DO

3 Your obligations in carrying out the Activity

- 3.1 You must carry out the Activity as required by this Agreement, including meeting all objectives, timeframes and milestones.
- 3.2 In carrying out the Activity, you must:
 - (a) use all proper care; and
 - (b) comply with any codes of ethics, regulations or other industry standards relevant to the Activity; and
 - (c) comply with all relevant laws and in particular, take all reasonable actions to ensure that no fraud occurs; and
 - (d) pay all taxes, duties and government charges imposed in Australia or overseas in connection with this Agreement; and
 - (e) comply with any Commonwealth policy notified to you in writing; and
 - (f) notify us immediately if a conflict of interest arises, or could reasonably be perceived by others to have arisen, that may restrict you undertaking the Activity in a fair and independent way; and

- (g) communicate with us, especially if there is an issue that may delay, stop or adversely affect the Activity; and
 - (h) provide information we reasonably require.
- 3.3 You must also comply with any Supplementary Conditions set out in Annexures to the Schedule, which form part of these Terms and Conditions.
- 3.4 You must establish and publicise the existence of a documented complaints process which you must use to deal with any complaints by your clients unless otherwise required by another part of this Agreement and:
 - (a) If your clients are dissatisfied with the results following their complaint/s you must refer your clients to our complaints service unless otherwise required by another part of this Agreement for further investigation of the complaint and you must assist us in the investigation of the complaint. Details of our complaints service can be found on our website.
 - (b) You must, on our request, give to us access to or copies of your Complaints Register in accordance with clause 5.5.
 - (c) Copies of all correspondence and other materials received or created by you in connection with any of the above must be kept in accordance with clause 5.2.

4 Your obligation to acknowledge our support

- 4.1 In all Agreement Material you publish, you must acknowledge our financial and other support.
- 4.2 When doing so, you must use any form of acknowledgment we reasonably specify.

5 Your obligation to keep records and provide reports

- 5.1. A You must keep accurate records and accounts including:
 - (a) receipts, proof of purchase and invoices, to show how you spend the Funding and carry out the Activity, and
 - (b) client records in accordance with this Agreement and any legislative requirements.

- 5.1.B You acknowledge that giving false or misleading information to the Department is a serious offence under section 137.1 of the Criminal Code Act 1995 (Cth)
- 5.2 You must keep these records and accounts in their original form for at least 5 years after the Activity Period or other period as required by legislation.
- 5.3 In addition, you must prepare and give us the reports required and specified in the Schedule.
- 5.4 If we consider that the form or content of a report is not adequate for our purposes, we can request you to submit a revised report. You must submit that revised report within 30 Business Days of our request, unless we specify a shorter or longer time.
- 5.5 You must also at all reasonable times allow access to all records, accounts, documents and papers relating to this Agreement, including those relating to how you are carrying out the Activity and receiving or spending the Funding and to allow copies of these materials to be taken by the following:
- (a) us, or persons authorised by us, or
 - (b) the Commonwealth Auditor-General, or
 - (c) the Commonwealth Privacy Commissioner, or
 - (d) the Commonwealth Director of Evaluation and Audit or person authorised by them.

For the purpose of clause 5.5 the parties agree that:

- (a) 'access' includes access to your premises (which means premises occupied by you or where any obligation under this Agreement is undertaken and/or wherever any Assets may be located).
 - (b) You must provide such assistance as may be needed to allow access to all records, accounts, documents and papers relating to this Agreement.
- 5.6 However, you do not have to allow access to, or copies to be made of, Secret and Sacred Material.

ABOUT THE FUNDING

6 Paying the Funding

- 6.1 Subject to parliamentary appropriation we will pay you the Funding in accordance with Item C and Item F of the Schedule.
- 6.2 However, we will only pay the Funding if you are not in breach of this Agreement.
- 6.3 For the purposes of clause 6.2, being in breach of this agreement includes being in serious breach of any other agreement under which you receive funding from the Commonwealth (a “serious breach” is one which would entitle the Commonwealth to terminate the other agreement).

7 Financial Security

At any time we may require you to provide an unconditional financial security for an amount up to the amount of funding provided by us, from a financial institution that we approve, using a form that we provide. You must do this within 10 Business Days of our request.

