



Northern Territory of Australia

Standard Five Year Grant Funding Agreement

Part 2 - General Conditions (Version 2023:01)

These are the **Part 2 - General Conditions** referred to in **Part 1 – Contract Details** of the **Standard Five Year Grant Funding Agreement**

General Conditions

1. Preamble

- 1.1 Grant funding is provided by the NT Government to non-government organisations to provide a range of services and programs to the Northern Territory community. The NT Government's financial management and accountability framework underpins all grant funding. We need to ensure public funds achieve the best value for the Northern Territory, are an accountable use of public money, and deliver the best outcomes for individuals, families and communities.
- 1.2 Activities funded by us are to be delivered in a manner that promotes the privacy, dignity, self-esteem and independence of the clients and, except to the extent the Funded Activity is provided to meet the needs of a specific group of persons, provide all clients with access to the activity on a non-discriminatory basis and in a manner that recognises the diversity in the needs, including specific needs, of people from urban, regional and remote areas and of people with differing cultures, languages and abilities.
- 1.3 The purpose of this Standard Five Year Funding Agreement is to provide your organisation with recurrent funding to support ongoing service provision to the community to improve social outcomes over a five year period.

2. Defined Terms

- 2.1 In this Agreement, except where the contrary intention is expressed, the following definitions are used:

Agreement	means the contract formed between you and us described in clause 4.1 of these General Conditions.
Agreement Material	means Material created by you or on your behalf in the course of delivering the Funded Activity or otherwise for the purpose of this Agreement.
Approved Assets	means the Assets listed at Item 9 (if any) that are pre-approved by us for purchase with the Funding.
Asset	means any item of property that has been or will be created, purchased, leased or otherwise acquired wholly or in part with the Funding, or any item of property we provide to you for the Funded Activity, but does not include Intellectual Property or consumable items.
Budget	means the budget for the Funded Activity attached to this Agreement or subsequently accepted by us in accordance with clause 10 of these General Conditions, detailing how you will expend the Funding, including identifying Other Contributions (if any).
Business Day	means any day which is not a Saturday, Sunday, or a public holiday to be observed under the <i>Public Holidays Act 1981</i> (NT) in Darwin in the Northern Territory.
Client	means any person to whom a service is being delivered (whether on a voluntary or involuntary basis) as part of the Funded Activity.
Commencement Date	means the date specified in Item 4 .
Contract Details	means Part 1 – Contract Details of this Agreement.
Date of this Agreement	means the date on which the last party to sign this Agreement does so.

Description	means the requirements for the delivery and performance of the Funded Activity specified at Item 3 .
Funded Activity	means the activity, service or program specified at Item 1 , which is further described in the Description.
Funding	means the approved funding for the Funded Activity for each funding period listed in Item 5 (including any interest earned by you on that Funding) and, where the context permits, includes: <ul style="list-style-type: none"> (a) any instalment of Funding; and (b) Other Contributions.
General Conditions	means this Part 2 – General Conditions .
Intellectual Property	means all intellectual property rights including patent rights, copyright, rights in circuit layout, registered designs, trademarks and other rights, but excludes moral rights and similar non-assignable personal rights of any person.
Interest	means interest calculated at the rate fixed under the Northern Territory Supreme Court Rules from time to time (as if payable on a judgment debt).
Item	means an Item in clause 2 of the Contract Details.
Law	includes all laws applicable to the operation of your business and the carrying out of the Funded Activity contained in any applicable statutes, regulations, by-laws, ordinances or subordinate legislation in force from time to time, whether made by a State, Territory, the Commonwealth, or a local government, and includes the common law and rules of equity as applicable from time to time.
Material	includes documents, information, data and other material in any form stored by any means and includes all copies and extracts of such material.
Misused Funds	means appropriating, using or dealing with the Funding or part of the Funding in a manner: <ul style="list-style-type: none"> (a) other than in accordance with this Agreement; (b) that constitutes Improper Conduct; or (c) that is considered by us to be at risk of either (a) or (b), whether directly or indirectly and whether intentionally or unintentionally.
Objectives	means the objectives of the Funded Activity described at Item 2 .
Operational Plan	means the operational plan for the Funded Activity attached to this Agreement or subsequently accepted by us in accordance with clause 10 of these General Conditions, detailing the daily tasks, processes and operations you need to perform in order to meet the Objectives, the Description and your service delivery obligations under this Agreement.
Other Contributions	means the other funding contributors to the Funded Activity and their financial contribution amounts described at Item 11 (if any), which may include you and your contributions.
Our Material	means any Material provided by us to you for the purpose of this Agreement and includes Material copied or derived from Our Material.
Performance Measures	means the performance measures, key performance indicators and milestones set out at Item 7 that provide a basis for reviewing and evaluating the Funded Activity's objectives and outcomes.
Personnel	means the directors, officers, employees, subcontractors, advisers, agents and volunteers of a party.

