
FUNDING AGREEMENT: GRANT

Standard Terms and Conditions

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1. Introduction

1.1 Status of these Standard Terms and Conditions

These Standard Terms and Conditions form part of and are incorporated into the Funding Agreement.

1.2 Definitions and interpretation

- (a) In the Funding Agreement, key terms or expressions are capitalised and defined in the dictionary in clause 18.1 (Dictionary). Certain words or phrases which are used in one clause only of these Standard Terms and Conditions are usually defined in that clause.
- (b) Provisions regarding the interpretation of the Funding Agreement are set out in clause 18.2 (Interpretation).

1.3 Priority of documents

Any conflict or inconsistency between the provisions in documents forming part of the Funding Agreement will be resolved in the following order of priority:

- (a) these Standard Terms and Conditions;
- (b) the Details;
- (c) the Schedule; and
- (d) any other document identified in the Schedule as forming part of the Funding Agreement.

1.4 Additional Conditions

The Organisation agrees, in its carrying out of an Activity, to comply with any Additional Conditions for that Activity.

1.5 Term of the Funding Agreement

The Funding Agreement commences on the Date of the Funding Agreement and ends on the earlier of:

- (a) 30 Business Days after the date on which the Organisation has provided the NSW Health Entity with all reports, Material and anything else that the Organisation is required to provide to the NSW Health Entity under the Funding Agreement; and
- (b) the date on which the Funding Agreement is terminated.

1.6 Representatives

- (a) The parties agree to each appoint a Representative for the purposes of the Funding Agreement.
- (b) A party's Representative will be a senior member of management of the party or, in the case of the Organisation, a board member authorised to act on behalf of the Organisation.
- (c) The parties may each appoint administrative officers for day-to-day administration of the Funding Agreement.

2. NSW Health Entity General Conduct

- (a) The NSW Health Entity agrees to:
 - (i) provide the Organisation with current information relevant to each Activity, including standards, policies and guidelines;
 - (ii) work with the Organisation to monitor, review and evaluate each Activity and improve the Funding Agreement;
 - (iii) work with the Organisation to reduce red tape, including, where practicable, linking the Organisation's reporting obligations under the Funding Agreement with the Organisation's governance framework;
 - (iv) consider and respond to any request by the Organisation for a review of the Funding Agreement; and
 - (v) process the Funds in a timely, efficient, accountable and responsible manner.

- (b) Nothing in clause 2(a) limits or affects the Organisation's obligations under the Funding Agreement or the NSW Health Entity's exercise of its statutory authorities or powers.

3. Activity

3.1 Planning the Activity

- (a) This clause 3.1 applies where it is stated in the Schedule that the Organisation is required to develop or complete an Action Plan or a detailed Budget to be included in the Schedule after execution of the Funding Agreement.
- (b) The Organisation will:
- (i) ensure that the proposed Action Plan or Budget has been prepared diligently, effectively and to a high professional standard and consistent with any aims and objectives for each Activity set out in the Schedule; and
 - (ii) provide the proposed Action Plan or a Budget to the NSW Health Entity for approval by the NSW Health Entity on or before the date stated in the Schedule for that Activity.
- (c) The NSW Health Entity may, in determining whether to approve the proposed Action Plan or Budget, request changes to and the resubmission of the proposed Action Plan or Budget.
- (d) Without limiting any other remedy, the NSW Health Entity may approve, or not approve, the proposed Action Plan or a Budget in its absolute discretion and on such terms and conditions as the NSW Health Entity considers appropriate.
- (e) An Action Plan or a Budget approved under clause 3.1(d) forms part of the Funding Agreement from the date of approval and is not a variation to the Funding Agreement.

3.2 Carrying out of the Activity

The Organisation agrees to carry out each Activity in accordance with the Funding Agreement and:

- (a) consistent with, and in furtherance of, any aims and objectives for that Activity stated in the Schedule;
- (b) within its Activity Period and so as to meet the Milestones and timeframes stated in the Schedule for that Activity;
- (c) in accordance with any Action Plan and Budget for that Activity; and
- (d) in a proper, timely and efficient manner and to a high ethical and professional standard.

3.3 Compliance with laws, standards and policies

The Organisation agrees, in carrying out each Activity, to:

- (a) comply with all applicable Laws, including Laws relating to child protection, work, health and safety, employment screening (including mandatory criminal record and working with children checks), privacy, workplace relations and taxation;
- (b) comply with any standards and codes relevant to the Activity;
- (c) comply with any NSW Health policies or guidelines stated in the Schedule or that the NSW Health Entity reasonably notifies the Organisation in writing;
- (d) perform the Activity on a non-discriminatory basis; and
- (e) obtain and maintain any licences, accreditation, registration and consents required to perform the Activity or reasonably requested in writing by the NSW Health Entity.

3.4 The Organisation's Responsibility

The Organisation remains fully responsible for the carrying out of each Activity and for otherwise complying with its obligations under Funding Agreement and will not be relieved of that responsibility because of:

- (a) the NSW Health Entity involvement in the performance of that Activity;
- (b) any payment of the Funds to the Organisation for the Activity;
- (c) any subcontracting of any Activity; or
- (d) the Organisation's obligations, and the performance of those obligations, under clause 3.5 (Supporting transition of Activity).

3.5 Supporting transition of Activity

On expiry or termination of the Funding Agreement, the Organisation agrees, if requested by the NSW Health Entity, to provide all reasonable assistance in good faith to transition all or part of an Activity, Assets and New Material under the Funding Agreement to the NSW Health Entity or a third party. Such reasonable assistance includes:

- (a) providing reasonable cooperation with a third party nominated by NSW Health Entity; and
- (b) providing the records, data, information and materials that may be required to enable transacting with a new provider as reasonably requested by NSW Health Entity.

4. Organisation's General Obligations

4.1 Personnel

- (a) The Organisation is solely responsible for all Personnel employed or otherwise engaged or supported from the Funds.
- (b) The Organisation is solely responsible for the payment of all wages, entitlements, superannuation, payroll and any other tax and associated costs to its Personnel.

4.2 Probity relating to Personnel

- (a) The Organisation agrees to have risk assessment procedures and risk plans in place to ensure compliance with any obligations under the *Child Protection (Working With Children) Act 2012* (NSW) and to undertake national criminal record checks and any other relevant probity checks for Personnel, including those required by Law.
- (b) Before Personnel undertake any function or role in relation to an Activity, the Organisation agrees to:
 - (i) ensure that Personnel are not prohibited or disqualified under any Law from being employed or engaged to undertake such a role or function, or are not otherwise undesirable to work with children or vulnerable persons where the Personnel may have contact with children or vulnerable persons;
 - (ii) have regard to whether any criminal record check or other probity check of the Personnel is relevant to and may impact on the suitability of the Personnel to perform the function or role in relation to an Activity; and
 - (iii) if requested by the NSW Health Entity, provide the NSW Health Entity with evidence satisfactory to the NSW Health Entity that the Organisation has complied with this clause 4.2.
- (c) The NSW Health Entity may require the immediate removal of Personnel from undertaking any function or role in relation to an Activity where, in the reasonable opinion of the NSW Health Entity, the Personnel are considered to represent an unacceptable risk to an individual or individuals receiving that Activity.

4.3 Notifiable Incidents

The Organisation agrees to notify the NSW Health Entity immediately of any of the following:

- (a) when it becomes aware of Alleged Misconduct or a Serious Incident in relation to the carrying out or performance of an Activity;
- (b) serious complaints received in relation to the carrying out or performance of an Activity;
- (c) the occurrence of any event which may cause adverse publicity in relation to an Activity or relating to a user of the Services;
- (d) another NSW Government body or agency terminates an arrangement with the Organisation under which it receives funding; or
- (e) any current, pending or threatened Reputational Proceedings.

