

NSW Health Grant Agreement

STANDARD CONDITIONS

Contents

1.	Introduction.....	4
1.1	Status of these Standard Conditions.....	4
1.2	Definitions and interpretation.....	4
1.3	Term of the Agreement.....	4
2.	Agency general conduct.....	4
3.	Activity.....	4
3.1	Planning the Activity.....	4
3.2	Undertaking the Activity.....	5
3.3	Compliance with Supplementary Conditions.....	5
3.4	Compliance with Laws, standards and policies.....	5
3.5	Your Organisation's responsibility.....	5
3.6	Supporting transition of Activity.....	5
4.	Organisation's general obligations.....	5
4.1	Personnel.....	5
4.2	Probity relating to Personnel.....	6
4.3	Notifiable incidents.....	6
4.4	Notifications relating to Your Organisation.....	6
4.5	Notification of other financial assistance.....	7
4.6	Subcontracting.....	7
4.7	Auspice Body.....	7
4.8	Complaints process.....	7
4.9	Review meetings.....	8
5.	Records and Reports.....	8
5.1	Accounts and records.....	8
5.2	Record keeping.....	8
5.3	Reporting.....	8
6.	Financial arrangements.....	9
6.1	Use of the Grant by Your Organisation.....	9
6.2	What the Grant will not be used for.....	9
6.3	Payment of Grant.....	9
6.4	Indexation.....	9
6.5	Other funding.....	9
6.6	Bank Account.....	10
6.7	Interest and earnings.....	10
6.8	Co-contribution.....	10
6.9	Budgeted and Unspent Grant within the Activity Period.....	10
6.10	Residual Grant at end of Activity Period.....	10
7.	GST.....	11
7.1	Definitions.....	11
7.2	GST payable.....	11
7.3	Tax invoice.....	11
7.4	Adjustment event.....	11
7.5	Pay or reimburse.....	11
7.6	Issuing recipient created tax invoices and adjustment notes.....	11
7.7	Acknowledgments.....	12
8.	Assets and Capital Works.....	12
8.1	Acquiring of Assets.....	12
8.2	Ownership of Assets.....	12
8.3	Use of Assets.....	12

8.4	Obligations in relation to Assets	12
8.5	Depreciation of Assets	12
8.6	Capital Works	13
8.7	Registering of interest	13
9.	Reviews and audits.....	13
9.1	Access to premises and records.....	13
9.2	Cooperation and access	13
9.3	Application of this clause.....	13
10.	Intellectual Property Rights and information	14
10.1	Ownership of Intellectual Property Rights	14
10.2	Licences of Intellectual Property	14
10.3	Protection of Personal Information.....	14
10.4	Confidential Information	15
10.5	Information of a sensitive or cultural nature.....	15
11.	Acknowledgement and publicity	15
11.1	Acknowledgment and publicity	15
11.2	No restriction on advocacy activities	16
12.	Dealing with risk	16
12.1	Insurance	16
12.2	Indemnity	16
12.3	Conflict of Interest.....	16
13.	Suspension and termination.....	16
13.1	Suspension or withholding the Grant	16
13.2	Termination without fault	17
13.3	Termination for cause	17
13.4	Consequences of termination.....	18
14.	Repayment of Grant.....	18
14.1	Notice concerning Grant	18
14.2	Organisation's rights and obligations	19
14.3	Agency rights.....	19
15.	Relationship between the parties.....	19
15.1	Status of Organisation	19
15.2	Trust warranties.....	19
16.	Dispute resolution	19
17.	General	20
17.1	Variations	20
17.2	Notice requirements.....	20
17.3	Assignment	20
17.4	Non-Waiver	21
17.5	Severability.....	21
17.6	Clauses that continue to apply after the Term	21
17.7	Governing law and jurisdiction.....	21
18.	Dictionary and interpretation.....	21
18.1	Dictionary	21
18.2	Interpretation	25

1. Introduction

1.1 Status of these Standard Conditions

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

1.2 Definitions and interpretation

- (a) In the 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 Conditions are usually defined in that clause.
- (b) Provisions regarding the interpretation of the Agreement are set out in clause 18.2 (Interpretation).