Premises	means any premises or location at or from which you are delivering or intend to deliver the Funded Activity, and includes a location (if any) described in Item 3 .
Primary Contact Person	means the person with the day to day management of this Agreement named at clause 1 of the Contract Details.
Records	means the information created, maintained or required to be kept by you for the purpose of this Agreement in any form stored by any means.
Reports	means the reports provided or required to be provided to us by you under this Agreement regarding performance and delivery of the Funded Activity and financial acquittal of the Funding, including those reports specified at Item 10 , which must meet the applicable requirements of clause 23 of these General Conditions.
Special Conditions	means the special terms and conditions (if any) specified for the Funded Activity at clause 4 of the Contract Details.
Term	means the term of this Agreement specified in clause 5 of these General Conditions.
Unacquitted Funds	means the Funding or any part of the Funding that cannot, by reconciliation or audit of the Records maintained by you (or as reported to us by you), be shown to our reasonable satisfaction to have been spent or committed in accordance with this Agreement.
Unspent Funds	means any part of the Funding that: <ul style="list-style-type: none"> (a) has not been spent by you; and (b) has not been legally committed to pay to a third party by written agreement in accordance with this Agreement.
you or your	means the Funded Organisation named as a party in the Contract Details.

3. Interpretation

3.1 In this Agreement, unless the context requires otherwise:

- (a) if a word or phrase is defined, its other grammatical forms have corresponding meaning;
- (b) a word which means the singular also means the plural and vice versa;
- (c) the word “including” is not a word of limitation, and is to be interpreted as though it were immediately followed by the words “but not limited to”;
- (d) where a clause states that an action requires notice, consent, approval, agreement, authorisation, endorsement, permission or words of similar effect, then it must be given or obtained in writing to be effective;
- (e) a reference to a “person” includes a reference to an individual, a partnership, a body corporate, unincorporated body, a government or local authority or agency or any other entity;
- (f) if an act is to be done on a day which is not a Business Day, that act must be done on the next Business Day;
- (g) headings and sub-headings have been included for ease of reference only and have no effect in limiting or extending the language of the provision to which they refer;
- (h) reference to “party” or “parties” means a party or the parties to this Agreement and includes the Personnel of that party or parties;

- (i) a reference to a right or obligation of any two or more persons confers that right, or imposes that obligation, on both persons;
- (j) a reference to a statute, ordinance, code or other Law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (k) a reference to a clause or attachment is a reference to a clause of or attachment to this Agreement;
- (l) a reference to a document (including a reference to this Agreement) is to the document as amended, varied, supplemented, notated or replaced, unless the context otherwise requires;
- (m) no rules of construction apply to the disadvantage of a party on the basis that that party was responsible for the preparation of this document or any part of it; and
- (n) a reference to dollars and \$ is to Australian currency only.

4. Formation & Priority

4.1 This Agreement is comprised of:

- (a) **Part 1 - Contract Details**; and
- (b) these **Part 2 - General Conditions**,

and includes the signing page, all annexures, appendices, schedules or attachments referred to in this Agreement and any other documents expressly incorporated by reference into this Agreement.

4.2 You acknowledge and agree that this Agreement is intended to be, and is, legally binding.

4.3 If there is a conflict or inconsistency between any of the parts or provisions forming part of this Agreement then, to the extent of the inconsistency, those parts or provisions have priority in the following order:

- (a) Special Conditions;
- (b) General Conditions;
- (c) an Item in the Contract Details;
- (d) the Budget and Operational Plan;
- (e) other annexures, appendices or attachments referred to in the Contract Details; and
- (f) any other document incorporated by reference into this Agreement.

5. Five Year Term

5.1 This Agreement will start on the Commencement Date and will expire 5 years after the Commencement Date, unless terminated earlier in accordance with this Agreement.

6. Public Accountability

6.1 You will liaise and work collaboratively with us on an 'open book' basis to:

- (a) enhance our knowledge base of service delivery practices and outcomes in connection with the Funded Activity;

- (b) ensure effective expenditure of public monies (including all Funding); and
- (c) monitor, review and evaluate delivery of the Funded Activity.