8 When can we withhold payment?

- 8.1 We can withhold any or all of a Funding payment if we consider that you:
 - (a) have not carried out Activities in accordance with this Agreement; or
 - (b) have not spent Funding in accordance with this Agreement; or
 - (c) have breached any other term of this Agreement; or
 - (d) have breached any other agreement as referred to in Clause 6.3
- 8.2 We will pay the withheld payment under clause 8.1(a) when you have carried out the Activities to which the payment relates according to the requirements of the Agreement.

9 Spending the Funding

- 9.1 You must spend the Funding:
- (a) only on carrying out the Activity; and
 - (b) in accordance with this Agreement (including in accordance with the Budget if stipulated in the Schedule).

10 Acquitting the Funding

- 10.1 You must provide the reports set out in the Schedule. Where the report is a financial acquittal report, we may (at our discretion) require it to be independently audited, non-audited or in any other form.
- 10.2 A financial acquittal report must:
- (a) be in accordance with the Agreement, applicable Australian Accounting Standards¹ and based on proper accounts and records; and
 - (b) report income and expenditure relating to the Funding provided under this Agreement. The report must show expenditure in accordance with the approved Budget (where applicable) or, where there is no approved Budget, show to our satisfaction major items/areas of expense; and
 - (c) verify that you have spent the Funding provided on the Activity and in accordance with this Agreement; and
 - (d) include any other matters (in addition to the matters set out in the Schedule) we require to allow us to meet Commonwealth financial management and accountability legislation.
- 10.3 Independently audited financial acquittal reports must be audited by:
- (a) a Registered Company Auditor under the Corporations Act 2001 (Cth); or
 - (b) a member of CPA Australia; or
 - (c) a member of the Institute of Public Accountants in Australia; or

¹ Refer Australian Accounting Standards Board <http://www.aasb.gov.au>

- (d) a member of the Institute of Chartered Accountants in Australia,

The auditor must not be a principal member, shareholder, officer or employee of yours or of a Related Body Corporate as defined in the Corporations Act 2001 (Cth). Reports must be audited in accordance with Australian Audit Standards.²

- 10.4 A non-audited financial acquittal report must be certified by your board, your chief executive officer or one of your officers, with authority to do so, verifying that you have spent the Funding on the Activity in accordance with the Agreement.
- 10.5 At any time up to five (5) years after the Activity Period, we may ask you to send us:
 - (a) original receipts or other documents which account for the expenditure of the Funding; and/or
 - (b) a statutory declaration made in accordance with the Statutory Declarations Act 1959 (Cth) accounting for the expenditure of the Funding.

11 Repaying the Funding

- 11.1 You must repay the Funding (or the relevant part of it) to us in any of the circumstances set out below:
 - (a) we overpay you;
 - (b) we pay you an amount that you incorrectly claim;
 - (c) we pay you an amount that you are unable to spend in accordance with this Agreement;
 - (d) you spend an amount other than in accordance with this Agreement.
- 11.2 If you must repay an amount under clause 11.1:
 - (a) you must do so within 20 Business Days after we give you a notice in writing; and
 - (b) you must pay interest on the amount from the end of the 20 Business Days until the date of repayment (and interest is calculated at the general interest charge rate

² as maintained by the Auditing and Assurance Standards Board www.auasb.gov.au

as specified in section 8AAD of the Taxation Administration Act 1953 (Cth) on a daily compounding basis); and

- (c) we may recover the amount and any interest as a debt due to the Commonwealth.

11.3 We can recover all or any of the amount and interest by deducting it from subsequent amounts we pay you under this Agreement or any other agreement we have with you.

12 GST – Goods and Services Tax

- 12.1 This clause 12 applies if you are registered or required to be registered, for GST and the Funding arrangement is a payment for a Taxable Supply.
- 12.2 You must notify us immediately of any change to your GST registration status.
- 12.3 We are registered for GST, and will notify you immediately of any change to our GST registration status.
- 12.4 The Funding under this Agreement includes an amount in respect of your GST liability.
- 12.5 You are responsible for claiming all Input Tax Credits to which you are entitled under this Agreement. We will not be responsible for any additional costs you may incur as a consequence of failing to claim such Input Tax Credits.
- 12.6 If an Activity, or any part of it, is not a Taxable Supply (or ceases to be a Taxable Supply) or the rate of GST applying to it is reduced, then we may reduce the amounts we pay in relation to that Activity accordingly.
- 12.7 The following provisions apply to Tax Invoices:
 - (a) you allow us to issue you with a Recipient Created Tax Invoice (RCTI) for any Taxable Supplies you make under this Agreement;
 - (b) if we issue an RCTI (and we may do so by facsimile, email or pre-paid post), we must do so within 28 days of determining the value of the Taxable Supply to which the RCTI relates and you must not issue a Tax Invoice for the same Taxable Supply;

- (c) if we issue an RCTI and an Adjustment Event occurs, we will issue you with an Adjustment Note within 28 days of the Adjustment Event;
- (d) if we do not issue you with a valid RCTI within 28 days, the agreement contained in this clause regarding the issue of RCTIs is no longer valid and you must:
 - (i) provide us with a Tax Invoice (which you may do by facsimile, email or pre-paid post); and
 - (ii) issue any Adjustment Notes relating to Taxable Supplies for which you previously issued a valid Tax Invoice within 28 days of the Adjustment Event.

12.8 If we issue an RCTI and the amount of GST paid by us is ultimately less than your GST liability, we will pay to you an additional amount to cover that additional liability.

ASSETS

13 Assets

- 13.1 This clause only applies if Assets are purchased with the Funding.
- 13.2 You can only use the Funding to purchase the Assets we have specified in Item H of the Schedule.
- 13.3 You must obtain our prior approval in writing if you want to use the Funding to purchase Assets not specified in Item H of the Schedule.
- 13.4 You own the Assets purchased from the Funding unless Item H of the Schedule states otherwise.

Material and information

14 Intellectual Property Rights

- 14.1 You own the Intellectual Property Rights in all Agreement Material subject to clause 14.2.
- 14.2 We own all Commonwealth Material, including Intellectual Property Rights in that Material.

- 14.3 You grant us a licence to use, reproduce, publish, adapt and exploit the Intellectual Property Rights in Agreement Material and Existing Material, excluding Secret and Sacred Material for any Commonwealth purpose. This licence is permanent, irrevocable, free, worldwide, non-exclusive and includes a right of sublicense.
- 14.4 We license you to use the Commonwealth Material (including copying it and supplying it to others), but only for the purposes of this Agreement.
- 14.5 You must ensure that you have the right, or will have the right at the relevant time, to deal with the Intellectual Property Rights in the Agreement Material and any Existing Material under this clause 14.
- 14.6 If we require, you must bring into existence, sign or otherwise deal with any document which we consider is necessary or desirable to give effect to this clause 14.
- 14.7 You must obtain, from each author of any Agreement Material or Existing Material, a written consent to the Specified Acts. The consent must cover Specified Acts done before or after the date of the consent, and whether done by us or by someone claiming under or through us. If we ask, you must give us the original of the consent.

15 Safekeeping and return of Commonwealth Material

- 15.1 You must keep safe and maintain all Commonwealth Material. You accept all risk relating to that Material.
- 15.2 Unless we otherwise direct, you must promptly return all Commonwealth Material when this Agreement ends or is terminated.

16 Privacy issues

- 16.1 In this clause 16, 'Information Privacy Principle' and 'Personal Information' have the same meaning as in the Privacy Act 1988 (Cth).
- 16.2 You agree:
 - (a) not to do anything which, if done by the Commonwealth, would breach an Information Privacy Principle; and
 - (b) to comply with any directions from us, to the extent that they are consistent with the Information Privacy

Principles or a Commonwealth, State or Territory public interest determination or privacy determination.

- 16.3 If you become aware of any breach or possible breach of this clause 16, you must notify us immediately.
- 16.4 You acknowledge that we or the Commonwealth including us may disclose or publish details about this Agreement or the Activity. The details may include (but are not limited to) your name, the value of the Funding, and the location of where the Activity is being delivered or performed.
- 16.5 You must obtain any subcontractor's express consent for the disclosure to us of the subcontractor's identity (and their Personal Information if the subcontractor is an individual) to us. The consent obtained must extend to allowing us to disclose for reporting purposes the subcontractor's identity, and the existence and nature of the subcontract.