4.4 Notifications relating to the Organisation

- (a) The Organisation agrees to notify the NSW Health Entity as soon as practicable of any of the following:
 - (i) changes to the Organisation's name, address and contact details from those stated in the Details;

- (ii) any material change or proposed material change in the Organisation's constitution or rules or memorandum and articles of association (however described); or
 - (iii) a Change in Control.
- (b) The Organisation agrees to notify the NSW Health Entity immediately of any of the following:
 - (i) any action or proposed action relating to an Insolvency Event; or
 - (ii) any notice or show cause notice as to why the Organisation is not or should not come under external administration.

4.5 Notification of other financial assistance

- (a) Unless stated in the Schedule or the NSW Health Entity notifies the Organisation otherwise, the Organisation agrees to notify the NSW Health Entity when it receives financial assistance from a Commonwealth, State, Territory or local government body for any activities in connection with an Activity that are not specified as a Co-contribution in accordance with clause 6.8 (Co-contribution).
- (b) The notification under clause 4.5(a) is required to be given within ten (10) Business Days of the Organisation obtaining the assistance and include details of assistance, including the amount and proposed use of the funds.

4.6 Subcontracting

- (a) The Organisation agrees not to subcontract any of its obligations under the Funding Agreement without the prior written approval of the NSW Health Entity, except to the extent that is stated in the Schedule.
- (b) Where the engagement of a subcontractor is approved by the NSW Health Entity, the Organisation agrees to ensure:
 - (i) the suitability of any subcontractor and any part of an Activity performed by the subcontractor meet the requirements of the Funding Agreement;
 - (ii) any subcontract entered into between the Organisation and the subcontractor in relation to an Activity is consistent with the Funding Agreement; and
 - (iii) all subcontractors comply with the subcontract and the terms of the Funding Agreement as if they were a party to it.
- (c) The Organisation agrees that:
 - (i) the subcontracting of any part of an Activity, or the NSW Health Entity's approval for a subcontractor, does not relieve the Organisation from its responsibility for the carrying out or performance of an Activity; and
 - (ii) it is liable for the acts and omissions of each subcontractor as if they were the acts and omissions of the Organisation.
- (d) The NSW Health Entity may approve or not approve the engagement of any subcontractor in its absolute discretion and may impose any terms and conditions on its approval it considers appropriate.
- (e) The NSW Health Entity may at any time require the Organisation to cease using any subcontractor on reasonable grounds by notice in writing to the Organisation.
- (f) For the purposes of this clause 4.6, "subcontract" includes entering into a joint venture, partnership or agency relationship.

4.7 Auspice Body

- (a) If the Organisation is an Auspice Body, the Organisation agrees to ensure that the End Recipient complies with the terms of the Funding Agreement and is liable for the acts and omissions of the End Recipient.
- (b) The terms of clause 4.6 (Subcontracting) apply to any auspicing arrangement with the appropriate changes as if reference to "subcontractor" is a reference to End Recipient.

4.8 Complaints

Where an Activity is provided to members of the public, the Organisation agrees to:

- (a) have in place a complaints process to deal with any complaints about that Activity and maintain a complaints register;
- (b) ensure the complaints process includes advising a person who makes a complaint that if they are unsatisfied with the outcome of the complaint they may also complain to the NSW Health Entity; and
- (c) provide the NSW Health Entity or any person nominated by the NSW Health Entity with access to the Organisation's complaints register and any other material relevant to a complaints, where requested to do so.

4.9 Steering committee and planning meetings

The Organisation acknowledges that the NSW Health Entity may require:

- (a) the establishment of a steering committee to oversee an Activity or related program; and/or
- (b) the convening of planning meetings with the Organisation to ensure that it is meeting its obligations under the Funding Agreement,

as stated in the Schedule and as otherwise reasonably required by the NSW Health Entity from time to time, and agrees to cooperate and provide all reasonable assistance to the NSW Health Entity in any of the above roles.

5. Records and Reports

5.1 Accounts and records

The Organisation agrees to keep full and accurate accounts and records regarding each Activity so that:

- (a) all accounting and financial transactions, including receipts and payments relating to the Funds, are clearly separate and identified from the Organisation's other financial and operational accounts and records;
- (b) if required by Law or the NSW Health Entity, financial statements can be prepared in accordance with Australian Accounting Standards;
- (c) if required by Law or the NSW Health Entity, the accounts and records can be audited in accordance with Australian Auditing Standards;
- (d) proper operational records are able to verify the Organisation's carrying out or performance of its obligations under the Funding Agreement; and
- (e) any Asset Register is maintained in accordance with clause 8.3 (Obligations in relation to Assets).

5.2 Record keeping

The Organisation agrees to keep its accounts and records referred to in clause 5.1 (Accounts and records):

- (a) in accordance with applicable Law and usual record keeping practices;
- (b) for a period of 7 years after the earlier of the Activity End Date or the end of the Term; and
- (c) in such a way to allow the records to be easily accessed, retrieved and used by the NSW Health Entity or its representative.

5.3 Reporting

- (a) The Organisation agrees to provide to the NSW Health Entity the information and reports at the times and in the format specified by the NSW Health Entity and including the content stated in the Schedule.
- (b) The Organisation agrees to prepare its reports in accordance with:
 - (i) if required by the NSW Health Entity, applicable NSW Health policy or guidelines; and
 - (ii) if required by Law or the NSW Health Entity, Australian Accounting Standards.
- (c) In addition to any requirements to provide information or reports to the NSW Health Entity, the Organisation agrees to provide the NSW Health Entity with any information, records or reports in relation to an Activity, the expenditure of the Funds or the obligations under the Funding Agreement when requested to do so by the NSW Health Entity.

- (d) All reports provided by the Organisation to the NSW Health Entity will be of a standard and provided in a way reasonably acceptable to the NSW Health Entity.

6. Financial arrangements

6.1 Use of Funds by the Organisation

- (a) Subject to clause 6.1(b), the Organisation agrees to use the Funds provided for an Activity:
- (i) only for the purpose of carrying out or performing that Activity and in accordance with the Funding Agreement;
 - (ii) within the Activity Period and in accordance with any time periods stated in the Schedule for expenditure of the Funds; and
 - (iii) if applicable, by paying the Funds to the End Recipient in accordance with the Funding Agreement.
- (b) The Organisation may use the Funds:
- (i) to pay an amount of the Funds to a third party after the Activity End Date provided that the amount was Committed for that Activity before the Activity End Date in accordance with the Budget (if any) and the Funding Agreement;
 - (ii) if there is no Budget for an Activity, for the preparation of the Activity's reports that are due after the Activity End Date; and
 - (iii) in accordance with any approval under clause 6.10 (Residual Funds at end of Activity Period).

6.2 What the Funds will not be used for

- (a) Without limiting clause 6.1 (Use of Funds by the Organisation), the Organisation agrees not to, without the prior written approval of the NSW Health Entity, use the Funds to:
- (i) make a loan, advance, donation, commission, gift of similar benefit for any purpose;
 - (ii) make repayments of existing loans, investments or debts;
 - (iii) provide security for any purpose;
 - (iv) pay fees or expenses, including sitting fees, to any board member, non-executive director or non-executive committee members of the Organisation (other than reasonable travel expenses for the purposes of attending the business of the board);
 - (v) pay legal fees or settle any claim, order or judgment against the Organisation, staff or board members; or
 - (vi) make termination of employment or redundancy payments unless the payment is due to termination in accordance with clause 13.2 (Termination without fault).
- (b) The NSW Health Entity may approve or not approve use of the Funds under clause 6.2(a) in its absolute discretion and on any terms or conditions it considers appropriate and the Organisation agrees to comply those terms and conditions.

6.3 Payment of Funds

- (a) The NSW Health Entity agrees to pay the Funds for an Activity to the Organisation at the times, and in the amounts, stated in the Schedule.
- (b) The Organisation agrees that payment of all or part of the Funds is not an admission by the NSW Health Entity that the Organisation has met its obligations under the Funding Agreement to the reasonable satisfaction of the NSW Health Entity.

6.4 Indexation

- (a) If the Funding Agreement sets out that the Funds are to be increased on a yearly basis, the NSW Health Entity agrees to increase the Funds payable each year for the Term by the rate of indexation as stated in the Schedule and as otherwise advised by the NSW Health Entity from time to time.
- (b) An increase in Funds under this clause 6.4 is not a variation to the Funding Agreement.

6.5 Other Funds

The NSW Health Entity is under no obligation to provide the Organisation with Funds or other financial assistance in excess of the total amount stated in the Schedule or provide funding beyond the expiration or termination of the Funding Agreement.

6.6 Bank Account

The Organisation agrees to keep all Funds paid by the NSW Health Entity under the Funding Agreement in a Bank Account, except to the extent those Funds are used or paid in accordance with the Funding Agreement.

6.7 Interest

The Organisation agrees to pay the Funds into an interest earning account and ensure that all interest earned on the Funds will be used in accordance with the Funding Agreement.

6.8 Co-contribution

- (a) The Organisation agrees to make or procure any Co-contribution for an Activity as stated in the Schedule and use it to provide that Activity.
- (b) The Organisation agrees to provide written confirmation to the NSW Health Entity that the Co-contribution is available or has been received from any third party for that Activity as reasonably required by the NSW Health Entity from time to time.
- (c) The Organisation agrees to notify the NSW Health Entity immediately if it cannot, or may not be able to, comply with this clause 6.8.
- (d) The NSW Health Entity may terminate the Funding Agreement in accordance with clause 13.3 (Termination for cause) if the Organisation does not or cannot comply with this clause 6.8.

6.9 Budgeted and Unspent Funds within the Activity Period

- (a) Subject to clause 6.9(b), where there is a Budget for an Activity, the Organisation must only spend the Funds specified in that Budget on that Activity and in accordance with that Budget.
- (b) The Organisation agrees not to:
 - (i) transfer or reallocate Funds for an Activity between expenditure items of any Activity's Budget; or
 - (ii) carry-over any Unspent Funds in one Financial Year to the next Financial Year during the Activity Period for an Activity,except to the extent that it is stated in the Schedule and in accordance with the Funding Agreement or with the prior written approval of the NSW Health Entity.
- (c) Where the Organisation uses Funds in accordance with clause 6.9(b), the Organisation agrees to advise the NSW Health Entity as part of its next reports as to the reasons for the transfer or reallocation of the Funds or why the Funds were not spent in accordance with the Funding Agreement and how the Funds will be utilised.
- (d) Any transfer, reallocation or carry-over of Funds within the Activity Period other than in accordance with this clause 6.9, including the transfer, reallocation or carry-over of Budgets of or between two or more Activities, requires the prior written approval of the NSW Health Entity.
- (e) The NSW Health Entity may, in determining whether to approve the transfer, reallocation or carry-over of Funds:
 - (i) approve or not approve a request in its absolute discretion;
 - (ii) request the Organisation to submit a revised Budget for approval; and
 - (iii) impose terms and conditions as it considers appropriate.

6.10 Residual Funds at end of Activity Period

- (a) The Organisation agrees to repay to the NSW Health Entity any Residual Funds remaining at the Activity End Date or on earlier termination of the Funding Agreement within 20

Business Days of the Activity End Date or on the earlier termination, unless the NSW Health Entity has given prior written approval for the Organisation to retain the Residual Funds.

- (b) Where the NSW Health Entity approves the retention of Residual Funds, the Organisation will use those Residual Funds in accordance with the approval, including any terms and conditions specified by the NSW Health Entity.

7. GST

7.1 Definitions

In this clause 7:

- (a) **GST Act** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);
- (b) **GST Law** has the same meaning as given in the GST Act;
- (c) **Ruling** means a published GST ruling, GST determination or similar document issued by the Commissioner of Taxation; and
- (d) all other words and expressions which are not defined in the Funding Agreement but which have a defined meaning in GST Law or Ruling have the same meaning as in the GST Law or Ruling.

7.2 GST payable

- (a) If a party ("supplier") makes a supply under or in connection with the Funding Agreement in respect of which GST is payable, the recipient of the supply ("recipient") will pay to the supplier an amount equal to the GST payable on the supply.
- (b) If any amount on account of GST has been included in the consideration for a supply under the Funding Agreement, the GST amount is as stated as GST in the Schedule.

7.3 Tax invoice

Except where clause 7.6 applies:

- (a) the supplier must deliver a tax invoice or an adjustment note to the recipient before the supplier is entitled to payment of an amount under clause 7.2(a); and
- (b) the recipient can withhold payment of the amount payable under clause 7.2(a) until the supplier provides a tax invoice or an adjustment note as appropriate.

7.4 Adjustment event

If an adjustment event arises in respect of a taxable supply made by a supplier under the Funding Agreement, the amount payable by the recipient under clause 7.2(a) will be recalculated to reflect the adjustment event and a payment will be made by the recipient to the supplier or by the supplier to the recipient as the case requires.

7.5 Pay or reimburse

Where a party is required under the Funding Agreement to pay or reimburse an expense or outgoing of another party, the amount to be paid or reimbursed by the first party will be the sum of:

- (a) the amount of the expense or outgoing less any input tax credits in respect of the expense or outgoing to which the other party is entitled; and
- (b) if the payment or reimbursement is subject to GST, an amount equal to that GST.

7.6 Issuing recipient created tax invoices and adjustment notes

Where the Organisation makes a taxable supply under or in connection with the Funding Agreement, the parties agree that:

- (a) the NSW Health Entity, where permitted by the GST Law and Rulings, will issue a recipient created tax invoice for the supply by the Organisation in accordance with the GST Law and Rulings, and the NSW Health Entity will retain the original or the copy;
- (b) the Organisation will not issue tax invoices in relation to the supply; and
- (c) the NSW Health Entity, and not the Organisation, will issue an adjustment note to the NSW Health Entity for any adjustment event that arises in relation to the supply, and the NSW Health Entity will retain the original or the copy.

7.7 Acknowledgments

The parties acknowledge and agree that each party is registered for GST at the date of entry into the Funding Agreement and that it will notify the other party if it ceases to be so registered, or if it otherwise ceases to be entitled to enter into a recipient created tax invoice arrangement.

8. Assets and Capital Works

8.1 Acquiring of Assets

The Organisation agrees not to use the Funds to purchase, lease or otherwise acquire any Assets for an Activity unless:

- (a) it is stated in the Schedule and it is in accordance with any allocation of the Funds set out in the Schedule or in any Budget for that purpose; or
- (b) the NSW Health entity has given its prior written approval and the Organisation complies with any conditions placed on that approval.

8.2 Ownership of Assets

Unless it is otherwise stated in the Schedule, the Organisation agrees that it must own or lease any Assets.