6.2 You acknowledge and agree that:

- (a) the Funding is 'public resources' under the *Independent Commissioner Against Corruption Act 2017* (NT) (the '**ICAC Act**');
- (b) for the purpose of the ICAC Act you are a 'public body' that receives 'public resources', and your members, officers and employees are 'public officers';
- (c) you must comply with the ICAC Act, and you must obtain your subcontractors' written agreement to comply with the ICAC Act in the same way and to the same extent as you;
- (d) we may do anything in connection with this Agreement that may be required for compliance with our public accountability responsibilities, including our obligations under privacy and freedom of information laws, financial management legislation and the ICAC Act;
- (e) your failure to comply with this Agreement may be taken into consideration in any future grant funding applications and may result in you being excluded from consideration for subsequent or other funding;
- (f) where you have an Australian Business Number (ABN) details of the Funding may be provided by us to the Australian Taxation Office; and
- (g) subject to reasonable notice, you must give our Auditor-General, the Information Commissioner, the Ombudsman, and the Independent Commissioner Against Corruption (and their respective authorised representatives), access to inspect and copy Records associated with this Agreement, howsoever and wheresoever stored, and you must provide all reasonable assistance requested in respect of any inquiry into or concerning the Funded Activity or the Funding.

7. Payment of Funding

7.1 Subject to:

- (a) parliamentary appropriation;
- (b) if applicable, receipt of any part of the Funding that is to be provided by a third party to us (such as from the Commonwealth); and
- (c) the performance of your obligations under this Agreement,

we will pay the Funding to you in accordance with the payment schedule set out in **Item 5**.

7.2 Payment of Funding is not an admission by us that you have met your obligations under this Agreement.

7.3 The monies to be contributed by us will not exceed the total amount of the Funding and we are not liable for:

- (a) any debts incurred by you to deliver the Funded Activity; and
- (b) any monies owed by you to any third party in connection with the delivery of the Funded Activity,

and you are solely responsible for:

- (c) any budget or cost overruns of the Funded Activity; and
 - (d) contributing further monies if the Funding is insufficient to deliver the Funded Activity.
- 7.4 If you receive revenue from fees charged to Clients for the Funded Activity, you must use that revenue solely for the purpose of delivering the Funded Activity and report on the use of that revenue if required by us.
- 7.5 Notwithstanding any other provision of this Agreement, we may by notice withhold payment of any Funding if, in our reasonable opinion, you have not complied with any material term of this Agreement to our reasonable satisfaction, including obligations to report and comply with Laws.
- 7.6 We may from time to time at our discretion pay you indexation on the Funding in recognition of any cost increases applicable to, and not currently reflected in the Funding for, the delivery of the Funded Activity. Once we have calculated and notified you of any such indexation, it will become and must be accounted for as part of the Funding.

8. Other Contributions

- 8.1 Where Other Contributions are identified, or where clause 8.3 below applies, you must:
- (a) ensure that the terms on which Other Contributions are provided to you are not inconsistent with the terms of this Agreement and do not in any way limit or affect your ability to comply with your obligations or our ability to exercise our rights under this Agreement;
 - (b) use the Other Contributions to undertake the Funded Activity; and
 - (c) if requested by us, provide to us satisfactory written evidence that the Other Contributions have been paid, which request may include details of the person or entity providing the contribution, the nature and value of the contribution and a copy of any written arrangements entered into, or proposed to be entered into, in respect of the Other Contributions,
- and we are not required to make any payment Funding until such time as you have complied with clause 8.1(c) to our satisfaction.
- 8.2 Notwithstanding any other provision of this Agreement, if the Other Contributions are not given or used in accordance with clause 8.1, in addition to our right to withhold Funding under clause 7.5, we may at our discretion by notice:
- (a) suspend payment of Funding until we are satisfied of compliance;
 - (b) reduce the total Funding payable under this Agreement by an amount that, in our reasonable opinion, represents an equivalent proportion of the overall reduction in the total value of the Other Contributions resulting from the failure; or
 - (c) immediately terminate this Agreement by notice and require repayment of Funding within the time specified in the notice.
- 8.3 You must promptly notify us if you enter into any arrangement under which you are entitled to receive additional financial contributions in respect of the Funded Activity that are not identified as Other Contributions. Any such additional contribution is deemed to constitute Other Contributions for the purpose of this Agreement.

- 8.4 Where the actual cost of the completed Funded Activity is less than the sum of the Funding and the Other Contributions, resulting in '**cost savings**', we may give you notice requiring you to return to us an amount that in our reasonable opinion is equal to our proportion of those cost savings, and that proportion will be Unspent Funds for the purpose of this Agreement.