17 Confidential Information

- 17.1 In this clause 17, "Confidential Information" means information that:
 - (a) the parties know, or ought to know is confidential; or
 - (b) is described in Item K of the Schedule; or
 - (c) information that the parties agree in writing after the date of this Agreement is confidential information for the purposes of this Agreement; or
 - (d) Secret and Sacred Material.
- 17.2 Subject to clause 17.3, a party must not disclose Confidential Information to anyone, without the prior written consent of the other party.
- 17.3 A party can disclose Confidential Information to the extent that it:
 - (a) is disclosed to its internal management personnel, solely to enable effective management or auditing of Agreement-related activities;
 - (b) is disclosed by us to the responsible Minister;
 - (c) is disclosed by us, in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia;

- (d) is shared within a party, or with another agency, where this serves the Commonwealth's legitimate interests;
- (e) is authorised or required by law to be disclosed; or
- (f) is in the public domain otherwise than due to a breach of this clause 17.

17.4 Where a party discloses Confidential Information to another person under clause 17.3 they must:

- (a) notify the receiving party that the information is confidential; and
- (b) not provide the information unless the receiving person agrees to keep the information confidential.

17.5 You agree to secure all of our Confidential Information against loss and unauthorised access, use, modification or disclosure.

18 Confidentiality deeds

18.1 If we ask, you must promptly arrange for any of your subcontractors, employees, and volunteers to promptly give us a signed confidentiality deed relating to the use and non-disclosure of our Confidential Information.

18.2 You must use the form of confidentiality deed we provide.

WORKING WITH VULNERABLE PERSONS

19 Vulnerable Persons, Police Checks and Criminal Offences

19.1 This clause 19 applies if the Activity or any part of the Activity involves working with or contact with Vulnerable Persons.

19.2 Before engaging or deploying any Person (whether as an officer, employee, contractor, or volunteer) in relation to any part of the Activity, you must:

- (a) conduct a Police Check for that Person or where relevant, confirm a similar check by appropriate authorities has occurred;
- (b) confirm that no Commonwealth, State or Territory law prohibits that Person from being engaged in a capacity

where they may have contact with Vulnerable Persons;
and

- (c) comply with all other legal requirements of the place where the Activity, or part of the Activity, is being conducted in relation to engaging or deploying persons in a capacity where they may have contact with Vulnerable Persons.

19.3 You agree:

- (a) if a Police Check or other relevant check by authorities indicates that a Person has a Serious Record, or a Criminal or Court Record, not to engage, deploy or redeploy the Person unless you have conducted and documented a risk assessment of that Person;
- (b) within 24 hours of becoming aware of a Person being charged or convicted of any Serious Offence or Other Offence, to conduct and document a risk assessment in accordance with clauses 19.4 to 19.5 to determine whether to allow that Person to continue performing the Activity or any part of the Activity; and
- (c) to document the actions you will take as a result of conducting the risk assessment.

19.4 You will be wholly responsible for conducting any risk assessment, assessing its outcome and deciding to engage, deploy or redeploy a Person with a Serious Record, Criminal or Court Record, to work on any Activity, or any part of an Activity.

19.5 In undertaking your risk assessment under clauses 19.2 to 19.3 you agree to take into account the following factors:

- (a) whether the Person's Serious Record, Criminal or Court Record is directly relevant to the role the Person will or is likely to perform in relation to the Activity or any part of the Activity;
- (b) the length of time that has passed since the Person's conviction and the Person's record since that time;
- (c) the nature of the offence pertaining to the Serious Record, Criminal or Court Record and the circumstances in which it occurred;
- (d) whether the offence involved Vulnerable Persons;

- (e) the nature of the Activity and the circumstances in which the Person will or is likely to have contact with Vulnerable Persons;
- (f) the particular role the Person is proposed to undertake or is currently undertaking in relation to the Activity and whether the fact the Person has a Serious Record, Criminal or Court Record is reasonably likely to impair the Person's ability to perform or continue to perform the inherent requirements of that role; and
- (g) the Person's suitability based on their merit, experience and references to perform the role they are proposed to undertake or are currently undertaking in relation to the Activity or any part of the Activity.

19.6 After taking into account the factors set out in clause 19.5, you agree to then determine whether it is reasonably necessary to:

- (a) not engage, deploy or redeploy the Person in relation to the Activity or any part of the Activity; or
- (b) remove the Person from working in any position or acting in any capacity in relation to the Activity or any part of the Activity which involves working or having contact with Vulnerable Persons; or
- (c) make particular arrangements or impose conditions under which the Person's role in relation to the Activity or any part of the Activity and, where relevant, contact with Vulnerable Persons is to occur; or
- (d) take steps to protect the physical, psychological or emotional wellbeing of the Vulnerable Persons to whom the Activity relates.

19.7 If we require you must promptly provide evidence, in a form we require, that you have complied with the requirements of this clause 19.