8.3 Use of Assets

The Organisation agrees not use Assets for any purpose other than the carrying out and performance of the Activity and any Designated Use unless it has obtained the prior written approval of NSW Health which will not be unreasonably withheld.

8.4 Obligations in relation to Assets

- (a) The Organisation agrees to:
 - (i) ensure that it obtains value for money in the procurement of Assets and related Activity;
 - (ii) during the Activity Period and any Designated Use Period, use the Assets only for the purpose of the Activity for which the Asset has been acquired;
 - (iii) maintain the Assets in good working order;
 - (iv) be fully responsible for, and bear all risk in relation to, the use and disposal of the Assets,
 - (v) maintain all appropriate insurances in respect of the Assets;
 - (vi) if it is stated in the Schedule, maintain an Assets Register of the Assets;
 - (vii) if it is stated in the Schedule, maintain registration and licencing of the Assets; and
 - (viii) not dispose of, deal with or encumber the Assets other than in accordance with this clause 8, without the prior written approval of the NSW Health Entity.
- (b) Clause 12.3 (Conflict of Interest) applies to the Organisation in connection with the purchase, lease or other acquisition of the Assets.
- (c) The Organisation will comply with any additional provisions relating to the Assets as stated in the Schedule.

8.5 Depreciation of Assets

- (a) If an Asset has not been fully depreciated in accordance with the Australian Accounting Standards:
 - (i) at the end of the Activity Period for which the Asset has been acquired;
 - (ii) at the end of any Designated Use Period; or
 - (iii) on early termination of the Funding Agreement,the Organisation agrees to do any of the following required by the NSW Health Entity:
 - (iv) use the Assets for a purpose and in accordance with any conditions approved in writing by the NSW Health Entity; or

- (v) deal with the Assets in any way which the NSW Health Entity notifies the Organisation in writing.
- (b) The Organisation agrees to comply with any request under clause 8.5(a) within 20 Business Days of the request being made.
- (c) If the Organisation fails to comply with its obligations under clause 8.5(a), some or all of the Funds used for the purchase of the Assets will be recoverable as a debt due by the Organisation to the NSW Health Entity from the date it was due.

8.6 Capital Works

- (a) The Organisation will not use the Funds for Capital Works or General Infrastructure, without the prior written approval of the NSW Health Entity.
- (b) Any approval under clause 8.6(a) may be subject to additional conditions or requirements under the Funding Agreement or to a separate written agreement.

8.7 Registering of Interest

The Organisation agrees to comply with any reasonable request of the NSW Health Entity to register the NSW Health Entity's interest in any Assets, Capital Works or transaction relating to the Funding Agreement, including the execution of any documents.

9. Reviews and Audits

9.1 Access to premises and records

- (a) The Organisation acknowledges and agrees that the NSW Health Entity, any persons nominated by the NSW Health Entity and any Public Accountability Body may on notice to the Organisation require access to:
 - (i) the Organisation's premises or the premises where an Activity is being provided;
 - (ii) the premises at which any work associated with an Activity is undertaken;
 - (iii) the premises at which any Assets are located;
 - (iv) copies of records held or created by the Organisation in relation to that Activity, for purposes associated with the Funding Agreement, including any review or audit of the Organisation's performance of its obligations under the Funding Agreement or ability to provide all or part of an Activity.
- (b) Where possible, the NSW Health Entity will give reasonable notice to the Organisation and seek to involve the Organisation in any performance review or audit. However, the notice under clause 9.1(a) does not need to be in any particular form.

9.2 Cooperation and Access

- (a) Unless it is prohibited by Laws from disclosing such information or material, the Organisation will cooperate with and provide all assistance reasonably requested by permitted persons under clause 9.1(a).
- (b) The cooperation and assistance under clause 9.2(a) includes full and free access to:
 - (i) the Personnel, accounts, records and other information; and
 - (ii) the Activity or places of business to conduct the performance review or audit, for purposes associated with the Funding Agreement or any review of the carrying out of an Activity by the Organisation .

9.3 Application of this clause

- (a) The Organisation must ensure that any subcontract or auspicing arrangement entered into for the purpose of the Funding Agreement allows those permitted persons under clause 9.1(a) (Access to premises and records) to have access as specified in this clause 9.
- (b) Nothing in this clause 9 limits or restricts in any way the authority or rights of a Public Accountability Body.

10. Intellectual Property Rights and Information

10.1 Ownership of Intellectual Property Rights

- (a) The Existing Material of each party remains the property of the party that owns the Intellectual Property Rights at the Commencement Date.
- (b) The Organisation owns all New Material except to the extent that it is stated in the Schedule or clause 10.1(c) applies.
- (c) The NSW Health Entity will give written notice to the Organisation prior to the delivery of all or part of an Activity if the NSW Health Entity considers that all or part of the New Material arising from the Funding Agreement should be owned by the NSW Health Entity.
- (d) If the NSW Health Entity gives written notice to the Organisation under clause 10.1(c), the New Material set out in the notice is owned by the NSW Health Entity.

10.2 Licences of Intellectual Property

- (a) The NSW Health Entity grants, and the Organisation accepts, a licence (including a licence to copy or supply it to others) over:
 - (i) the NSW Health Entity's Existing Material; and
 - (ii) New Material owned by the NSW Health Entity,to the extent needed to allow the Organisation to provide an Activity and comply with the Funding Agreement or for any other purpose that the NSW Health Entity agrees in writing with the Organisation.
- (b) The Organisation grants, and the NSW Health Entity accepts a permanent, irrevocable, royalty-free, worldwide, transferable, non-exclusive licence (including a right of sublicense to copy or supply it to others) to use, reproduce, communicate, adapt and exploit:
 - (i) the New Material not owned by the NSW Health Entity; and
 - (ii) the Organisation's Existing Material, but only in conjunction with the New Material.
- (c) Each party warrants to the other party that it has the right, or will be entitled at the required time, to deal with the Intellectual Property in the manner provided under this clause 10.2, including obtaining any Moral Rights.
- (d) At the request of the NSW Health Entity, the Organisation will provide the NSW Health Entity with copies of all materials in a manner that allows the NSW Health Entity to give effect to this clause 10.2.
- (e) The Organisation agrees to properly manage the New Material to allow the NSW Health Entity to enjoy the full benefit of an Activity and the Funding Agreement.
- (f) The Organisation will not accept any funding (including Co-contributions) from a third party that would jeopardise or limit any right in this clause 10.2 without the prior written approval of the NSW Health Entity.

10.3 Privacy

- (a) The Organisation acknowledges and agrees it is bound by Privacy Laws in carrying out or providing an Activity and complying with the Funding Agreement.
- (b) In carrying out or performing an Activity, the Organisation will comply with any direction of the NSW Health Entity to the extent that it is consistent with Privacy Laws.
- (c) The Organisation will immediately notify the NSW Health Entity if it has reasonable grounds to believe that there has been a breach of Privacy Laws in connection with the carrying out or performance of an Activity.
- (d) The Organisation will take reasonable steps to ensure relevant persons are made aware that information the Organisation collects in connection with carrying out or performance of an Activity may be provided to the NSW Health Entity for the purposes of auditing or assessing the Organisation's compliance with the Funding Agreement.

10.4 Confidential Information

- (a) Subject to clause 10.4(b) a party will not disclose Confidential Information without the prior written approval of the other party.

- (b) The obligation not to disclose Confidential Information does not apply to the extent that the Confidential Information is:
 - (i) reasonably required by any persons performing their obligations under the Funding Agreement or to a party's legal and professional advisors, provided that the Confidential Information is used solely for the purpose of the Funding Agreement;
 - (ii) authorised or required by Law to be disclosed;
 - (iii) publicised and reported by the NSW Health Entity or the NSW Government on the awarding of the Funds;
 - (iv) shared by the NSW Health Entity with another government agency, body or Minister for its legitimate interests; or
 - (v) to give a public explanation of any action that the NSW Health Entity takes in connection with the Funding Agreement.

10.5 Information of a sensitive or cultural nature

The NSW Health Entity will not publish any information that the Organisation reasonably considers to be, and identifies to the NSW Health Entity as being, of a sensitive or cultural nature, unless:

- (a) the NSW Health Entity consults the Organisation;
- (b) the NSW Health Entity publishes the information for a purpose stated in the Schedule; or
- (c) it is in accordance with clause 10.4 (Confidential Information).

11. Acknowledgement and Publicity

11.1 Acknowledgment and publicity

- (a) The Organisation will acknowledge the funding support from the NSW Health Entity in any publications, advertising and promotional materials in a form and manner stated in the Schedule or as reasonably requested by the NSW Health Entity from time to time.
- (b) The Organisation will notify the NSW Health Entity prior to making any press or other announcement or releases relating to the Funding Agreement, unless it is for the purpose of the promotion of an Activity or required to be made by Law.
- (c) The Organisation acknowledges that the NSW Government may publicise the awarding of the Funds at any time after it is awarded, including the Organisation's name, the amount of Funds and the title and brief description of the Activity and any results or outcomes arising out of the Funds.

11.2 No restriction on advocacy activities

NSW Health Entity agrees that nothing in the Funding Agreement restricts the ability of the Organisation or its Personnel from entering into public debate or advocacy activities, subject to the Organisation complying with its obligations in relation to Privacy (clause 10.3), Confidentiality (clause 10.4) and Conflict of Interest (clause 12.3).

12. Dealing with Risk

12.1 Insurance

- (a) The Organisation warrants that it has or will take out and will maintain adequate insurance coverage appropriate for an Activity, including the following insurances:
 - (i) public liability insurance for an amount stated in the Schedule for any claim arising out of or in connection with the Activity; and
 - (ii) any other insurance stated in the Schedule,
 for the Term and, if the insurance is for professional indemnity insurance, for the period that is four (4) years from the Activity End Date.
- (b) The Organisation will provide the NSW Health Entity with proof of insurance cover on request.
- (c) The Organisation will immediately notify the NSW Health Entity of any event which affects or may affect the Organisation's compliance with this clause 12.1.

12.2 Indemnity

- (a) In this clause 12.2, "NSW Health Entity" includes its officers, employees and agents.
- (b) The Organisation indemnifies, and keeps indemnified, the NSW Health Entity from and against any Claim that may be made or brought by any person against the NSW Health Entity arising from or in connection with:
 - (i) any negligent or unlawful act or omission by the Organisation or Personnel;
 - (ii) any breach by the Organisation of the Funding Agreement or Laws; or
 - (iii) use or disposal of any Asset,
 relating to an Activity or the Funding Agreement.
- (c) The Organisation's liability under clause 12.2(b) will be reduced proportionally to the extent that any negligent or unlawful act or omission of the NSW Health Entity caused or contributed to the Claim.

12.3 Conflict of Interest

- (a) The Organisation warrants that, to the best of its knowledge after making diligent inquiry, at the date of the Funding Agreement, no Conflict of Interest exists or is likely to arise in relation to the Funding Agreement.
- (b) The Organisation undertakes to notify the NSW Health Entity immediately upon becoming aware of a Conflict of Interest and agrees to comply with any reasonable written directions of the NSW Health Entity to manage the Conflict of Interest
- (c) The NSW Health Entity may terminate the Funding Agreement under clause 13.3 (Termination for cause) if the Organisation fails to notify it of a Conflict or Interest or is unable or unwilling to resolve the Conflict of Interest to the reasonable satisfaction of the NSW Health Entity.

13. Suspension and Termination**13.1 Suspension or withholding Funds**

- (a) If the NSW Health Entity, acting reasonably, considers it appropriate, it may by written notice to the Organisation, immediately suspend or withhold (either temporarily or permanently) the use and/or payment of all or any part of the Funds if:
 - (i) the Organisation has failed, or in the NSW Health Entity's reasonable opinion, is likely to fail to carry out the Activity in accordance with the Funding Agreement;
 - (ii) the Organisation has received Funds for an Activity that have not been spent or Committed for the Activity in accordance with the Funding Agreement, including as a result of the Organisation having a surplus or underspend;
 - (iii) the Organisation has breached a provision of the Funding Agreement or another arrangement or agreement with a NSW Health organisation;
 - (iv) the Organisation has misused, or in the NSW Health Entity's opinion, is suspected to have misused, the Funds or has shown an inability to properly manage the Funds or the Assets;
 - (v) the Organisation has breached the Funding Agreement and the NSW Health Entity has given notice to the Organisation under clause 13.2 (Termination for cause) or clause 13.4 (Consequences of termination);
 - (vi) the NSW Health Entity has concerns on reasonable grounds that the Organisation is not financially stable; or
 - (vii) the Organisation or any of its Personnel has breached or is suspected to have breached any Laws material to an Activity.
- (b) The NSW Health Entity may, by giving written notice to the Organisation, reduce an Activity to be provided under the Funding Agreement to reflect any suspension or withholding of all or part of the Funds under clause 13.1(a) and the Organisation agrees to suspend the carrying out or performance of an Activity at the request of the NSW Health Entity in accordance with this clause 13.1.

- (c) A notice under clause 13.1(a) or clause 13.1(b) will contain the reasons for any payment being withheld or reduction of an Activity and the steps the Organisation can take to address those reasons.
- (d) The NSW Health Entity will pay the withheld amount, subject to any suspension of an Activity under clause 13.1(a) or clause 13.1(b), once the Organisation has addressed the reasons contained in the notice to the reasonable satisfaction of the NSW Health Entity.
- (e) Nothing in this clause 13.1 prevents a party from exercising its rights at any time under clauses 13.2 (Termination without fault) or 13.3 (Termination for cause).

13.2 Termination without fault

- (a) Either the NSW Health Entity or the Organisation may terminate the Funding Agreement at any time by giving the non-terminating party at least three (3) months' written notice. A notice to terminate under this clause 13.2 does not have to include reasons.
- (b) Subject to clause 13.4 (Consequences of termination), the party electing to terminate the Funding Agreement under this clause 13.2 will pay the non-terminating party for any reasonable costs directly and necessarily incurred as a result of termination and properly substantiated by the non-terminating party.

13.3 Termination for cause

- (a) The NSW Health Entity may terminate the Funding Agreement with immediate effect by giving notice to the Organisation if:
 - (i) the Organisation breaches any provision of the Funding Agreement and:
 - (A) the breach is not capable of being remedied; or
 - (B) the breach is capable of being remedied and the Organisation fails to remedy the breach within 20 Business Days following receipt of a notice requiring it to do so;
 - (ii) the Organisation regularly or habitually commits breaches of the Funding Agreement which collectively constitute material or serious breach, whether or not they are remedied;
 - (iii) the NSW Health Entity is reasonably satisfied that any statement provided by the Organisation and relied on by the NSW Health Entity to approve the Funds is incorrect, incomplete, false or misleading in a way which would have affected the original decision to approve the Funds;
 - (iv) there is a Change in Control or a change in ownership of the Organisation which the NSW Health Entity reasonably considers has an adverse impact on the decision to pay the Funds or the ability of the Organisation to comply with its obligations under the Funding Agreement;
 - (v) the Organisation no longer has the requisite authorisations, licences, accreditation, registration or consents to perform its obligations under the Funding Agreement;
 - (vi) the Organisation suffers an Insolvency Event;
 - (vii) the Organisation has breached any other agreement with a NSW Health or NSW Government agency or body, and that breach entitled or entitles the NSW Health or NSW Government agency or body to terminate that agreement; or
 - (viii) there has been or there is any current, pending or threatened Reputational Proceedings.
- (b) The NSW Health Entity may terminate the Funding Agreement by giving written notice to the Organisation as soon as possible if the NSW Health Entity does not receive sufficient funds from the NSW Parliament or the Commonwealth Government to finance an Activity or part of an Activity.

13.4 Consequences of termination

- (a) If the NSW Health Entity terminates the Funding Agreement:
 - (i) the Organisation will:
 - (A) comply with any notice requirements;

- (B) provide the NSW Health Entity with any reports and records that the NSW Health Entity reasonably requires; and
 - (C) cooperate in good faith and provide all assistance reasonably required by the NSW Health Entity in relation to Confidential Information, the disposal of Assets and any transition arrangements in relation to the Funding Agreement; and
- (ii) the NSW Health Entity will consider in its absolute discretion the payment of the costs of the reasonable transition arrangements of the Organisation.
- (b) The NSW Health Entity is not liable to the Organisation if the NSW Health Entity exercises its rights under clause 13.3 (Termination for cause).
 - (c) The liability of the NSW Health Entity to the Organisation on termination of the Funding Agreement, including under clause 13.2 (Termination without fault), is limited to the amount of unpaid Funds remaining at the date of termination under the Funding Agreement.
 - (d) This clause 13.4 does not limit any other rights or remedies that may be available to a party.

14. Repayment of Funds

14.1 Notice concerning Funds

If at any time the NSW Health Entity forms the reasonable opinion that the Organisation:

- (a) has not used, spent or Committed the Funds in accordance with the Funding Agreement;
- (b) has failed to perform any of the Organisation's obligations under the Funding Agreement or has otherwise not complied with the Funding Agreement; or
- (c) there is an overpayment or incorrect payment of the Funds,

the NSW Health Entity may by giving notice in writing to the Organisation:

- (d) require the Organisation to repay that part of the Funds within 20 Business Days on receipt of a request by the NSW Health Entity;
- (e) recover that part of the Funds through set-off of the amount of those Funds against Funds payable to the Organisation under the Funding Agreement; or
- (f) require the Organisation to use all or part of those Funds, or an amount equivalent to those Funds, as the NSW Health Entity sees fit.

14.2 Organisation's rights and obligations

- (a) The Organisation will comply with a notice that the NSW Health Entity gives under clause 14.1 (Notice concerning Funds).
- (b) The Organisation may make a written request to the NSW Health Entity to reallocate or retain Funds specified in a notice under clause 14.1 (Notice concerning Funds). If the NSW Health Entity agrees to such a request, the Organisation agrees to use the Funds in accordance with any terms and conditions specified by the NSW Health Entity.

14.3 NSW Health Entity rights

If the Organisation fails to make payment required by a notice under clause 14.1 (Notice concerning Funds), the Organisation will pay the NSW Health Entity interest on any unpaid amount and the unpaid amount and the interest may be recovered by the NSW Health Entity as a debt.

15. Relationship between the parties

15.1 Status of Organisation

- (a) The parties agree and acknowledge that:
 - (i) nothing in the Funding Agreement creates any employment, partnership, agency or joint venture relationship between the parties; and
 - (ii) neither party has authority to incur any liability or make any representation on behalf of the other party.
- (b) The Organisation warrants that:
 - (i) it is a legal entity capable of entering into the Funding Agreement;

- (ii) the execution of the Funding Agreement and the provision and performance of an Activity complies with all Laws under which it is incorporated; and
 - (iii) all licences, accreditation, registration and consents required to be obtained by the Organisation to provide and perform an Activity have been obtained and are valid and continuing and it is not aware of any breach of those authorisations.
- (c) If the Organisation is a partnership, joint venture or consortium of two (2) or more persons, the Organisation agrees that:
- (i) all such persons are liable both individually and as a group to the NSW Health Entity for the full performance of the Funding Agreement; and
 - (ii) the Organisation's Representative has authority to bind the partnership, joint venture or consortium and each of its members.

15.2 Trust warranties

- (a) Where the Organisation provides or carries out any or all of an Activity in its capacity as a trustee, the Organisation warrants that:
- (i) it is the sole trustee of the Trust and it has been validly appointed;
 - (ii) it has full and valid power, authority, consents and approvals under the Trust to sign the Funding Agreement and to carry out the transactions contemplated by the Funding Agreement; and
 - (iii) it has the right to be indemnified out of the assets of the Trust for all liabilities incurred by it under the Funding Agreement.
- (b) The Organisation acknowledges and agrees that the Organisation is liable in its own capacity and in its capacity as trustee of the Trust in respect of any liability of the Organisation to the NSW Health Entity arising out of the Funding Agreement.

16. Dispute Resolution

- (a) The parties agree that they will enter into discussions to resolve any dispute arising under the Funding Agreement.
- (b) If a dispute cannot be resolved under clause 16(a), it will be resolved as follows:
- (i) the party claiming that a dispute has arisen will give written notice to the other party, describing in full the details of the dispute (the "First Notice");
 - (ii) within 15 Business Days of receipt of the First Notice, the parties will meet to discuss and try and resolve the dispute;
 - (iii) if the dispute remains unresolved 20 Business Days after receipt of the First Notice, either party may give written notice (the "Second Notice") to the other party, requesting that the dispute be referred to the Dispute Resolution Officer for resolution;
 - (iv) within 15 Business Days of receipt of the Second Notice, the parties will either (i) meet with the Dispute Resolution Officer to discuss the dispute or (ii) provide written submissions regarding the dispute; and
 - (v) within 30 Business Days of receipt of the Second Notice the Dispute Resolution Officer will provide their decision to the parties in writing.
- (c) The parties agree that any decision of the Dispute Resolution Officer will be final and binding on the parties.
- (d) The parties will continue to perform their obligations under the Funding Agreement despite the existence of any dispute.
- (e) Nothing in clause affects a party's ability to:
- (i) seek urgent interlocutory relief from a court; or
 - (ii) exercise their rights under clause 13 (Suspension and Termination).

17. General

17.1 Variations

- (a) The parties agree that the Funding Agreement may only be varied if:

- (i) both parties agree in writing; or
 - (ii) the NSW Health Entity notifies the Organisation of a proposed change in writing which is a minor variation and the Organisation does not, with 10 Business Days of receipt of the notice, advise the NSW Health Entity of an objection to the proposed change.
- (b) This clause does not apply to any change to the Funding Agreement resulting from a party exercising its rights under the Funding Agreement.

17.2 Notice requirements

- (a) Any notice, approval or consent under the Funding Agreement must in be in writing and directed and sent to the other party's Representative.
- (b) Any notice served in accordance with this clause 17.2 will be deemed to be received:
- (i) in the case of delivery in person – on the day of delivery;
 - (ii) in the case of delivery by post to the address stated in the Details – three (3) Business Days after the date of posting;
 - (iii) in the case of transmission by facsimile to any facsimile number stated in the Details – at the time of dispatch if the sender receives a transmission report which confirms that the facsimile was sent in its entirety; or
 - (iv) in the case of transmission by email to any email address stated in the Details – on the day of receipt of confirmation report or any other written evidence that the email has reached the recipient's mail box OR on a non-Business Day or after 5.00pm on a Business Day, on the next Business Day.