9. Use of the Funding

- 9.1 You must use the Funding for the Funded Activity in accordance with:

- (a) the Operational Plan and Budget;
- (b) the requirements of this Agreement (including the Special Conditions); and
- (c) our reasonable directions,

and, in the absence of our approval, you must not use the Funding or any part of the Funding for any other purpose including:

- (d) your administrative or other general costs other than those identified in the Budget;
- (e) to purchase, lease or otherwise acquire vehicles, land, premises or other assets (except for the Approved Assets, if any);
- (f) capital works (other than general repairs and maintenance identified in the Budget), including construction, extension, modification, refurbishment, fit-out or upgrade of existing facilities; or
- (g) investment purposes, to make a loan, to give any form of credit, or to provide any form of financial security.

- 9.2 You must hold the Funding in an interest bearing account with an "authorised deposit-taking institution" as that term is defined in the *Banking Act 1959* (Cth).

10. Operational Plan and Budget

- 10.1 Unless specified as an annexure at **Item 6** and attached to this Agreement, you must submit to us within 10 Business Days of the Date of this Agreement an Operational Plan and a Budget for the first year of the funding period of the Term.

- 10.2 You must also submit to us an Operational Plan and a Budget for each subsequent year of the funding period in the Term not less than 30 Business Days prior to the commencement of that year.

- 10.3 You must ensure that all Operational Plans and Budgets:

- (a) have been prepared accurately, diligently, effectively and to a high professional standard;
- (b) sets out for the relevant period the primary goals, the activities and tasks you will carry out, specifies the resources required (including subcontractors) and the allocation of those resources, sets out how Performance Measures will be met, and describes the end of year review and evaluation methodology for the Funded Activity; and
- (c) otherwise meet all applicable requirements of this Agreement.

- 10.4 We will review the Operational Plan and Budget and may at our discretion within 10 Business Days of receiving the documents, notify you that the Operational Plan and/or Budget requires amendment, in which case you must amend the Operational Plan and/or Budget so as to address our comments and resubmit the documents to us within the time specified.
- 10.5 Our review of, comment on, or acceptance of, an Operational Plan and/or Budget will not in any way limit or affect your obligations under this Agreement.
- 10.6 If you fail to comply with clause 10.1, 10.2 or 10.4, in addition to our right to withhold Funding under clause 7.5, we may by notice:
- (a) give you at least 10 Business Days' notice of our intention to terminate this Agreement; and
 - (b) terminate this Agreement immediately by notice if you do not rectify the non-compliance within the period of time specified in the notice,
- and require repayment of Funding already paid within the time specified in the notice.

11. Conduct of the Funded Activity

11.1 With respect to the Funded Activity you must:

- (a) deliver the Funded Activity in accordance with the Description, meet the Objectives and meet or exceed the Performance Measures;
- (b) perform the Funded Activity diligently, effectively, in a professional manner and in compliance with this Agreement, including in accordance with Applicable Policies listed at **Item 13** (if any);
- (c) comply with all applicable Australian industry standards, best practices and guidelines;
- (d) conduct the Funded Activity in a manner that promotes the privacy, dignity, self-esteem and independence of Clients and that recognises the diversity in the needs of people from urban, regional and remote areas and of people with differing cultures, languages and abilities;
- (e) collect and provide to us for the purpose of research, the compilation or analysis of statistics, evaluation or public reporting the de-identified data listed at **Item 14** (if any);
- (f) maintain and comply with all applicable approvals, permits, registrations, accreditations, certifications, staff credentials and licences;
- (g) act in good faith and cooperate with us, and provide such information or documentation and participate in such meetings as we reasonably request;
- (h) fulfil the representations made in your funding application or funding proposal (if any);
- (i) ensure that you secure any tenure or entitlement to occupy land or Premises for the Term;
- (j) maintain and keep the Premises in a good state of repair and ensure the Premises are at all times fit for purpose;
- (k) undertake planning, development and evaluation of the delivery of the Funded Activity on an ongoing basis in consultation with organisations who participate in the Funded Activity, relevant government agencies and other stakeholders; and

- (l) promptly notify us of any relevant matters that may affect your ability to carry out the Funded Activity or otherwise meet your obligations under this Agreement.

11.2 You must have and maintain procedures for resolving complaints and disputes in connection with the Funded Activity, which procedures must be made available to all Clients. You must keep a record of all complaints and disputes, including how the complaint or dispute was addressed, and provide us with a copy of those records on our request.