1.3 Term of the Agreement

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

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

2. Agency general conduct

- (a) The Agency agrees to:
 - (i) provide Your Organisation with current information relevant to the Activity, including standards, policies and guidelines;
 - (ii) work with Your Organisation to monitor, review and evaluate the Activity and improve the Agreement;
 - (iii) work with Your Organisation to reduce red tape, including, where practicable, linking Your Organisation's reporting obligations under the Agreement with Your Organisation's governance framework;
 - (iv) consider and respond to any request by Your Organisation for a review of the Agreement; and
 - (v) process the Grant in a timely, efficient, accountable and responsible manner.
- (b) Nothing in clause 2(a) limits or affects Your Organisation's obligations under the Agreement or the Agency'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 Grant Schedule that Your Organisation is required to develop or complete an Action Plan or a detailed Budget to be included in the Grant Schedule after execution of the Agreement.
- (b) Your 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 the Activity set out in the Grant Schedule; and
 - (ii) provide the proposed Action Plan or a Budget to the Agency for approval by the Agency on or before the date stated in the Grant Schedule for that Activity.
- (c) The Agency 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 Agency may approve, or not approve, the proposed Action Plan or a Budget in its discretion and on such terms and conditions as the Agency considers appropriate.

NSW Health Grant Agreement

- (e) An Action Plan or a Budget approved under clause 3.1(d) forms part of the Agreement from the date of approval and is not a variation to the Agreement.

3.2 Undertaking the Activity

Your Organisation agrees to undertake the Activity in accordance with the Agreement and:

- (a) consistent with, and in furtherance of, the aims and objectives and so as to assist in meeting the outcomes for that Activity as stated in the Grant Schedule;
- (b) within the Activity Period and so as to meet each Milestone and other timeframes stated in the Grant Schedule for that Activity;
- (c) in accordance with any Action Plan, performance requirements and Budget for that Activity; and
- (d) in a proper, timely and efficient manner and to a high standard.

3.3 Compliance with Supplementary Conditions

Your Organisation agrees, in its undertaking of the Activity, to comply with any Supplementary Conditions for that Activity.

3.4 Compliance with Laws, standards and policies

Your Organisation agrees, in undertaking the 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 Grant Schedule or that the Agency reasonably notifies Your Organisation in writing;
- (d) undertake the Activity on a non-discriminatory basis; and
- (e) obtain and maintain all qualifications, licences, accreditation, registration and consents required to undertake the Activity or reasonably requested by the Agency in writing.

3.5 Your Organisation's responsibility

Your Organisation remains fully responsible for undertaking the Activity and for otherwise complying with its obligations under the Agreement and will not be relieved of that responsibility because of:

- (a) the Agency involvement in the undertaking or undertaking of that Activity;
- (b) any payment of the Grant to Your Organisation for the Activity;
- (c) any subcontracting of any Activity; or
- (d) Your Organisation's obligations, and the performance of those obligations, under clause 3.6 (Supporting transition of Activity).

3.6 Supporting transition of Activity

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

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

4. Organisation's general obligations

4.1 Personnel

- (a) Your Organisation is solely responsible for all Personnel employed or otherwise engaged in connection with, or supported by, the Grant.

NSW Health Grant Agreement

- (b) Your 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) Your Organisation agrees to comply, and ensure that Your Organisation's Personnel comply, with:
 - (i) any obligations under any Laws relating to working or contact with vulnerable persons or police checks, including under the *Child Protection (Working With Children) Act 2012* (NSW); and
 - (ii) any other requirements stated in the Grant Details regarding working or contact with vulnerable persons or police checks.
- (b) Before Personnel undertake any function or role in relation to the Activity, Your 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 the Activity; and
 - (iii) if requested by the Agency, provide the Agency with evidence satisfactory to the Agency that Your Organisation has complied with this clause 4.2.
- (c) The Agency may require the immediate removal of Personnel from undertaking any function or role in relation to the Activity where, in the reasonable opinion of the Agency, the Personnel are considered to represent an unacceptable risk to an individual or individuals receiving that Activity.

4.3 Notifiable incidents

Your Organisation agrees to notify the Agency immediately of any of the following:

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

4.4 Notifications relating to Your Organisation

- (a) Your Organisation agrees to notify the Agency as soon as practicable of any of the following:
 - (i) changes to Your Organisation's name, address and contact details from those stated in the Grant Details;
 - (ii) any material change or proposed material change in Your Organisation's constitution or rules or memorandum and articles of association (however described); or
 - (iii) a Change in Control.
- (b) Your Organisation agrees to notify the Agency immediately of any of the following:
 - (i) any issue that may delay, stop or adversely affect the Activity;
 - (ii) any action or proposed action relating to an Insolvency Event; or
 - (iii) any notice or show cause notice as to why Your Organisation is not or should not come under external administration.

4.5 Notification of other financial assistance

- (a) Unless stated in the Grant Schedule or the Agency notifies Your Organisation otherwise, Your Organisation agrees to notify the Agency when it receives financial assistance from a Commonwealth, State, Territory or local government body for any activities in connection with the 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 Your Organisation obtaining the assistance and include details of assistance, including the amount and proposed use of the funds.

4.6 Subcontracting

- (a) Your Organisation agrees not to subcontract any of its obligations under the Agreement without the prior written approval of the Agency, except to the extent that is stated in the Grant Schedule.
- (b) Where the engagement of a subcontractor is approved by the Agency, Your Organisation agrees to ensure:
 - (i) the suitability of any subcontractor and any part of the Activity performed by the subcontractor meet the requirements of the Agreement;
 - (ii) that the subcontract is in writing; and
 - (iii) any subcontract entered into between Your Organisation and the subcontractor in relation to the Activity gives effect to, and is not inconsistent with, the obligations of Your Organisation and the rights of the Agency under the Agreement.
- (c) Your Organisation agrees that:
 - (i) the subcontracting of any part of the Activity, or the Agency's approval for a subcontractor, does not relieve Your Organisation from its responsibility for the undertaking of the Activity; and
 - (ii) it is liable for the acts and omissions of each subcontractor as if they were the acts and omissions of Your Organisation.
- (d) The Agency may approve or not approve the engagement of any subcontractor in its discretion and may impose any terms and conditions on its approval it considers appropriate.
- (e) The Agency may at any time require Your Organisation to cease using any subcontractor on reasonable grounds by notice in writing to Your 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 Your Organisation is an Auspice Body, Your Organisation agrees to ensure that the End Recipient complies with the terms of the 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 process

Where the Activity is provided to members of the public, Your 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 Agency; and
- (c) provide the Agency or any person nominated by the Agency with access to Your Organisation's complaints register and any other material relevant to any complaint, where requested to do so.

4.9 Review meetings

Your Organisation:

- (a) acknowledges that the Agency may require the convening of meetings with Your Organisation to review any aspect of the Activity or Your Organisation's capacity and capability to undertake the Activity, as stated in the Grant Schedule and as otherwise reasonably required by the Agency from time to time; and
- (b) agrees to cooperate and comply with the Agency's reasonable requests, directions and requirements in any such review.

5. Records and Reports**5.1 Accounts and records**

Your Organisation agrees to keep full and accurate accounts and records regarding the Activity, including those set out in the Grant Details, so that:

- (a) proper operational records are able to verify Your Organisation's undertaking of its obligations under the Agreement;
- (b) all accounting and financial transactions, including all receipts and payments, relating to the Grant are clearly separate and identified from Your Organisation's other financial and operational accounts and records, except with the Agency's prior written agreement;
- (c) if required by Law or the Agency, financial statements can be prepared in accordance with Australian Accounting Standards;
- (d) if required by Law or the Agency, the accounts and records can be audited in accordance with Australian Auditing Standards; and
- (e) any Asset Register is maintained in accordance with clause 8.4 (Obligations in relation to Assets).

5.2 Record keeping

Your 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 Agency or its representative.

5.3 Reporting

- (a) Your Organisation agrees to provide to the Agency the information and reports at the times and in the format stated in the Grant Schedule.
- (b) Your Organisation agrees to prepare its reports in accordance with:
 - (i) if required by the Agency, applicable NSW Health policy or guidelines; and
 - (ii) if required by Law or the Agency, Australian Accounting Standards.
- (c) In addition to any requirements to provide information or reports to the Agency, Your Organisation agrees to provide the Agency with any information, records or reports in relation to the Activity, the expenditure of the Grant or the obligations under the Agreement when requested to do so by the Agency.
- (d) All reports provided by Your Organisation to the Agency will be of a standard and provided in a way reasonably acceptable to the Agency or as otherwise notified by the Agency from time to time.

6. Financial arrangements

6.1 Use of the Grant by Your Organisation

- (a) Subject to clause 6.1(b), Your Organisation agrees to use the Grant provided for the Activity:
 - (i) only for the purpose of undertaking that Activity and in accordance with the Agreement;
 - (ii) within the Activity Period and in accordance with any time periods stated in the Grant Schedule for expenditure of the Grant; and
 - (iii) if applicable, by paying the Grant to the End Recipient in accordance with the Agreement.
- (b) Your Organisation may use the Grant:
 - (i) to pay an amount of the Grant 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 Agreement;
 - (ii) if there is no Budget for the 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 Grant at end of Activity Period).

6.2 What the Grant will not be used for

- (a) Without limiting clause 6.1 (Use of Grant by Your Organisation), Your Organisation agrees not to, without the prior written approval of the Agency, use the Grant 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 Your 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 Your 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 Agency may approve or not approve use of the Grant under clause 6.2(a) in its discretion and on any terms or conditions it considers appropriate and Your Organisation agrees to comply those terms and conditions.

6.3 Payment of Grant

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

6.4 Indexation

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

6.5 Other funding

The Agency is under no obligation to provide Your Organisation with other funding or other financial assistance in excess of the total amount stated in the Grant Schedule or provide funding beyond the expiration or termination of the Agreement.

NSW Health Grant Agreement

6.6 Bank Account

Your Organisation agrees to hold the Grant in a Bank Account, except to the extent the Grant is used or paid in accordance with the Agreement.

6.7 Interest and earnings

Your Organisation agrees to:

- (a) pay the Grant into an interest earning account and ensure that all interest earned on the Grant, or a reasonable and genuine pre-estimate of the interest earned, will be used in accordance with the Agreement; and
- (b) use and deal with any money earned by Your Organisation from the Activities (such as fees, benefits or charges) as if the money earned was part of the Grant.

6.8 Co-contribution

(a) Your Organisation agrees to:

- (i) make or procure any Co-contribution for the Activity as stated in the Grant Schedule and use it to provide that Activity;
- (ii) provide written confirmation to the Agency that the Co-contribution is available or has been received from any third party for that Activity as reasonably required by the Agency from time to time; and
- (iii) notify the Agency immediately if it cannot, or may not be able to, comply with this clause 6.8.

(b) The Agency may terminate the Agreement in accordance with clause 13.3 (Termination for cause) if Your Organisation does not or cannot comply with this clause 6.8.

6.9 Budgeted and Unspent Grant within the Activity Period

(a) Subject to clause 6.9(b), where there is a Budget for the Activity, Your Organisation must only spend the Grant specified in that Budget on that Activity and in accordance with that Budget.

(b) Where there is a Budget for the Activity, Your Organisation agrees not to:

- (i) transfer or reallocate the Grant for the Activity between expenditure items of any Activity's Budget; or
- (ii) carry-over any Unspent Grant in one Financial Year to the next Financial Year during the Activity Period for the Activity,

except to the extent that it is stated in the Grant Schedule and in accordance with the Agreement or the Agency has given its prior written approval.

(c) Where Your Organisation uses the Grant in accordance with clause 6.9(b), Your Organisation agrees to advise the Agency as part of its next reports as to the reasons for the transfer or reallocation of the Grant or why the Grant was not spent in accordance with the Agreement and how the Grant will be utilised.

(d) Any transfer, reallocation or carry-over of the Grant 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 Agency's prior written approval.

(e) The Agency may, in determining whether to approve the transfer, reallocation or carry-over of the Grant:

- (i) approve or not approve a request in its discretion;
- (ii) request Your Organisation to submit a revised Budget for approval; and
- (iii) impose terms and conditions as it considers appropriate.

6.10 Residual Grant at end of Activity Period

(a) Your Organisation agrees to repay to the Agency any Residual Grant remaining at the Activity End Date or on earlier termination of the Agreement within 20 Business Days of the Activity End

Date or on the earlier termination, unless the Agency has given prior written approval for Your Organisation to retain the Residual Grant.

- (b) Where the Agency approves the retention of Residual Grant, Your Organisation will use those Residual Grant in accordance with the approval, including any terms and conditions specified by the Agency.

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 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 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 Agreement, the GST amount is as stated as GST in the Grant 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 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 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 Your Organisation makes a taxable supply under or in connection with the Agreement, the parties agree that:

- (a) the Agency, where permitted by the GST Law and Rulings, may issue a recipient created tax invoice for the supply by Your Organisation in accordance with the GST Law and Rulings, and the Agency will retain the original or the copy;
- (b) Your Organisation will not issue tax invoices in relation to the supply; and

- (c) the Agency, and not Your Organisation, will issue an adjustment note to the Agency for any adjustment event that arises in relation to the supply, and the Agency 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 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

Your Organisation agrees not to use the Grant to purchase, lease or otherwise acquire any Assets for the Activity unless:

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

8.2 Ownership of Assets

Unless it is otherwise stated in the Grant Schedule or with the Agency has given its prior written approval, Your Organisation agrees that it must own or lease any Assets.

8.3 Use of Assets

Your Organisation agrees not use Assets for any purpose other than the undertaking and performance of the Activity and any Designated Use unless it has obtained the prior written approval of the Agency, which will not be unreasonably withheld.

8.4 Obligations in relation to Assets

- (a) Your Organisation agrees to:
 - (i) ensure that it obtains value for money in the procurement or otherwise 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 Grant Schedule, maintain an Assets Register of the Assets;
 - (vii) if it is stated in the Grant 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 Agency.
- (b) Clause 12.3 (Conflict of Interest) applies to Your Organisation in connection with the purchase, lease or other acquisition of the Assets.
- (c) Your Organisation will comply with any additional provisions relating to the Assets as stated in the Grant Schedule.

8.5 Depreciation of Assets

- (a) If the 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 Agreement,

Your Organisation agrees to do any of the following required by the Agency:

(iv) use the Assets for a purpose and in accordance with any conditions approved in writing by the Agency; or

(v) deal with the Assets in any way which the Agency notifies Your Organisation in writing.