17.3 Unforeseen Events

- (a) The Organisation will promptly notify the NSW Health Entity if it is, or reasonably perceives it will be, prevented from performing its obligations under the Funding Agreement due to an Unforeseen Event.
- (b) The notice to the NSW Health Entity under clause 17.3(a) will identify the extent to which the Unforeseen Event will have an effect on the performance of its obligations under the Funding Agreement.
- (c) The Organisation will make all reasonable efforts to minimise the effects of an Unforeseen Event on its obligations under the Funding Agreement.
- (d) The NSW Health Entity acknowledges that an Activity may be suspended to the extent that they are affected by an Unforeseen Event.

17.4 Assignment

- (a) The Organisation may not assign the Funding Agreement, or any of its benefits or obligations under it, without the prior written approval of the NSW Health Entity.
- (b) The NSW Health Entity may by notice to the Organisation assign the Funding Agreement, or any of its benefits or obligations under it, to any other NSW Government entity that replaces or assumes the NSW Health Entity's responsibilities. If requested, the Organisation agrees to execute such documents the NSW Health Entity may reasonably require to formalise such arrangements.

17.5 Non-Waiver

- (a) No waiver by a party in exercising any right under the Funding Agreement will be, or deemed to be, effective unless it is in writing and signed by the party.
- (b) Any waiver or partial waiver of a right under the Funding Agreement will not be construed as a waiver of any further breach of the same or any other provision.

17.6 Severability

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

17.7 Clauses that continue to apply after the Term

The following clauses survive and continue to apply after the Term:

- (a) clause 5 – Records and Reports (all clauses);
 - (b) clause 6 – Financial Arrangements: clauses 6.9 (Budgeted and Unspent Funds during the Term), 6.10 (Residual Funds at end of Term);
 - (c) clause 8 – Assets and Capital Works: clauses 8.1 (Assets) and 8.5 (Depreciation of Assets);
 - (d) clause 9 – Reviews and Audits: all clauses;
 - (e) clause 10 – Intellectual Property and Information: all clauses;
 - (f) clause 11 – Acknowledgement and Publicity: all clauses;
 - (g) clause 12 – Dealing with Risk: clauses 12.1 (Insurance) and 12.2 (Indemnity);
 - (h) clause 13 – Suspension and Termination: clause 13.4 (Consequences of termination);
 - (i) clause 14 – Repayment of Funds: all clauses;
 - (j) clause 16 – Dispute resolution: all clauses;
- and any other clauses which by their nature should survive.

17.8 Governing law and jurisdiction

The Funding Agreement is governed by the laws of New South Wales and the parties submit to the exclusive jurisdiction of the courts of New South Wales.

18. Dictionary and Interpretation

18.1 Dictionary

In these Standard Terms and Conditions and the Funding Agreement, unless the context is otherwise expressed:

Action Plan means a document for each Activity that is approved by the NSW Health Entity under clause 3.1;

Activity means

- (a) an Activity stated in the Schedule; and
- (b) if more than one Activity is described Schedule, each Activity separately,

and includes:

- (c) to any Target Group to whom that Activity must be provided;
- (d) at any premises or location at which an Activity will be provided; and
- (e) all related Activity, responsibilities and roles not specifically described but which are incidental to or connected or are required for the proper performance and provision of the specified Activity;

Activity Commencement Date means the date for commencement of the Activity that is stated in the Schedule;

Activity End Date means the date by which the Activity is to be completed that is stated in the Schedule (and excludes reports and Material to be provided to the NSW Health Entity after the Activity End Date);

Activity Period means the period during which an Activity must be completed from the Activity Commencement Date to the Activity End Date as stated in the Schedule;

Additional Conditions means additional terms and conditions stated in the Schedule and which form part of the Funding Agreement;

Alleged Misconduct means an allegation which raises a reasonable suspicion of misconduct which may have a serious impediment to the provision or performance of an Activity, including but not limited to serious or persistent harassment or bullying, or a criminal offence such as theft, fraud or assault;

Approved Auditor means a person who is:

- (a) registered as a company auditor under the Corporations Act 2001 (Cth) or an appropriately qualified member of the National Institute of Accountants, Institute of Chartered Accountants or CPA Australia;
- (b) acting in a professional capacity as an auditor; and

- (c) not Personnel or a member or shareholder of the Organisation or of a related body corporate of the Organisation:

Assets means any non-consumable item of tangible property (including equipment, furniture, vehicles and buildings) that has a service life of more than one (1) year purchased, leased, hired, financed, created (except in the case of Intellectual Property rights) or otherwise brought into existence either wholly or in part with use of the Funds, which has a value over \$10,000 inclusive of GST;

Assets Register means a written register kept in accordance with Australian Accounting Standards and audited annually which contains details of Assets purchased or leased wholly or in part using the Funds, including but not limited to:

- (a) the date of purchase or lease of each Asset;
- (b) a description of each Asset;
- (c) the address at which each Asset is located;
- (d) the purchase or lease price of the Asset, exclusive of GST;
- (e) the amount of the Funds used to purchase or lease the Asset; and
- (f) where relevant, the details of Asset disposals including sale price.

Audited Financial Reports means a financial report audited by an Approved Auditor in accordance with applicable Australian Accounting Standards and any statutory requirements that govern the Organisation's accounting and financial records;

Auspice Body means an incorporated applicant who will use an unincorporated End Recipient to conduct or perform an Activity;

Australian Accounting Standards means the standards issued by the Australian Accounting Standards Board as in force for the time being;

Australian Auditing Standards means the auditing standards made by the Auditing and Assurances Standards Board in accordance with applicable legislation and as in force from time to time;

Bank Account means an account that is maintained with an established bank, building society or credit union operating in Australia and that is operated solely by the Organisation;

Budget means the budget (if any) detailing the Funds for an Activity, including sources of income that constitute any Co-contribution, for the expenditure of the Funds as stated in the Schedule or approved by the NSW Health Entity under clause 3.1 (Planning the Activity).

Business Day means a day that is not a Saturday, Sunday or public holiday in NSW;

Capital Works means that part of an Activity which relates to the design, construction and fit-out (construction and fit out may include site preparation, modification, expansion, refurbishment, furnishing and equipping as applicable), and related activities;

Change in Control means, if the Organisation is a corporation, there is any change in the direct or indirect beneficial ownership or control of the Organisation;

Claim includes any claim, rights, demand, action, proceeding, costs (including legal costs), losses, damages and expenses.