12. Your Personnel

12.1 You must:

- (a) adequately resource the Funded Activity with suitably competent, qualified, trained and skilled Personnel;
- (b) ensure your Personnel undertaking the Funded Activity:
 - (i) if applicable, are qualified, registered and licensed to undertake their duties;
 - (ii) comply with the relevant requirements of this Agreement;
 - (iii) where required under the *Care and Protection of Children Act 2007* (NT), or otherwise required by us, hold and maintain a valid clearance notice under that Act;
 - (iv) are appropriately screened nationally for a relevant criminal history having regard to the duties that person is required to perform, and you must not engage Personnel in connection with the Funded Activity if they have a relevant criminal history; and
 - (v) immediately notify you if they are charged with or convicted of any criminal offence.
- (c) pay all remuneration and other entitlements (including superannuation) of your employees when due irrespective of the receipt of any Funding.

12.2 For the purpose of this clause 12, '**relevant criminal history**' means a criminal conviction or pending charge under a Commonwealth, State or Territory law that indicates an individual may pose a threat to safety of persons (including Clients) or does not have the integrity or honesty to fulfil their duties or otherwise bears upon that person's fitness or suitability to be involved with the Funded Activity.

12.3 Notwithstanding any other provision of this Agreement, we may by notice, acting reasonably, request you to remove a member of your Personnel from being involved in the Funded Activity, and you must promptly comply with that request.

13. Subcontracting and Buy Local

13.1 You may engage subcontractors with respect to the Funded Activity, provided that you:

- (a) only engage subcontractors who are appropriately qualified, skilled and experienced in their respective disciplines;
- (b) manage and administer your subcontractors in a manner consistent with this Agreement; and
- (c) not make payment of a subcontractor conditional upon your receipt of Funding.

13.2 Procurement of subcontractors is to be carried out in a fair, open and transparent manner with due regard to probity and value for money. You acknowledge and adopt our commitment to the development of business and industry in the Northern Territory and our support for territory enterprises and will use your reasonable endeavours:

- (a) to carry out a competitive process;
- (b) invite territory enterprises (and any other enterprises) to submit quotes or tenders; and
- (c) require subcontractors to similarly engage with territory enterprises where they procure contractors or subcontractors.

13.3 For the purpose of this clause 13:

- (a) '**competitive process**' means a process whereby you:
 - (i) seek a minimum of two quotes where the estimated value of the supply is less than \$100,000 (ex GST); or
 - (ii) invite publicly advertised tenders where the estimated value of the supply is \$100,000 (ex GST) or greater,

and use weighted pre-set assessment criteria (which add up to 100%) to assess responses received in order to obtain best value for money, including an assessment criteria for local content and commitment with a minimum weighting of 30% applied to it.

- (b) '**territory enterprise**' means an enterprise operating in the Northern Territory that has an active ABN, is currently operating in the Northern Territory, has a significant permanent presence in the Northern Territory (for example manufacturing or office facilities) and employs Northern Territory residents.

13.4 Subcontracting any part of the Funded Activity will not relieve you of any of your obligations under this Agreement.

13.5 On our request, you must promptly provide us with documents evidencing your subcontracting arrangements.

14. Work Health and Safety

14.1 In delivering the Funded Activity you and your Personnel must strictly comply with the *Work Health and Safety (National Uniform Legislation) Act 2011* (NT) ('**the WHS Act**') and the regulations made under that Act and you must:

- (a) ensure safe work practices are adhered to; and
- (b) maintain appropriate safety precautions and training to deliver the Funded Activity safely so as to protect people and property.

14.2 You must, to the extent permitted by law, immediately report to us:

- (a) any incident that is a notifiable incident under the WHS Act; and
- (b) any allegation or knowledge which raises a reasonable suspicion that there has or may be:
 - (i) serious misconduct, dishonesty, fraud or criminal or other illegal activity by you or your Personnel in relation to the Funding or the Funded Activity; or

(ii) a serious risk to the health or safety of a Client or other persons.

14.3 If we are of the view on reasonable grounds that you or your Personnel have not complied with or are not complying with clause 14.1 or 14.2, we may by notice direct you to immediately suspend the performance of the Funded Activity until the non-compliance or reported incident or allegation is rectified or resolved to our satisfaction, and we are not obliged to make any payment whatsoever to you during or for the period of suspension.

14.4 We may terminate this Agreement immediately by notice if a suspension under clause 14.3 continues for a period in excess of 10 Business Days.

15. Intellectual Property

15.1 This Agreement does not affect the ownership of Intellectual Property in Material owned by a party prior to the Date of this Agreement or developed by a party independently of this Agreement.

15.2 Intellectual Property in:

- (a) Our Material is owned by us and, on our request, must be returned to us at the end of the Term;
- (b) Agreement Material vests in you; and
- (c) