|  |  |
| --- | --- |
| Department of Enterprise, Investment and Trade |  |
| Funding Agreement (long form)  <insert funded Activity Title> | |
| Parties | |
| The Crown in right of the State of New South Wales, acting through Department of Enterprise, Investment and Trade | |
| and | |
| <Recipient Name> | |
|  | |
| as detailed in the Activity Schedule. | |

Background

The Agency has agreed to provide the Recipient with the Funding for the purpose of carrying out the Activity and furthering the Objectives of the Natural Hazards Technology Program

The Recipient has agreed to accept and use the Funding to carry out the Activity in accordance with this Agreement.

Scope of Agreement

This Agreement is made up of the parts stated in the General Terms and Conditions.

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Activity Schedule

| **Item 1** | **Agency** | |
| --- | --- | --- |
| Name: | Department of Enterprise, Investment and Trade | |
| ABN: | 51 766 912 245 | |
| Address for notices: | Level 6, 52 Martin Place, Sydney NSW 2000 | |
| Email address for notices: | [grants@Chiefscientist.nsw.gov.au](mailto:grants@Chiefscientist.nsw.gov.au) | |
| Agency contact: | Name: | <insert> |
|  | Position | <insert> |
|  | Telephone | <insert> |
|  | Email | <insert> |

| **Item 2** | **Recipient** | |
| --- | --- | --- |
| Name: | <insert full legal Recipient name> | |
| Legal entity status: | Company  Incorporated Association  Unincorporated Partnership  Individual  Other: <specify> | |
| Trustee of a trust: | The Recipient [is] [is not] entering into this Agreement as a trustee of a trust. | |
| Business Name: | <insert> | |
| ABN: | <insert> | |
| Address for notices: | <insert address for service of notices> | |
| Email address for notices: | <Insert email address for service of notices, if required. The email address for notices should be accessible by more than one person.> | |
| Agency contact: | Name: | <insert> |
|  | Position | <insert> |
|  | Telephone | <insert> |
|  | Email | <insert> |

| **Item 3**  **Clause 1.2** | **Agreement Term** |
| --- | --- |
| Agreement Start Date: | The Agreement provides a Term, from the Agreement Start Date to the Agreement End Date. It is assumed that during the Term of the Agreement:   1. The funding will be paid: and 2. The Activity will be completed i.e., the Activity Period must fall within the Term.   The Agreement can also be terminated prior to the Agreement End Date, if the Agency takes steps to do so under Clause 15. Following termination of expiry of the Agreement, there remain some obligations which survive the ending of the Agreement, which are specified in Clause 16.6.  <Insert start date e.g. The date of execution of this Agreement by the last party to execute.> |
| Agreement End Date: | <Insert end date e.g. [Date] unless earlier terminated by either party, or extended by the Agency, in accordance with this Agreement.> |

| **Item 4**  **Clauses 2 and 16.3** | **Activity Details** |
| --- | --- |
| Funding Program: | <insert name and, if relevant, year of program> |
| Activity: | <insert name and description of funded Activity> |
| Activity Objectives: | <insert description of purposes/goals for the Activity> |
| Activity Start Date: | <insert start date for Activity; otherwise insert: Not Used.> |
| Activity Period: | <insert period during which Activity will be conducted, commencing on Activity Start Date and ending on a specified date or within a specified period thereafter; otherwise insert: Not Used.> |
| Activity Plan: | Detailed Milestones and deliverables will be developed and recorded as part of Table 3 of the Project Charter (Attached as Attachment 1), developed in conjunction with all participants of the pilot.  The project charter must be developed and agreed to before the 30/08/23.  Once approved Table 3 of the project charter will form the “Activity Plan” |
| Activity Budget: | Attached as Attachment 2 (Detailed Project Budget) |
| Activity Risk Assessment: | Detailed activity risk assessment will be developed and recorded as part of Table 3 of the Project Charter (Attached as Attachment 1), developed in conjunction with all participants of the pilot.  The project charter must be developed and agreed to before the 30/08/23.  Once approved Table 3 of the project charter will form the “Activity Plan” |
| Approved Subcontractors: | Nil |
| Specified Personnel and Specified Personnel Hours: | Nil |

| **Item 5**  **Clauses 3 and 15.3(d)** | **Significant Assets** |
| --- | --- |
| Significant Asset Threshold Value: | $1,000 |
| Significant Asset Retention Period: | 180 days |
| Significant Assets held on trust | The Significant Assets are held on trust for the Agency. |