Co-contribution means the contribution from the Organisation's own funds or a third party's funds, upon which the Funds is contingent, to be contributed to the costs of an Activity as stated in the Schedule and used by the Organisation to provide an Activity;

Committed means contractually obliged to pay a third party in respect of any part of the Activity and that can be identified in written contractual arrangement with that third party;

Confidential Information means information that:

- (a) is by its nature confidential;
- (b) is designated by a party as being confidential; or
- (c) a party knows or ought to know is confidential;
- (d) but does not include information that:
 - (i) is or becomes public knowledge, other than by breach of the Funding Agreement or by any unlawful means;

- (ii) is in the possession of a party without restriction in relation to disclosure before the date of receipt from the other party; or
- (iii) has been independently developed or acquired by a party;

Conflict of Interest means having an interest (whether personal, financial or otherwise) which conflicts or which may reasonably be perceived as conflicting with the Organisation's ability to fairly and independently perform its obligations under the Funding Agreement;

Date of the Agreement means the date specified in the signing page of the Details;

Designated Use Period means the period stated in the Schedule, if any;

Details means the part of the Funding Agreement titled Details which includes the details of the parties;

Dispute Resolution Officer means the person for the time being holding, occupying or performing the duties of the Dispute Resolution Officer stated in the Schedule or as otherwise advised by the NSW Health Entity from time to time;

End Recipient where the Organisation is an Auspice Body, means the unincorporated organisation who will conduct or provide an Activity as identified Schedule;

Existing Material means any Material that is developed prior to the Commencement Date or independently of the Funding Agreement and that is incorporated into the New Material;

Financial Year means each 12 month period beginning on 1 July during the Term or, if the Organisation has a financial year that begins on some other date, that date;

Funding Agreement means the agreement between the parties which sets out the agreed terms for the purpose of providing an Activity and comprises the Details, the Schedule including any Additional Conditions, any documents incorporated by reference into the Schedule and these Standard Terms and Conditions;

Funds means the money payable by the NSW Health Entity to the Organisation to provide an Activity as stated in the Schedule;

General Infrastructure means the basic physical systems of the Organisation, including communication, sewerage, water and electric systems;

Insolvency Event means the occurrence of any one or more of the following events in relation to the Organisation:

- (a) an order is made or an effective resolution is passed for winding up or dissolution without winding up (other than for the purposes of solvent reconstruction or amalgamation) of the Organisation and the order or resolution remains in effect for a period of five (5) Business Days;
- (b) a receiver, receiver and manager, official manager, administrator, provisional liquidator, liquidator, or like official is appointed over the whole or substantial part of the undertaking and property of the Organisation and the appointment remains in effect for a period of five (5) Business Days;
- (c) a holder of an encumbrance takes possession of the whole or any substantial part of the undertaking and property of the Organisation;
- (d) the Organisation is unable to pay its debts as they fall due;
- (e) the Organisation becomes insolvent or is deemed to become insolvent under any applicable Laws; or
- (f) the Organisation ceases to carry on business or threatens to do so;

Intellectual Property Rights means all intellectual property rights including:

- (a) copyright, patent, trademark, design, semi-conductor or circuit layout rights, registered design, trademarks or trade name and other protected rights, or related rights, existing worldwide; and
- (b) any licence, consent, application or right, to use or grant the use of, or apply for the registration of, any of the rights referred to in (a),

but does not include the right to keep confidential information confidential, Moral Rights, business names, company names or domain names.

Laws means common law, principles of equity, and laws made by the Commonwealth, State(s) and Territory(ies) in which an Activity will be provided (and regulations and other instruments under them, and

consolidations, amendments, re-enactments or replacements of any of them) and any lawful directions by any person exercising statutory powers regarding an Activity;

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

Milestones means a milestone or stage for an Activity as stated in the Schedule;

Moral Rights means the right of integrity of authorship, the right of attribution of authorship and the right not to have authorship falsely attributed as defined in the *Copyright Act 1968* (Cth);

New Material means any Material, other than Reporting Material, created by or on the Organisation's behalf for the purpose of the conducting or performing an Activity (other than from the NSW Health Entity), including documents, software and data stored by any means;

NSW Health Entity means the NSW Health organisation that enters into and is a party to the Funding Agreement and is responsible for the administration of the Funding Agreement;

Organisation means the person or body corporate named in the Details that enters into and is a party to the Funding Agreement;

Personnel means the Organisation's employees, officers, agents and subcontractors, the employees, officers, agents and subcontractors of the Organisation's subcontractors and any volunteers engaged by the Organisation or the Organisation's subcontractors;

Privacy Law means the *Privacy and Personal Information Protection Act 1998* (NSW), the *Health Records and Information Privacy Act 2002* (NSW) and the *Privacy Act 1988* (Cth) and includes any code of practice and principles under these Acts;

Public Accountability Body includes the NSW Auditor-General, the NSW Ombudsman and the NSW Privacy Commissioner;

Representative means the relevant party's person stated in the Details or as notified in writing from time to time;

Reputational Proceedings means any inquiry, investigation, conciliation, mediation, arbitration or such similar proceedings against the Organisation or any director, officer, employee, subcontractor or agent of the Organisation that could or has the potential to, in the reasonable opinion of the NSW Health Entity, have an adverse effect on reputation of an Activity, NSW Health Entity or the NSW Government;

Residual Funds means Funds paid to the Organisation that have not been spent or Committed for an Activity;

Schedule means the document titled "Schedule" to the Funding Agreement and forms part of the Funding Agreement;

Serious Incident means an incident that:

- (a) is likely to impact on the Organisation's ability to conduct or provide an Activity or otherwise fulfil its obligations under the Funding Agreement;
- (b) may affect or has affected the Organisation's obligations, or its performance of those obligations, under the Funding Agreement and requires an emergency response, death or serious injury or any criminal activity; and
- (c) has or may attract significant public interest and attention.

Standard Terms and Conditions means these Standard Terms and Conditions;

Target Group means those persons or groups of persons (if any) stated in the Schedule;

Term means the term of the Funding Agreement set out in clause 1.5 (Term of the Funding Agreement);

Trust means the trust as stated in the Details;

Unforeseen Event means circumstances beyond the Organisation's reasonable control, including but not limited to natural disasters, fire, floods, unavoidable accidents, strikes, lockouts or other industrial disputes;

Unspent Funds at a particular date means Funds that have not been spent or Committed by the Organisation in accordance with the Funding Agreement.

18.2 Interpretation

- (a) The following rules of interpretation apply unless the contrary intention appears:

- (i) headings are for convenience only and do not affect the interpretation of the Funding Agreement;
- (ii) the singular includes the plural and vice versa;
- (iii) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (iv) the words 'includes' and 'including' and similar expressions are not used as, nor are intended to be, interpreted as words of limitation;
- (v) a reference to:
 - (A) a person includes any type of body or person whether or not it is incorporated or has a separate legal entity;
 - (B) a party includes its successors and permitted assigns of that party;
 - (C) a document, including policy or guidelines, includes all amendments or supplements to that document;
 - (D) a clause is to a clause in these Standard Terms and Conditions;
 - (E) a part, schedule, attachment or annexure is a reference to a part, clause, schedule, attachment or annexure to these Standard Terms and Conditions or Schedule as the case may be;
 - (F) the Funding Agreement includes all schedules, attachments and annexures to it;
 - (G) a statute, ordinance, code or other Laws includes subordinate legislation, consolidations, amendments, re-enactments, and replacements of it;
 - (H) an agreement other than the Funding Agreement includes an undertaking, or legally enforceable arrangement or understanding, whether or not in writing; and
 - (I) a monetary amount is in Australian dollars.
- (b) To the extent that the parties have not completed items in the Schedule, unless otherwise stated in the Schedule, that item will be taken to be "not applicable" for the purposes of the Funding Agreement.
- (c) The Funding Agreement represents the entire agreement between the parties in relation to the Activity and the Funds and supersedes all prior representations, communications, agreements, statements and understandings, whether oral or in writing.
- (d) The parties may undertake business by the electronic exchange of information and the Funding Agreement may be executed in electronic format to the extent permitted by Laws, and the Funding Agreement will be interpreted to give effect to undertaking business in this manner.
- (e) The Funding Agreement may be executed in counterparts.