19.8 You agree to reflect your obligations under clause 19 in all subcontracts you enter into in relation to the Activity or part of the Activity.

19.9 In this clause 19:

- (a) "Child" means an individual under the age of 18;

- (b) “Criminal or Court Record” means any record of any Other Offence;
- (c) “Other Offence” means a conviction, finding of guilt, on-the-spot fine for, or court order relating to:
 - (i) an apprehended violence or protection order made against the Person; or
 - (ii) one or more traffic offences involving speeding more than 30 kilometres over the speed limit, injury to a person or damage to property; or
 - (iii) a crime or offence involving the consumption, dealing in, possession or handling of alcohol, a prohibited drug, narcotic or other prohibited substance;
 - (iv) a crime or offence involving violence against or the injury, but excluding the death of a person; or
 - (v) a minor crime or offence involving dishonesty, other than those crimes or offences referred to in paragraph (c) of this clause.
- (d) “Person” means each of your officers, employees, contractors and volunteers;
- (e) “Police Check” means a formal inquiry made to the relevant police authority in each Australian State or Territory where you know the Person has resided, designed to obtain details of the Person’s criminal conviction or a finding of guilt in all places (within and outside Australia).
- (f) “Serious Record” means a conviction or any finding of guilt for a Serious Offence;
- (g) “Serious Offence” means:
 - (i) a crime or offence involving the death of a person;
 - (ii) a sex-related offence or a crime, including sexual assault (whether against an adult or Child); Child pornography, or an indecent act involving a Child;

- (iii) a crime or offence involving dishonesty that is not minor;
 - (iv) fraud, money laundering, insider dealing or any other financial offence or crime, including those under legislation relating to companies, banking, insurance or other financial services.
- (h) “Vulnerable Person” means:
- (i) a Child; or
 - (ii) an individual aged 18 years and above who is or may be unable to take care of themselves, or is unable to protect themselves against harm or exploitation by reason of age, illness, trauma or disability, or any other reason.

DEALING WITH RISK

20 Indemnity

- 20.1 You indemnify us against the following:
- (a) all liability; and
 - (b) all losses, costs, and expenses
- (including those set out in clause 20.2 if caused by the circumstances set out in clause 20.3.)
- 20.2 The losses, costs, and expenses against which you indemnify us include:
- (a) loss of or damage to our property; and
 - (b) loss or expense in dealing with any claim against us (including legal costs on a solicitor/own client basis, the cost of time spent, resources used and disbursements paid).
- 20.3 For the purposes of clause 20.1, you indemnify us in circumstances where our liability, loss, cost or expense was caused by:
- (a) your act or omission in carrying out this Agreement, but only where you were at fault; or
 - (b) your breach of this Agreement; or

(c) our use of the Agreement Material or Existing Material (including where third parties make claims against us over the ownership of or right to use Intellectual Property Rights or Moral Rights in the Agreement Material or Existing Material).

20.4 Your liability to indemnify us under this clause 20 is reduced proportionately to the extent that our own fault caused our loss.

20.5 Our right to be indemnified under this clause 20 is in addition to any other remedy we have at law or under this Agreement. However, we are not entitled to be compensated for more than our actual loss.

21 Insurance

21.1 You agree to have current and adequate insurance appropriate to the Activity funded. Any additional requirements are specified in Item G of the Schedule.

21.2 If we ask, you must provide certificates of currency for the insurance and/or a warranty from your insurer that the policy extends to and will cover potential liability arising under this Agreement.

21.3 This clause 21 continues to operate for as long as any obligations remain in connection with this Agreement.

TERMINATING THE AGREEMENT

22 Our right to terminate, or reduce the scope of, the Agreement

22.1 Even though you are not in default, we can terminate this Agreement, or reduce its scope, at any time by giving you written notice.

22.2 If, under clause 22.1, we terminate this Agreement or reduce its scope, we are only liable to you for:

(a) payments that were due to you before the date of termination or reduction; and

(b) reasonable costs you incur as a direct result of the termination or reduction (but subject to clauses 22.4 and 22.5).