| **Item 6**  **Clauses 2 and 4** | **Funding and payment** | |
| --- | --- | --- |
| Funding: | The total amount of the Funding is $<amount> GST excl.)  Interest can be earned on the Funding. | |
| Payment: | Recipient Created Tax Invoices will not be issued by the Agency in respect of the Funding.  Subject to this Agreement, the Funding will be paid by direct transfer to the Recipient's Nominated Account in accordance with the below Payment Plan:   |  |  |  |  |  | | --- | --- | --- | --- | --- | | **Payment Plan** | | | | | | **Instalment number and amount** | | | **Payment trigger** | **Expected Date for payment** | | GST excl | GST | Total (GST incl.) |  |  | | 1. $<insert> | $<insert> | $<insert> | Execution of Funding Agreement and receipt of Correctly Rendered Tax Invoice/issue of CRTI | 30/06/2024 | |  |  |  |  |  | |  |  |  |  |  | |  |  |  |  |  | | |
| Nominated Account: | Account name: | <insert> |
| Account number: | <insert> |
| Financial institution: | <insert> |
| Contribution: | Yes  No | |

| **Item 7**  **Clause 2** | **Notified Policies and Standards** |
| --- | --- |
|  | not used |

| **Item 8**  **Clause 9** | **Reports** |
| --- | --- |
|  | |

| Report Name | Required content | Reporting Period and date for submission | Form and method of delivery | Special requirements |
| --- | --- | --- | --- | --- |
| Project Charter | Detailed planning outcomes in collaboration with pilot participants as part of the commencement milestone  Including milestones, actions, assumptions, risk register and meeting schedules. | Completed within 1 month of commencement and reviewed 6 months after commencement | Charter to be submitted via email attachment to grants@chiefscientist.nsw.gov.au | Report to be signed by Recipient’s Managing Director/Chief Executive Officer or equivalent |
| Progress report | Report on progress of the Activity to date with reference to the Objectives and including;   * Progress against Milestones * Future planned activities * New or updated risk and control measures * Required engagement with agency/s | Every month, to be submitted within 10 Business Days of expiry of the relevant reporting period. | No required format, to be submitted to via email or email attachment to grants@chiefscientist.nsw.gov.au |  |
| Completion report | Full report on the conduct of the Activity during the Activity Period including:   * A summary of the progress achieved, measured against the Milestones, including achievements and any difficulties encountered * A summary of any steps taken to promote the Activity * An assessment of the Activity’s contribution to any stated Objectives * Any publications referring to the conduct of the Activity   Any additional information which may be reasonably required by the Agency | Within 30 Business Days of expiry or termination of this Agreement | Report to be submitted via email attachment to grants@chiefscientist.nsw.gov.au | Report to be signed by Recipient’s Managing Director/Chief Executive Officer or equivalent. |
| Financial Acquittal | A detailed [and independently audited] financial statement containing:  (a) receipts and application of the Funding including each Instalment;  (b) a statement as to completeness and accuracy of financial accounts; and  (c) the balance of any unspent Instalments/Funding | Within 20 Business Days of termination or expiry of the Agreement. | No required format.  Financial Acquittal to be submitted to grants@chiefscientist.nsw.gov.au | Financial Acquittal to be signed by Recipient’s Chief Finance Officer or equivalent |

| **Item 9**  **Clause 11** | **IP** |
| --- | --- |
| IP ownership | not used |
| Acknowledgement of creators | The Agency will acknowledge the recipient as the creator of activity material in any future agency use of the material. |

| **Item 10**  **Clause 8** | **Funding Acknowledgement** |
| --- | --- |
|  | Social media content posted relating to the activities should where possible link to official pages and content relating to the agency and the program. These will be supplied on request of the recipient.  Where Funding is provided for infrastructure or capital works, the Recipient will acknowledge the Funding in accordance with the funding acknowledgement guidelines at  https://www.nsw.gov.au/branding/sponsorship-and-funding-acknowledgment-guidelines/funding-acknowledgement-guidelines |

| **Item 11**  **Clause 13.3** | **Insurance** | |
| --- | --- | --- |
|  | |  |  |  | | --- | --- | --- | | Type of Insurance | Insured Amount ($AUD) | Additional period after Agreement termination or expiry | | Broad form public liability | $20 million | 12 months post  termination or expiry | | Professional indemnity  insurance | Min. of  $1 million in  respect of  any one  claim. | 12 months post  termination or expiry | | |
| **Item 12**  **Clause 1.1** | **Additional conditions** |
|  |  |

AC1  **Indemnities**

(a) The Recipient must indemnify and keep indemnified the Agency and its officers, employees, and agents from and against any claim, loss or damage arising in connection with this Agreement.

(b) The Recipient’s obligation to indemnity the Agency under this Clause will be reduced proportionately to the extent that any negligent or unlawful act or omission by the Agency, its officers, employees or agents contributed to the relevant loss or damage.