(b) Your Organisation agrees to comply with any request under clause 8.5(a) within 20 Business Days of the request being made.

(c) If Your Organisation fails to comply with its obligations under clause 8.5(a), some or all of the Grant used for the purchase of the Assets will be recoverable as a debt due by Your Organisation to the Agency from the date it was due.

8.6 Capital Works

(a) Your Organisation will not use the Grant for Capital Works or General Infrastructure, without the prior written approval of the Agency.

(b) Any approval under clause 8.6(a) may be subject to additional conditions or requirements under the Agreement or to a separate written agreement.

8.7 Registering of interest

Your Organisation agrees to comply with any reasonable request of the Agency to register the Agency's interest in any Assets, Capital Works or transaction relating to the Agreement, including the execution of any documents.

9. Reviews and audits

9.1 Access to premises and records

(a) Your Organisation acknowledges and agrees that the Agency, any persons nominated by the Agency and any Public Accountability Body may on notice to Your Organisation require access to:

(i) Your Organisation's premises or the premises where the Activity is being provided;

(ii) the premises at which any work associated with the Activity is undertaken;

(iii) the premises at which any Assets are located;

(iv) copies of records held or created by Your Organisation in relation to that Activity,

for purposes associated with the Agreement, including any review or audit of Your Organisation's performance of its obligations under the Agreement or ability to provide all or part of the Activity.

(b) Where possible, the Agency will give reasonable notice to Your Organisation and seek to involve Your 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 Law from disclosing such information or material, Your 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 Agreement or any review of the undertaking of the Activity by Your Organisation.

9.3 Application of this clause

(a) Your Organisation must ensure that any subcontract or auspicing arrangement entered into for the purpose of the 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) Your Organisation owns all New Material except to the extent that it is stated in the Grant Schedule or clause 10.1(c) applies.
- (c) The Agency will give written notice to Your Organisation prior to the delivery of all or part of the Activity if the Agency considers that all or part of the New Material arising from the Agreement should be owned by the Agency.
- (d) If the Agency gives written notice to Your Organisation under clause 10.1(c), the New Material set out in the notice is owned by the Agency.

10.2 Licences of Intellectual Property

- (a) The Agency grants, and Your Organisation accepts, a licence (including a licence to copy or supply it to others) over:
 - (i) the Agency's Existing Material; and
 - (ii) New Material owned by the Agency,to the extent needed to allow Your Organisation to provide the Activity and comply with the Agreement or for any other purpose that the Agency agrees in writing with Your Organisation.
- (b) Your Organisation grants, and the Agency 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 Agency; and
 - (ii) Your 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 Agency, Your Organisation will provide the Agency with copies of all materials in a manner that allows the Agency to give effect to this clause 10.2.
- (e) Your Organisation agrees to properly manage the New Material to allow the Agency to enjoy the full benefit of the Activity and the Agreement.
- (f) Your 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 Agency.

10.3 Protection of Personal Information

- (a) Your Organisation acknowledges and agrees it is bound by Privacy Law in undertaking or providing the Activity and complying with the Agreement.
- (b) If Your Organisation collects or has access to Personal Information for the purposes of undertaking the Activity, Your Organisation will:
 - (i) ensure that it will not use or disclose the Personal Information for a purpose other than the purpose for which it was collected, unless required or authorised by law;
 - (ii) ensure that it will establish and maintain security procedures and safeguards to prevent unauthorised loss, unauthorised access, use, modification or disclosure and against all other misuse;

- (iii) ensure that Your Organisation's subcontractors and any Auspice Body that have access to Personal Information comply with obligations that are the same as are imposed on Your Organisation under this clause;
- (iv) otherwise not do anything that would be a breach of the Privacy Law if it was done by the Agency;
- (v) take reasonable steps to notify relevant persons that information Your Organisation obtains may be provided to the Agency for the purposes of auditing or assessing Your Organisation's compliance with the Agreement;
- (vi) immediately notify the Agency if it has reasonable grounds to believe that there has been a breach of Privacy Law or its obligations under this clause;
- (vii) comply with any direction of the Agency to the extent that it is consistent with Privacy Law and any other measures the Agency may reasonably require to maintain the protection of Personal Information.

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 Agreement or to a party's legal and professional advisors, provided that the Confidential Information is used solely for the purpose of the Agreement;
 - (ii) authorised or required by Law to be disclosed;
 - (iii) publicised and reported by the Agency or the NSW Government on the awarding of the Grant;
 - (iv) shared by the Agency with another government agency, body or Minister for its legitimate interests; or
 - (v) to give a public explanation of any action that the Agency takes in connection with the Agreement.

10.5 Information of a sensitive or cultural nature

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

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

11. Acknowledgement and publicity

11.1 Acknowledgment and publicity

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

11.2 No restriction on advocacy activities

The Agency agrees that nothing in the Agreement restricts the ability of Your Organisation or its Personnel from entering into public debate or advocacy activities, subject to Your 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) Your Organisation warrants that it has taken out or will take out, and will maintain, adequate insurance coverage appropriate for the Activity, including the following insurances:
 - (i) public liability insurance for an amount stated in the Grant Schedule for any claim arising out of or in connection with the Activity; and
 - (ii) any other insurance stated in the Grant Schedule,for the Term and, if the insurance is for professional indemnity insurance, for the period that is seven (7) years from the Activity End Date.
- (b) Your Organisation will provide the Agency with proof of insurance cover on request.
- (c) Your Organisation will immediately notify the Agency of any event which affects or may affect Your Organisation's compliance with this clause 12.1.

12.2 Indemnity

- (a) In this clause 12.2, "Agency" includes its officers, employees and agents.
- (b) Your Organisation indemnifies, and keeps indemnified, the Agency from and against any Claim that may be made or brought by any person against the Agency arising from or in connection with:
 - (i) any negligent or unlawful act or omission by Your Organisation or Personnel;
 - (ii) any breach by Your Organisation of the Agreement or Laws; or
 - (iii) use or disposal of any Asset,relating to the Activity or the Agreement.
- (c) Your 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 Agency caused or contributed to the Claim.

12.3 Conflict of Interest

- (a) Your Organisation warrants that, to the best of its knowledge after making diligent inquiry, at the Date of the Agreement, no Conflict of Interest exists or is likely to arise in relation to the Agreement.
- (b) Your Organisation undertakes to notify the Agency immediately upon becoming aware of a Conflict of Interest and agrees to comply with any reasonable written directions of the Agency to manage the Conflict of Interest.
- (c) Your Organisation agrees to keep and implement a policy about Conflicts of Interest for its executive officers and other Personnel. The policy must include guiding principles and procedures for identifying, declaring and dealing with Conflicts of Interest.
- (d) The Agency may terminate the Agreement under clause 13.3 (Termination for cause) if Your Organisation fails comply with the requirements under this clause or is unable or unwilling to resolve the Conflict of Interest to the reasonable satisfaction of the Agency.

13. Suspension and termination

13.1 Suspension or withholding the Grant

- (a) If the Agency, acting reasonably, considers it appropriate, it may by written notice to Your Organisation, immediately suspend or withhold (either temporarily or permanently) the use and/or payment of all or any part of the Grant if:

- (i) Your Organisation has failed, or in the Agency's reasonable opinion, is likely to fail to undertake the Activity in accordance with the Agreement;
 - (ii) Your Organisation has received the Grant for the Activity and that Grant has not been spent or Committed for the Activity in accordance with the Agreement, including as a result of Your Organisation having a surplus or underspend;
 - (iii) Your Organisation has breached a provision of the Agreement or another arrangement or agreement with a NSW Health organisation;
 - (iv) Your Organisation has misused, or in the Agency's opinion, is suspected to have misused, the Grant or has shown an inability to properly manage the Grant or the Assets;
 - (v) Your Organisation has breached the Agreement and the Agency has given notice to Your Organisation under clause 13.2 (Termination for cause) or clause 13.4 (Consequences of termination);
 - (vi) the Agency has concerns on reasonable grounds that Your Organisation is not financially stable; or
 - (vii) Your Organisation or any of its Personnel has breached or is suspected to have breached any Laws material to the Activity.
- (b) The Agency may, by giving written notice to Your Organisation, reduce the Activity to be provided under the Agreement to reflect any suspension or withholding of all or part of the Grant under clause 13.1(a) and Your Organisation agrees to suspend the undertaking of the Activity at the request of the Agency 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 the Activity and the steps Your Organisation can take to address those reasons.
- (d) The Agency will pay the withheld amount, subject to any suspension of the Activity under clause 13.1(a) or clause 13.1(b), once Your Organisation has addressed the reasons contained in the notice to the reasonable satisfaction of the Agency.
- (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 Agency or Your Organisation may terminate the 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 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 Agency may terminate the Agreement with immediate effect by giving notice to Your Organisation if:
 - (i) Your Organisation breaches any provision of the Agreement and:
 - (A) the breach is not capable of being remedied; or
 - (B) the breach is capable of being remedied and Your Organisation fails to remedy the breach within 20 Business Days following receipt of a notice requiring it to do so;
 - (ii) Your Organisation regularly or habitually commits breaches of the Agreement which collectively constitute material or serious breach, whether or not they are remedied;
 - (iii) the Agency is reasonably satisfied that any statement provided by Your Organisation and relied on by the Agency to approve the Grant is incorrect, incomplete, false or misleading in a way which would have affected the original decision to approve the Grant;