- 22.3 If we terminate or reduce the scope of this Agreement under clause 22.1, you must:
- (a) immediately stop carrying out your obligations under this Agreement (or, in the case of a reduction in scope, the obligations removed by the reduction); and
 - (b) immediately do everything you can to lessen all losses, costs and expenses that you may suffer from the termination or reduction; and
 - (c) repay the Funding or the relevant part of it as if we had given you a notice to repay under clause 11.2.
- 22.4 We need only pay you the reasonable costs in clause 22.2(b) if you:
- (a) comply strictly with this clause 22; and
 - (b) provide written evidence to satisfy us of the amounts claimed.
- 22.5 We are not liable to pay you compensation for any loss of profits or benefits that you would have received had the termination or reduction not occurred.

23 Our right to terminate for your default or financial circumstances

- 23.1 We can terminate this Agreement immediately by notice to you if any of the following occur:
- (a) you breach any of your obligations under this Agreement and we consider that the breach cannot be rectified;
 - (b) you breach any of your obligations under this Agreement and you do not rectify the breach within 10 Business Days after we give you a notice to rectify it;
 - (c) in relation to this Agreement or Activity, you breach a law of the Commonwealth, or of a State or Territory;
 - (d) we consider that our decision to approve the Funding was affected by a statement in your application for Funding that was incorrect, incomplete, false or misleading;
 - (e) you are unable to pay all of your debts as and when they fall due;

- (f) you have come under external administration, or have applied to come under external administration, or have received a notice requiring you to show cause why you should not come under external administration. This includes any external administration referred to in:
 - (i) Chapter 5 of the Corporations Act 2001 (Cth), or equivalent provisions in State or Territory legislation concerning incorporated associations;
 - (ii) Chapter 11 of the Corporations (Aboriginal and Torres Strait Islander) Act 2006 (Cth);
- (g) you have become bankrupt or entered into a scheme of arrangement with creditors.

23.2 If we terminate this Agreement under this clause 23, we can recover from you as a debt due to the Commonwealth any part of the Funding:

- (a) that we consider you have not spent in accordance with the Agreement; or
- (b) that you have not legally committed for spending under the Agreement and that is not payable by you as a current liability by the time the notice is given.

23.3 This clause 23 does not affect our other rights under this Agreement, or otherwise at law.

24 Dispute Resolution

24.1 If a dispute or difference (called collectively a “dispute” in this clause 24, and in clauses 25 and 26) arises between you and us, both parties agree to deal with the dispute in the following way:

- (a) the party who claims that a dispute exists will give the other party a notice setting out the nature of the dispute;
- (b) the parties will then try to resolve the dispute by negotiation, within 20 Business Days from when the notice is given, and for that purpose may authorise persons to act for them;

24.2 If the dispute is not resolved within 20 Business Days from when the notice is given, a party may submit the dispute to a form of alternative dispute resolution (including mediation).

- 24.3 A party cannot start legal proceedings in relation to the dispute unless:
- (a) the negotiations fail to resolve the dispute within 20 Business Days of when the notice is given; or
 - (b) where a party submits the dispute to alternative dispute resolution under clause 24.2 — the dispute is not resolved within 20 Business Days of that submission (or any extended time the parties have agreed in writing before the expiry of the 20 Business Days).

25 Exceptions to clause 24

- 25.1 A party does not need to follow the dispute resolution procedures set out in clause 24.2 if they are seeking urgent interlocutory³ relief from a court.
- 25.2 We need not follow the procedures set out in clause 24 in relation to actions we take under clauses 6-11 (which deal with Funding and the provision of financial security), 22 (Termination, or reduction in scope, where you are not in default) or 23 (Termination for your default or for your financial circumstances).

26 Obligation to perform despite dispute

Whether or not a dispute exists, each party must continue to perform its obligations under this Agreement.

Other legal matters

27 Relationship between the parties

- 27.1 This Agreement does not make you our partner, agent or employee.
- 27.2 You must not misrepresent your relationship with us.
- 27.3 Neither party is authorised to legally commit or represent the other party in any way.
- 27.4 Neither party may attempt to bind or represent the other in any way.

³ Interlocutory relief is an interim order, made by a court, issued provisionally and without finally deciding the rights of the parties.

28 Subcontractors

- 28.1 You agree not to subcontract any of your obligations under this Agreement without first getting our written consent.
- 28.2 If we give our consent, we may impose any conditions we consider appropriate, and you must comply with them.
- 28.3 You are not relieved of your obligation to carry out the Activity as required by this Agreement merely because you subcontract any part of the Agreement.
- 28.4 You agree to ensure that any subcontracts entered into by you for the purposes of this Agreement are consistent with the obligations binding on you under this Agreement.
- 28.5 If we terminate or reduce the scope of this Agreement under either clauses 22.1 or 23.1, you must exercise any right of termination or reduction you have against any of your subcontractors.

29 Use of Specified Personnel

- 29.1 If we give you written notice, you must remove any personnel, including Specified Personnel, specified in that notice, and replace such person with other Specified Personnel satisfactory to us.
- 29.2 If any Specified Personnel is unavailable or unable to undertake the services, you must notify us in writing and you must replace that person with another Specified Personnel agreed by us.

30 Entire agreement

This Agreement comprises the entire agreement between the parties about the subject matter of this Agreement. It supersedes all prior communications, negotiations and agreements, whether oral or written, about the subject matter of this Agreement.

31 Governing law

This Agreement is governed by the law of the Australian Capital Territory.

32 Variation of this Agreement

This Agreement may only be varied in writing, signed by both parties.

33 Enforcement of part does not prevent enforcement of another part

We are not prevented from enforcing any part of this Agreement merely because:

- (a) we did not enforce that part on an earlier occasion; or
- (b) we do not enforce another part.

34 You must not assign your rights

34.1 You must not assign your rights under this Agreement without first getting our written consent.

34.2 In this clause 34, “assign” includes novate or transfer, in whole or in part.

35 Effect of invalidity of part

If part of this Agreement is found to be invalid, the rest of the Agreement continues in effect as if the invalid part were excluded.

36 Certain clauses continue after this Agreement ends

36.1 The termination or expiry of this Agreement, for any reason, does not affect:

- (a) the continued operation of the following clauses:
 - (i) clause 5 (Your obligation to keep records and provide reports);
 - (ii) clause 9 (Spending the Funding);
 - (iii) clause 11 (Repaying the Funding);
 - (iv) clause 12 (GST);
 - (v) clause 14 (Intellectual Property Rights);
 - (vi) clause 15 (Safekeeping and return of Commonwealth Material);
 - (vii) clause 16 (Privacy issues);
 - (viii) clause 17 (Confidential Information)
 - (ix) clause 20 (Indemnity); or
 - (x) clause 21 (Insurance); or
- (b) the continued operation of any other clauses that by their nature, survive termination or expiry.

37 Priority of documents

37.1 If there is any conflict or inconsistency, the provisions in documents forming part of this Agreement take priority in the following order:

- (a) the Supplementary Conditions (if any);
- (b) the Terms and Conditions;
- (c) the Schedule;

38 Notices

38.1 A notice under this Agreement is ineffective unless it is in writing.

38.2 Also, a notice under this Agreement is ineffective unless it meets the following requirements:

- (a) where you give it to us—you address it, and forward it, to the address specified in Item L of the Schedule, or as we otherwise direct;
- (b) where we give it to you—we address it, and forward it, as specified in Item L of the Schedule, or as you otherwise direct; and
- (c) in either case, it is signed by or on behalf of the person giving it.

38.3 A notice may be given:

- (a) by hand delivery; or
- (b) by prepaid post; or
- (c) by electronic transmission, including by email or by facsimile.

38.4 A notice is treated as having been given:

- (a) if delivered by hand—on delivery to the relevant address;
- (b) if sent by post—on delivery to the relevant address, or 5 Business Days after it was posted, whichever is earlier;
- (c) if transmitted electronically—when received by the addressee.

39 Interpretation: General

39.1 In this Agreement:

- (a) headings are for convenience only and have no effect on interpretation; and
- (b) footnotes are for information only and are not part of the Agreement; and
- (c) a provision is not to be interpreted against a party merely because that party proposed it.

39.2 Also in this Agreement, unless the contrary appears:

- (a) where a word or phrase has a defined meaning, any grammatical form of that word has a corresponding meaning; and
- (b) a reference to legislation or a legislative provision includes a reference to any amendment, substitution or re-enactment of that legislation or provision; and
- (c) the singular included plural and vice versa.

40 Defined terms

40.1 In this Agreement, unless the contrary appears:

- (a) **we** or **us** (and grammatical variations such as ours) means the Commonwealth of Australia represented by the Department(s) or Agency(ies) specified in the Agreement and includes our officers, delegates, employees, other contractors and agents;
- (b) **you** (and grammatical variations such as your) means the legal entity set out in the Schedule, and includes your officers, employees, agents, volunteers, subcontractors, and successors.

40.2 Also in this Agreement, unless the contrary appears:

Activity means any tasks, activities, services or other purposes for which this funding is provided. The Activity is described in Item B of a Schedule.

Activity Period means the period specified in Item B of a Schedule during which the Activity must be completed.

Agreement means the Terms and Conditions, including the Supplementary Conditions, the Schedule, and any documents incorporated by reference into this document or the Schedule.

Agreement Material means all Material:

- (a) which you bring into existence in performing this Agreement; and
- (b) copied or derived from Material referred to in paragraph (a).

Asset means any item of personal, real or intangible⁴ property, with a price or value of \$10,000 or more, inclusive of GST, and which has been created, acquired or leased wholly or in part with the Funding, except Intellectual Property Rights and licences provided for in clause 14.

Budget means the Budget as described in Item D of the Schedule

Business Day means any day other than a Saturday, Sunday, public or bank holiday in the place where the relevant act is to be done.

Commonwealth Auditor-General means the holder of the position including members of staff of the Auditor General's office

Commonwealth Director of Evaluation and Audit means the holder of the position Director of Evaluation and Audit with the Commonwealth Department of Finance and Administration including members of staff of the Office of Evaluation and Audit

Commonwealth Material means any Material that we give you for the purposes of this Agreement or that is copied or derived from that Material, but does not include Agreement Material.

Commonwealth Privacy Commissioner means the holder of the position including members of staff of the Privacy Commissioner's office

Commencement Date means the date on which the Agreement was signed by the last party to do so.

Completion Date means the completion date specified in the Schedule, which finishes last, or the day after you have done, to our satisfaction, all that you are required to do under this Agreement, whichever is the later.

Existing Material means all Material in existence before the execution of this Agreement or developed independently of this Agreement that is:

- (a) incorporated in the Agreement Material; or

⁴ Intangible assets are those assets that lack a physical presence, but are constituted by a right enforceable in a court of law or equity. Intellectual property is an example of intangible property.

- (b) supplied with, or as part of, the Agreement Material; or
- (c) required to be supplied with, or as part of, the Agreement Material.

Funding means the money, or any part of it, paid to you as set out in Item C of the Schedule.

GST and related terms— In clause 12, GST, Adjustment Event, Adjustment Note, Input Tax Credit, Recipient Created Tax Invoice, Tax Invoice, and Taxable Supply have any of the meanings used in the A New Tax System (Goods and Services Tax) Act 1999 (Cth), or any other relevant legislation, regulations, or rulings by the Australian Taxation Office.

Intellectual Property Rights means all copyright, rights in relation to inventions (including patent rights), registered and unregistered trademarks (including service marks), registered designs, and other rights resulting from intellectual activity in industrial, scientific, literary or artistic fields, but does not include Moral Rights.

Material includes documents, equipment, software (including source code and object code versions), goods, information and data stored by any means including all copies and extracts of them.

Moral Rights includes the following rights of an author of copyright Material:

- (a) the right of attribution of authorship; and
- (b) the right of integrity of authorship; and
- (c) the right not to have authorship falsely attributed;

Program means the program referred to in Item A of the Schedule.

Schedule means a schedule to this Agreement. It may include annexures and incorporate other documents by reference.

Secret and Sacred Material means all information and knowledge of special religious, spiritual or customary significance considered to be secret, exclusive or restricted by an Aboriginal person or according to Aboriginal Tradition as defined in the Aboriginal and Torres Strait Islander Heritage Protection Act 1984(Cth)

Specified Acts means any of the following acts or omissions by or on behalf of the Commonwealth:

- (a) using, reproducing, adapting or exploiting all or any part of the Agreement Material, with or without attribution or authorship;
- (b) supplementing Agreement Material with any other Material;

- (b) using the Agreement Material in a different context to that originally envisaged,

but does not include false attribution of authorship.

Specified Personnel means the personnel, if any, (whether your officers, employees, subcontractors or volunteers of you) required to undertake the Activity or any part of the Activity as set out in Item J of the Schedule, or such personnel replaced in accordance with clause 29.

Subcontractor means any contractor, person or organisation who is engaged by you to undertake the relevant Activity (and any of that contractor's, person's or organisation's employees, agents and subcontractors). 'Subcontracts' has a corresponding meaning.

Supplementary Conditions means terms & conditions in annexures to the Schedule.

Terms and Conditions means all clauses of this document.