### 

| **Item 13**  **Clause 1.1** | **Attachments** |
| --- | --- |
| Attachment 1 | Project Charter Template |
| Attachment 2 | Detailed Project Budget |
| Attachment [num] | Grant application |

| Execution | |
| --- | --- |
| **Executed as a Deed**: |  |
| **Signed, sealed and delivered** for and on behalf of <insert full legal name of agency> by its duly authorised officer, <insert authorised officer name and position>, but not so as to incur personal liability. |  |
|  | Signature |
| In the presence of: |  |
| Name of witness | Signature of witness |
| Date: |  |

[Alternatives 1A and 1B - where Recipient is a corporation]

**Guide Note:** Alternatives 1A and 1B provide for execution by a company not using its common seal. If the company has a sole director who is also sole company secretary then the signature of that sole director and secretary will suffice (alternative 1B). Otherwise, two directors or one director and one company secretary should sign (alternative 1A). The names of directors can be checked by conducting a paid ASIC Search at <https://connectonline.asic.gov.au>.

| **Signed, sealed and delivered** by <Recipient name and ABN> in accordance with section 127 of the *Corporations Act 2001* (Cth).  By: <insert name and position of director 1>. |  |
| --- | --- |
|  | Signature |
| And by <insert name and position of director 2 or company secretary>. |  |
|  | Signature |
| Date: |  |

| **Signed, sealed and delivered** by <Recipient name and ABN> in accordance with section 127 of the *Corporations Act 2001* (Cth).  By: <insert name and position of sole director/secretary> who states that s/he is the sole director and sole secretary of <Company name>. |  |
| --- | --- |
|  | Signature |
| Date: |  |

[Alternative 2 - where Recipient is an individual]

| **Signed, sealed and delivered** by <insert name of individual>. |  |
| --- | --- |
|  | Signature |
| In the presence of: |  |
| Name of witness who is not a party to this Agreement. | Signature of witness |
| Date: |  |

[Alternative 3 - where Recipient is a partnership]

**Guide Note:** A partner may only execute a deed on behalf of a partnership if s/he has been authorised by deed to do so. (A partner may execute an agreement on behalf of a partnership if there is evidence of an agreement as between the partners authorising the executing partner to do so.) In the absence of the requisite authority, all partners should be asked to sign.

| **Signed, sealed and delivered** by <insert name and position of partner authorised to sign on behalf of the partnership> for and on behalf of <insert partnership name> who is authorised to sign on behalf of the partnership.  By: <insert name and position> |  |
| --- | --- |
| On: <insert date> | Signature |
| In the presence of: |  |
| Name of witness who is not a party to this Agreement. | Signature of witness |

[Alternative 4 - where Recipient is an incorporated association]

| **Signed, sealed and delivered** by <insert name and ABN/other registration number of the incorporated association> in accordance with its constitution and any requirements for execution contained in the statute that establishes the incorporated association.  By: |  |
| --- | --- |
| Print name and position of authorised signatory  On: <insert date> | Signature |
| In the presence of: |  |
| Name of witness who is not a party to this Agreement. | Signature of witness |
|  |  |
| And by:  Print name and position of authorised signatory 2 |  |
| At: <insert location>  On: <insert date> | Signature |
| In the presence of |  |
| Name of witness who is not a party to this Agreement. | Signature of witness |

General Terms and Conditions

# Scope of this Agreement

## Parts of this Agreement and priority

### This Agreement consists of the following parts (in order of precedence):

#### These General Terms and Conditions

#### The Activity Schedule;

#### The Attachments (if any); and

#### Any other documents incorporated by reference.

### If there is any inconsistency between these parts, unless expressly stated otherwise it will be resolved by applying the above order of precedence, with (i) taking highest priority.

## Term

This Agreement will be for the Term unless earlier terminated in accordance with its terms.

# The Activity

The Recipient must, in accordance with this Agreement:

### if required, provide the Agency with a completed Activity Risk Assessment before the Activity Start Date;

### carry out the Activity:

#### within the Activity Period, so as to promote the Objectives;

#### in accordance with the Activity Plan and any Activity Budget;

#### using any Specified Personnel for the Specified Personnel Hours (if any);

#### diligently, to a professional standard and ensuring that any personnel who are engaged on the Activity are appropriately qualified, trained and experienced and hold any required clearances; and

#### in compliance with all applicable laws, Funding Program conditions and any Notified Policies and Standards;

#### not sub-contract the conduct of the Activity or any part of it, except to an Approved Subcontractor, without the Agency’s prior consent; and

#### hold all necessary licences, consents and approvals that may be required to conduct the Activity.

# Significant Assets

### The Recipient must ensure that any Significant Asset purchased wholly or partly with the Funding is recorded in an Asset Register that is kept current at all times.

### Subject to clause 15.3(d) (Deliver-up Significant Assets), unless otherwise agreed the Recipient must retain ownership of any Significant Asset, purchased wholly or partly with the Funding for the Term and for the Significant Asset Retention Period.

### If the Activity Schedule specifies that Significant Assets are held on trust for the Agency then the following clauses apply:

#### A Significant Asset that is purchased by the Recipient:

##### wholly with the Funding is held by the Recipient on trust for the benefit of the Agency; and

##### partly with the Funding is held by the Recipient on trust for the Agency as to a proportionate share of the value of that Significant Asset.

#### The Recipient must do all things reasonably requested by the Agency, including execute any necessary documents, to give full effect to, and protect, the trust created by this clause 3 (Significant Assets).

#### Subject to clause 15.3(d) (Deliver-up Significant Assets), all Significant Assets cease to be held by the Recipient on trust for the Agency upon termination or expiry of this Agreement.