- (iv) there is a Change in Control or a change in ownership of Your Organisation which the Agency reasonably considers has an adverse impact on the decision to pay the Grant or the ability of Your Organisation to comply with its obligations under the Agreement;
 - (v) Your Organisation no longer has the requisite authorisations, licences, accreditation, registration or consents to perform its obligations under the Agreement;
 - (vi) Your Organisation suffers an Insolvency Event;
 - (vii) Your 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 Agency may terminate the Agreement by giving written notice to Your Organisation as soon as possible if the Agency does not receive sufficient funds from the NSW Parliament or the Commonwealth Government to finance the Activity or part of the Activity.

13.4 Consequences of termination

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

14. Repayment of Grant

14.1 Notice concerning Grant

If at any time the Agency forms the reasonable opinion that Your Organisation:

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

the Agency may by giving notice in writing to Your Organisation:

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

14.2 Organisation's rights and obligations

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

14.3 Agency rights

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

15. Relationship between the parties**15.1 Status of Organisation**

- (a) The parties agree and acknowledge that:
 - (i) nothing in the 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) Your Organisation warrants that:
 - (i) it is a legal entity capable of entering into the Agreement;
 - (ii) the execution of the Agreement and the provision and performance of the Activity complies with all Laws under which it is incorporated; and
 - (iii) all licences, accreditation, registration and consents required to be obtained by Your Organisation to provide and perform the Activity have been obtained and are valid and continuing and it is not aware of any breach of those authorisations.
- (c) If Your Organisation is a partnership, joint venture or consortium of two (2) or more persons, Your Organisation agrees that:
 - (i) all such persons are liable both individually and as a group to the Agency for the full performance of the Agreement; and
 - (ii) Your Organisation's Representative has authority to bind the partnership, joint venture or consortium and each of its members.

15.2 Trust warranties

- (a) Where Your Organisation provides or carries out any or all of the Activity in its capacity as a trustee, Your 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 Agreement and to undertake the transactions contemplated by the 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 Agreement.
- (b) Your Organisation acknowledges and agrees that Your Organisation is liable in its own capacity and in its capacity as trustee of the Trust in respect of any liability of Your Organisation to the Agency arising out of the Agreement.

16. Dispute resolution

- (a) The parties agree that they will enter into discussions to resolve any dispute arising under the 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 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 Agreement may only be varied if:
 - (i) both parties agree in writing; or
 - (ii) the Agency notifies Your Organisation of a proposed change in writing which is a minor variation and Your Organisation does not, with 10 Business Days of receipt of the notice, advise the Agency of an objection to the proposed change.
- (b) This clause does not apply to any change to the Agreement resulting from a party exercising its rights under the Agreement.

17.2 Notice requirements

- (a) Any notice, approval or consent under the Agreement must in be in writing and directed and sent to the other party’s Representative at the address stated in the Grant Schedule or any other address which the other party has most recently notified the sending party in writing.
- (b) Any notice served in accordance with this clause 17.2 will be deemed to be received:
 - (i) if delivered by hand, on delivery;
 - (ii) if posted, on the earlier date of the receipt and three (3) Business Days after the date of posting;
 - (iii) if an email, on the day of receipt of the confirmation report or any other written evidence that the email has reached the recipient’s mail box OR, if on a non-Business Day or after 5.00pm on a Business Day, on the next Business Day.

17.3 Assignment

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

17.4 Non-Waiver

- (a) No waiver by a party in exercising any right under the 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 Agreement will not be construed as a waiver of any further breach of the same or any other provision.

17.5 Severability

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

17.6 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 Grant during the Term), 6.10 (Residual Grant 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 Rights 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 Grant: all clauses;
 - (j) clause 16 – Dispute resolution: all clauses,
- and any other clauses which by their nature should survive.

17.7 Governing law and jurisdiction

The 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 Conditions and the Agreement, unless the context is otherwise expressed:

Action Plan means a document for the Activity that is approved by the Agency under clause 3.1;

Activity means the Activity described in the Grant Schedule and, if more than one Activity is described in the Grant Schedule, a reference to the Activity is a separate reference to each Activity, and includes:

- (a) to any Target Group to whom that Activity must be provided;
- (b) at any premises or location at which the Activity will be provided; and
- (c) all related activities, 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 Grant Schedule;

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

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

Agency means the NSW Health legal entity named in the Grant Details that enters into and is a party to the Agreement and, where relevant, includes its officers, employees, contractors and agents;

NSW Health Grant Agreement

Agreement means the agreement between the parties and comprises the Grant Details, the Grant Schedule including any Supplementary Conditions, any documents incorporated by reference into the Grant Schedule and these Standard Conditions;

Alleged Misconduct means an allegation which raises a reasonable suspicion of misconduct which may have a serious impediment to the provision or performance of the 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 Your Organisation or of a related body corporate of Your 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 Grant, 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 Grant, 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 Grant 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 Your Organisation's accounting and financial records;

Auspice Body means an incorporated applicant who will use an unincorporated End Recipient to conduct or perform the 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 authorised under Law to carry on banking business in Australia and that is operated solely by Your Organisation;

Budget means the budget (if any) detailing the Grant for the Activity, including sources of income that constitute any Co-contribution, for the expenditure of the Grant as stated in the Grant Schedule or approved by the Agency 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 the 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 Your Organisation is a corporation, there is any change in the direct or indirect beneficial ownership or control of Your Organisation;

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

NSW Health Grant Agreement

Co-contribution means the contribution from Your Organisation's own funds or a third party's funds, upon which the Grant is contingent, to be contributed to the costs of the Activity as stated in the Grant Schedule and used by Your Organisation to provide the 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 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 Your Organisation's ability to fairly and independently perform its obligations under the Agreement;

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

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

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

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

Existing Material means any Material that is developed prior to the Commencement Date or independently of the 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 Your Organisation has a financial year that begins on some other date, that date;

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

Grant means the money, or any part of it, payable by the Agency to Your Organisation to undertake the Activity as stated in the Grant Schedule;

Grant Details means the part of the Agreement titled "Grant Details";

Grant Schedule means the part of the Agreement titled "Grant Schedule";

Insolvency Event means the occurrence of any one or more of the following events in relation to Your 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 Your 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 Your 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 Your Organisation;
- (d) Your Organisation is unable to pay its debts as they fall due;

NSW Health Grant Agreement

- (e) Your Organisation becomes insolvent or is deemed to become insolvent under any applicable Laws; or
- (f) Your 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.

Law means common law, principles of equity, and laws made by the Commonwealth, State(s) and Territory(ies) in which the 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 the 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 the Activity as stated in the Grant 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 Your Organisation's behalf for the purpose of the conducting or performing the Activity (other than from the Agency), including documents, software and data stored by any means;

Personal Information means any information which is:

- (a) "personal information" or "health information" within the meaning of the Privacy Law; and
- (b) received (from any source) or generated by Your Organisation or Organisation Personnel;

Personnel means Your Organisation's employees, officers, agents and subcontractors, the employees, officers, agents and subcontractors of Your Organisation's subcontractors and any volunteers engaged by Your Organisation or Your 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 Grant Details or as notified in writing from time to time;

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

Residual Grant means that part of the Grant paid to Your Organisation that has not been spent or Committed for the Activity;

Serious Incident means an incident that:

- (a) is likely to impact on Your Organisation's ability to conduct or provide the Activity or otherwise fulfil its obligations under the Agreement;
- (b) may affect or has affected Your Organisation's obligations, or its performance of those obligations, under the 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 Conditions means this document;

NSW Health Grant Agreement

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

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

Term means the term of the Agreement set out in clause 1.3 (Term of the Agreement);

Trust means the trust as stated in the Grant Details;

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

Unspent Grant at a particular date means that part of the Grant that has not been spent or Committed by Your Organisation in accordance with the Agreement; and

Your Organisation means the person or body corporate named in the Grant Details that enters into and is a party to the Agreement, and, where relevant, includes its officers, employees, contractors and agents.

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 Agreement;
 - (ii) the singular includes the plural and vice versa;
 - (iii) the words 'includes' and 'including' and similar expressions are not used as, nor are intended to be, interpreted as words of limitation;
 - (iv) 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 Conditions;
 - (E) a part, schedule, attachment or annexure is a reference to a part, clause, schedule, attachment or annexure to these Standard Conditions or Grant Schedule as the case may be;
 - (F) the Agreement includes all schedules, attachments and annexures to it;
 - (G) any legislation includes any regulations or rules made under that legislation and any amendment, modification to or replacement of that legislation which may be made from time to time;
 - (H) an agreement other than the Agreement includes an undertaking, or legally enforceable arrangement or understanding, whether or not in writing;
 - (I) a monetary amount is in Australian dollars; and
 - (J) "discretion" means "absolute discretion".
- (b) To the extent that the parties have not completed items in the Grant Schedule, unless otherwise stated in the Grant Schedule, that item will be taken to be "not applicable" for the purposes of the Agreement.
- (c) The Agreement represents the entire agreement between the parties in relation to the Activity and the Grant 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 Agreement may be executed in electronic format to the extent permitted by Law, and the Agreement will be interpreted to give effect to undertaking business in this manner.