# Funding and payment

### The Recipient must:

#### use the Funding only for the Activity and during the Activity Period;

#### if required, provide the Contribution;

### Subject to this Agreement, if the Recipient meets its obligations under this Agreement to the Agency’s reasonable satisfaction, the Agency will pay the Funding to the Recipient in accordance with the Activity Schedule.

### Unless otherwise agreed, payment will be by direct transfer to the Recipient’s Nominated Account.

### Payment of any amount of the Funding is not an admission by the Agency that the Recipient has met its obligations under this Agreement to the Agency’s reasonable satisfaction.

### Any interest earned on the Funding must be spent on the Activity unless otherwise approved.

### The Recipient must immediately deposit and keep all Funding in its Nominated Account, which must be an account, with an Australian branch of an established bank, building society or credit union, which is solely controlled by the Recipient and allows for the Funding to be separately identified.

# GST

### If Goods and Services Tax (GST) is payable by a supplier on any supply made under this Agreement and the supplier is registered for GST, subject to receipt of a Correctly Rendered Tax Invoice (or in conjunction with the issue of an RCTI if applicable and agreed) the recipient of the supply will pay to the supplier an amount equal to the GST payable on the supply, in addition to and at the same time that the consideration for the supply is to be provided under this Agreement.

### The Recipient must immediately notify the Agency if its GST registration status changes during the Term.

### If, for any reason, the Agency pays to the Recipient an amount under this clause (GST) which is more than the GST imposed on a particular supply by the Recipient to the Agency, the Recipient must immediately repay to the Agency the excess or the Agency may set off the excess against any other amounts due to the Recipient.

### Subject to this clause (GST), if the Activity Schedule specifies that RCTIs will issue in respect of the Funding, the Recipient agrees that:

#### the Agency will issue it with an RCTI; and

#### the Recipient will not issue a tax invoice,

in respect of any taxable supply that the Recipient makes under this Agreement.

# Withholding payment and repayment

### The Agency may, by notice, withhold payment of any amount of the Funding if and for so long as it reasonably believes that:

#### the Recipient has not complied with this Agreement;

#### the Recipient is unlikely to conduct the Activity or administer the Funding in accordance with this Agreement; or

#### the Recipient’s actions will cause damage to the reputation of the Agency or its Funding Program.

### If any amount of the Funding:

#### has been incorrectly claimed or overpaid;

#### has not been spent in accordance with this Agreement;

#### has been spent upon a Significant Asset that is disposed of in breach of this Agreement;

#### is surplus to the requirements of the Activity; or

#### is unspent upon termination or expiry of this Agreement,

then the Agency may, by notice:

#### require the Recipient, within no less than twenty (20) Business Days, to repay that amount to, or to otherwise deal with that amount as directed by, the Agency; or

#### deduct that amount from any future payments of Funding, or other funding, payable by the Agency to the Recipient.

### If the Recipient does not make any required repayment of Funding under this Agreement by the due date for payment the Agency may recover the amount as a debt due to the Agency without the need for further proof.

# Reduction in Funding

### Without limiting other rights under this Agreement, the Agency may reduce the Funding agreed but not yet paid to the Recipient under this Agreement by giving at least 20 Business Days’ notice to the Recipient:

#### **(Loss of Funding)** if the Agency does not receive sufficient funds from the NSW Parliament or the Commonwealth Government to provide the Funding for the Activity; or

#### **(Change of policy)** if there is a change in NSW Government policy which affects the Funding Program or the Activity.

### If the Funding is reduced under this clause the Agency will:

#### agree with the Recipient any necessary consequent variation to this Agreement, for example, by way of reduction in scope of the Activity; and

#### pay the Recipient’s reasonable, substantiated costs (other than loss of profit or income) necessarily and directly incurred as a result of the reduction in the Funding and any consequent variation to the Agreement (“Reduction in Funding Costs”), provided that:

##### the Recipient uses its best efforts to minimise its Reduction in Funding Costs; and

##### the total amount of Reduction in Funding Costs payable will not exceed the total amount of unpaid Funding forfeited through reduction in the Funding under this clause 7 (Reduction in Funding).

# Acknowledgement of Funding and publicity

### The Recipient must:

#### ensure that all public statements relating to the Activity or the Funding acknowledge the provision of the Funding by the Agency;

#### comply with any Agency requirements in respect of the form and content of any acknowledgement of Funding, as specified in the Activity Schedule; and

#### not use Agency or NSW Government branding or logos except with the Agency’s prior consent and in accordance with the NSW Government’s [Style Manual](https://www.stylemanual.gov.au/).

### If requested, the Recipient must use best efforts to ensure the Agency and its Minister are given a reasonable opportunity to participate in media coverage or other promotion of the Activity.

### The Agency may publicise and report on the provision of the Funding to the Recipient, including the amount and purpose of the Funding and the nature and outcomes of the Activity.

### If requested, the Recipient must promptly remove its acknowledgement of the Funding and any Agency or NSW Government logo from any material relating to the Activity if the Agency reasonably requests it (for example, if the Agency determines that the Activity is not consistent with the Activity Objectives).

# Reports and review

## Reports

### The Recipient must provide:

#### the required Reports in relation to its conduct of the Activity, as and when required by this Agreement; and

#### any additional reports or information that may be reasonably requested by the Agency from time to time, for example to address specific issues of concern, as and when requested.

### If the Agency does not accept a Report as satisfactory, the Recipient must submit a revised Report within ten (10) Business Days of the Agency’s request.

## Review

### The Agency will regularly review (either directly or through a third party contractor acting as the Agency’s authorised representative) the Recipient’s implementation of this Agreement, including:

#### its conduct of the Activity against the Objectives; and

#### its expenditure of the Funding and any required Contribution against the Activity Budget and the Activity Plan.

### To facilitate the Agency’s review the Recipient must, on reasonable notice:

#### make appropriate personnel available to meet with, and/or discuss, the implementation of the Agreement with the Agency or its authorised representative;

#### make available to the Agency or its authorised representative, for inspection and the making of copies as appropriate, all relevant Records reasonably requested and assist the Agency in that inspection and the obtaining of any requested copies; and

#### allow the Agency or its authorised representative reasonable access to any site of the Activity to inspect the conduct of the Activity.

# Records

The Recipient must:

### keep and maintain adequate financial and operational Records in respect of its implementation of this Agreement, including Records of:

#### its conduct of the Activity; and

#### its receipt and expenditure of the Funding and any required Contribution,

#### during the Term and for seven (7) years following termination or expiry of this Agreement; and

### provide copies of these Records to the Agency upon request.

# IP

### Subject to clause 11(b), unless otherwise stated in the Activity Schedule, the Recipient owns the IP in the Activity Material.

### This Agreement does not affect ownership of IP in Existing Material.

### The Recipient grants (and will ensure any relevant third party IP owners grant) the Agency and the State a permanent, non-exclusive, irrevocable, royalty-free licence (including the right to sub-license) to use, reproduce, communicate, publish, adapt and modify the Activity Material for non-commercial, government purposes.

### The Recipient must obtain, and, if requested, provide to the Agency in conjunction with the required final report or acquittal, signed Moral Rights consents from all creators of the Activity Material:

#### if specified in the Activity Schedule that authorship will be acknowledged, to their use and adaptation by the Agency and the State without restriction, subject to acknowledgment of the authorship of the creator; or

#### otherwise, to their use and adaptation by the Agency and the State without restriction or any requirement to attribute authorship to the creators.

### If requested by the Agency, the Recipient must provide the Agency with a copy of any Activity Material in the format reasonably requested.

### The Recipient warrants that the use of Activity Material in accordance with this Agreement will not infringe any third party’s IP rights.

# Confidentiality and privacy

### Neither Party may disclose the other’s Confidential Information without its prior consent unless the disclosure:

#### is required or authorised by law, Parliament, the Agency’s responsible Minister or by this Agreement;

#### is reasonably required by a person, including a contracted auditor of the Agency, for the purpose of performing this Agreement;

#### is required for the Agency to perform a governmental function including research and analysis in respect of the Funding Program, monitoring performance of this Agreement, evaluation of the outcomes of this Agreement and/or the Funding Program and reporting on the Funding Program; or

#### is to that Party’s own professional advisers for the purpose of obtaining advice, or to its insurer for the purpose of claim management.

### Each Party will ensure that any third party to which it discloses Confidential Information under a permitted disclosure is made aware of the confidential nature of the information.

## Compliance with Privacy Legislation

To the extent that it deals with Personal Information in conducting the Activity, the Recipient must:

### comply, and ensure that its Personnel comply, with applicable Privacy Legislation;

### not cause the Agency to breach any obligations imposed by the Privacy and Personal Information Protection Act 1998; and

### immediately notify the Agency if it becomes aware of an actual or potential breach of privacy.

# Risk Management

## Recipient representations and warranties

The Recipient represents and warrants that, as the date of its execution of this Agreement:

### (**information**) all information provided by it to the Agency is true and correct;

### (**authority**) it has full power and authority to enter into this Agreement and to perform its obligations;

### (**validity**) the execution, delivery and performance of the Agreement by it has been validly authorised;

### (**skills, expertise**) it has the expertise, skills, qualifications and resources required to perform its obligations under the Agreement;

### (**no conflict of interest**) other than those (if any) disclosed in its Funding application, to the best of its knowledge, neither the Recipient nor its Personnel have any actual, perceived or potential conflicts of interest in relation to the Activity; and

### (**no adverse proceedings**) it is not aware of any circumstances, including any financial circumstances or litigation or other proceedings that are taking place, pending or threatened, which might affect its ability to perform the Agreement.

### (**working with children**) it has ensured that its officers, agents, subcontractors and volunteers engaged in child-related work (if applicable), have working with children check clearance, as required under the *Child Protection (Working with Children) Act 2012.*

## Notice of adverse events

### The Recipient must promptly notify the Agency as soon as it becomes aware of:

#### any material change to any representation and warranty given under this Agreement;

#### any significant delay or suspension of the Activity, including if the Activity is inactive for more than forty (40) Business Days; or

#### any other matter that is reasonably likely to adversely affect its conduct of the Activity or its performance of this Agreement;

and, in consultation with the Agency, take available steps to lessen the impact of any such adverse event.

## Insurance

### The Recipient must procure and maintain, with a reputable insurance company, each of the following policies:

#### Broad form public liability insurance (incorporating products liability insurance) for the minimum amount specified in the Activity Schedule in respect of each and every occurrence and unlimited in the number of such occurrences over any one period of cover, during the Term and for any additional period post termination or expiry specified in the Activity Schedule.

#### Workers’ compensation in accordance with applicable legislation in respect of all employees of the Recipient.

#### Any other policy specified in the Activity Schedule.

### The Recipient must, on request, produce evidence satisfactory to the Agency that its required insurance policies are current.

# Disputes

1. The Parties must attempt to settle any dispute in relation to this Agreement in accordance with this clause 14 (Disputes) before resorting to court proceedings or other dispute resolution process.
2. A Party claiming that a dispute has arisen, must give written notice of the dispute to the other Party. On receipt of this notice the Parties must within ten (10) Business Days of receipt seek to resolve the dispute.
3. If the dispute is not resolved within this ten (10) Business Day period or within such further period as the Parties agree in writing then the dispute is to be referred to the Australian Commercial Dispute Centre (“ACDC”) for mediation.
4. The mediation shall be conducted in accordance with the ACDC Mediation Guidelines which set out the procedures to be adopted, the process of selection of the mediator and the costs involved.
5. If the dispute is not settled within twenty (20) Business Days (or such other period as agreed in writing) after appointment of the mediator, or if no mediator is appointed within twenty (20) Business Days of the referral of the dispute to mediation, the Parties may pursue any other procedure available at law for the resolution of the dispute.
6. If the Agency requests it, the Recipient must continue performing this Agreement while a dispute is being dealt with in accordance with this Clause 14 (Disputes), to the extent practicable to do so.
7. Nothing in this clause 14 (Disputes) will prevent either Party from seeking urgent interlocutory relief.

# Termination

## Termination by Agency for cause

Without limiting other rights under this Agreement or at law, the Agency may terminate this Agreement with immediate effect by giving notice to the Recipient, if:

### (**Breach capable of remedy**) the Recipient breaches a provision of this Agreement and fails to remedy the breach within twenty (20) Business Days following receipt of a notice requiring the Recipient to do so (or such longer period as determined by the Agency);

### **(Breach not capable of remedy)** the Recipient breaches a provision of this Agreement and, in the Agency’s reasonable opinion, the breach is incapable of remedy;

### **(Inappropriate conduct)** in the Agency’s reasonable opinion, the Recipient’s actions will cause damage to the reputation of the Agency or its Funding Program;

### **(Change in Control)** there is a Change in Control of the Recipient that, in the Agency’s reasonable opinion, renders the Recipient no longer eligible to receive the Funding.

## Termination by Agency without cause

### Without limiting other rights under this Agreement or at law, but subject to the terms of this clause 15.2 (Termination by Agency without cause) the Agency may terminate this Agreement without cause (and without the need to give reasons) by giving at least twenty (20) Business Days’ notice to the Recipient.

### If the Agency terminates this Agreement without cause under this clause 15.2 (Termination by Agency without cause) the Agency will pay the Recipient’s reasonable, substantiated costs (other than loss of profit or income) necessarily and directly incurred as a result of the termination (“Early Termination Costs”), provided that:

#### the Recipient uses its best efforts to minimise its Early Termination Costs; and

#### the total amount of Early Termination Costs payable will not exceed the total amount of unpaid Funding forfeited through termination under this clause 15.2 (Termination by Agency without cause).

## On termination

Unless otherwise agreed, the Recipient must, within ten (10) Business Days of termination:

### **(Return unspent Funding)** repay to the Agency, in accordance with its direction, any unspent Funding;

### **(Provide Reports and other Material)** provide to the Agency:

#### any Reports due to, or otherwise reasonably requested by, the Agency; and

#### any Activity Material which is owned by, or licensed to, the Agency under this Agreement, in a format, and with associated explanatory material, which permit the Agency to exercise its IP rights in respect of that Activity Material;

### **(Return Confidential Information)** return any Confidential Information provided by the Agency; and

### **(Deliver-up Significant Assets)** if the Agency terminates this Agreement under clause 15.1 (Termination by Agency for cause) and requires delivery-up of Significant Assets purchased wholly with the Funding, deliver-up to the Agency any such required Significant Assets.

# General

## Relationship

### The Recipient acknowledges that neither the Recipient nor any of its Personnel are employees, partners or agents of the Agency.

### The Recipient must not, and must ensure that its Personnel do not, represent that the Recipient or a member of its Personnel is an employee, partner or agent of the Agency.

## Variations, consents and waivers

All variations to this Agreement and all consents, approvals and waivers must be in writing and variations must be signed by both Parties.

## Subcontracting and assignment

### The Recipient must not:

#### subcontract any part of the Activity other than to an Approved Subcontractor; or

#### assign its rights under all or any part of this Agreement,

#### without the prior written consent of the Agency.

### Any consent given by the Agency in accordance with this clause 16.3 (Subcontracting and assignment) does not relieve the Recipient of its obligations under this Agreement.

## Notices

### A notice under this Agreement must be in writing and delivered to the address or email address of the recipient Party as specified in the Activity Schedule or as that Party otherwise directs. A notice under this Agreement will be taken to be delivered:

#### if by hand or by registered post, on delivery to the Party’s address for service and a signature is received as evidence of delivery;

#### if by post (other than registered post), on the sixth (6th) Business Day after posting;

#### if by email, upon receipt by the sender of confirmation of delivery notification from an email server or a written acknowledgement from the recipient).

### Notwithstanding the immediately preceding subclause if a notice is delivered or received on a day that is not a Business Day, or is delivered or received later than 5.00 pm (Sydney, New South Wales time), it will be taken to have been given or made at 9.00 am on the next Business Day.

## Counterparts

This Agreement may be executed in any number of counterparts which taken together will form one agreement.

## Survival

The following clauses survive termination or expiry of this Agreement: clause 6 (Withholding payment and repayment); clause 9 (Reports and review), clause 10 (Records); clause 11 (IP); clause 12 (Confidential Information); clause 13.3 (Insurance); clause 14 (Disputes); clause 15.2 (Termination by Agency without cause); clause 15.3 (On termination); this clause 16.6 (Survival); clause 16.7 (Governing law and jurisdiction) and any other clause which by its nature is intended to survive this Agreement.

## Governing law and jurisdiction

The Agreement is subject to and must be construed in accordance with the laws for the time being in force in New South Wales and the Parties submit to the non-exclusive jurisdiction of courts of New South Wales.

## Entire Agreement

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

## Waiver and exercise of rights

Failure or omission by the Agency at any time to enforce or require strict or timely compliance with any provision of the Agreement will not in any way affect or impair that provision or the right of the Agency to avail itself of the remedies it may have in respect of any breach of a provision.

## Severability

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

**16.11 Electronic Signature and Exchange permitted**

(a) In relation to the electronic exchange of documents:

(i) Parties may exchange executed counterparts of this Agreement, or any other document required to be executed under this Agreement, by delivery from one Party to the other Party by emailing a pdf (portable document format) copy of the executed counterpart to that other Party as an attachment to an email or by transmitting the executed counterpart electronically via a secure digital platform such as DocuSign (“Electronic Delivery”); and

(ii) Electronic Delivery of an executed counterpart will constitute effective delivery of the executed counterpart as if the original had been received, from the date and time that the email was sent, provided that the sending Party does not receive a delivery failure message within a period of 24 hours of the email being sent.

(b) Electronic signatures complying with a law applicable in New South Wales will be deemed original signatures for the purposes of this Agreement and any such digital, scanned or electronically applied signature is to be treated in all respects as having the same effect as an original signature

# Interpretation

## Definitions

In this Agreement, unless the context otherwise dictates, where appearing with a capital letter:

1. **Activity Material** means any Material (including the Reports) created or developed by the Recipient in conducting the Activity and/or performing this Agreement and includes any Existing Material that is incorporated in or supplied with the Activity Material.
2. **Activity Period** means the period identified as such in the Activity Schedule.
3. **Agency** means the entity identified as such in the Activity Schedule.
4. **Agreement** means this Agreement as described in clause 1.1.
5. **Activity Schedule** means the Activity Schedule forming part of this Agreement.
6. **Asset Register** means an asset register kept in accordance with Australian Accounting Standards.
7. **Attachment** means an attachment to this Agreement.
8. **Business Day** means any day which is not a Saturday, Sunday or gazetted public holiday in the State of New South Wales.
9. **Change in Control** means any change during the Term in any person(s) who directly or indirectly exercise/s effective control over the Recipient (including the ability to determine the outcome of decisions about the financial and operating and other policies of the Recipient) by holding the majority of voting shares, units or other interests in the Recipient or by any other means, but does not include a change in respect of a local council if that change is due to an election.
10. **Claim** means all proceedings, applications, actions, claims, suits, demands, losses (including, except to the extent otherwise agreed in writing, costs, damages, expenses and liability, including consequential loss, indirect loss, loss of profit, loss of revenue, damages for loss of opportunity and legal costs), which may be brought against, made upon, or incurred by the Agency, the State or their Personnel.
11. **Confidential Information** means any written or oral information of a Party that:
12. is by its nature confidential;
13. is designated as confidential; or
14. the receiving Party knows or ought to know is confidential,

but does not include information which is or becomes public knowledge other than by breach of this Agreement.

1. **Conflict of Interest** means a situation where the exercise of a person’s duty or decision-making is influenced, potentially influenced, or may appear to be influenced, by a secondary interest, including (but not limited to) a private or business interest.
2. **Contribution** means the contribution toward the costs of the Activity, as specified in the Activity Schedule.
3. **Correctly Rendered Tax Invoice** means a tax invoice that:
4. complies with the requirements of the GST Law;
5. sets out details of the Activity undertaken for which the Funding or the relevant Instalment is claimed, applicable GST and the total amount payable; and
6. contains any other details and is accompanied by any other supporting information reasonably required by the Agency.
7. **Existing Material** means Material developed independently of this Agreement by either Party and includes Existing Material that is incorporated in or supplied as part of the Activity Material.
8. **Funding Program** means the funding program identified as such in the Activity Schedule.
9. **GST** has the meaning given to this term in the GST Law.
10. **GST Law** means *A New Tax System (Goods and Services Tax) Act* *1999* (Cth), related legislation and any delegated legislation.
11. **Instalment** means an instalment of Funding.
12. **IP** means all industrial and intellectual property rights whether created now or in the future, whether recognised in Australia or overseas, whether or not they are registered or capable of being registered and includes (without limitation), the rights in patents, knowhow, copyright, designs, semi-conductor or circuit layout rights, trade marks, trade secrets, plant breeder’s rights, business or company names or other proprietary rights.
13. **Material** includes all forms of works and subject matter in which IP may subsist, created or stored by any means, including (without limitation) documents, equipment, designs, templates, computer programs, software and applications, products, processes, devices, technologies, information and data.
14. **Moral Rights** means those rights recognised as belonging to the author or creator of Intellectual Property and includes, without limitation, those rights recognised under Part IX of the *Copyright Act 1968*, including the right of attribution, the right against false attribution and the right of integrity of creatorship.
15. **Parties** means the parties to this Agreement and **Party** means either one of them.
16. **Party’s Representative** means, in relation to each Party, the person named as such in the Activity Schedule or such other person as the Party may, from time to time, nominate in writing.
17. **Personal Information** has the meaning contained in the *Privacy and Personal Information Protection Act (1998)* (NSW).
18. **Personnel** means any person employed or engaged by a Party.
19. **Agency** means the entity identified as such in the Activity Schedule.
20. **Privacy Legislation** means the *Privacy and Personal Information Protection Act 1998 (NSW)*, *Health Records and Information Privacy Act 2002 (NSW)* and the *Privacy Act 1988 (Cth)* and includes any directions, regulations, codes of practice and principles made under these Acts.
21. **RCTI** means recipient created tax invoice.
22. **Recipient** means the entity identified as such in the Activity Schedule.
23. **Records** includes documents, information and data stored by any means and all copies and extracts of the same.
24. **Reports** means the reports specified in the Activity Schedule.
25. **Significant Asset** means an item of capital expenditure (excluding real property) the value of which exceeds the Significant Asset Threshold Value.
26. **Significant Asset Threshold Value** means the amount specified as such in the Activity Schedule.
27. **Significant Asset Retention Period** means the period following termination or expiry of this Agreement during which the Recipient must continue to retain ownership of a Significant Asset, as specified in the Activity Schedule.
28. **State** means the Crown in right of the State of New South Wales.
29. **Supply** has the meaning given to this term by the GST Law.
30. **Term** means the duration of this Agreement as specified in the Activity Schedule or until the date on which this Agreement is terminated, whichever occurs first.

## Construction

Except where the context otherwise requires:

### A reference to a statute, regulation, ordinance or by-law will be deemed to extend to include a reference to all statutes, regulations, ordinances or by-laws amending, consolidating or replacing that law from time to time.

### A reference to a person which has ceased to exist or has been reconstituted, amalgamated or merged, or other functions of which have become exercisable by any other person or body in its place, shall be taken to refer to the person or body established or constituted in its place by which its said functions have become exercisable.

### Where a word or phrase is given a defined meaning in this Agreement, any other part of speech or other grammatical form in respect of such word or phrase shall unless the context otherwise requires have a corresponding meaning.

### No rule of construction operates to the detriment of a Party only because that Party was responsible for the preparation of this Agreement or any part of it.

### Where there occurs a reference to the doing of anything by the Agency including giving any notice, consent, direction or waiver, this may be done by any duly authorised officer of the Agency.

### Where the Recipient is comprised of more than one person, each obligation of the Recipient will bind those persons jointly and severally and will be enforceable against them jointly and severally.

### The headings and contents list in this Agreement are for convenience only and do not affect the interpretation of this Agreement.

### Where the Agency is required to act reasonably in the performance of this Agreement, that shall be read as a requirement to act as would a Party in the position of the Agency which is acting reasonably in its own best interests.

### A reference to a group of persons is a reference to all of them collectively and to any two or more of them collectively and to each of them individually.

### Persons will be taken to include any natural or legal person.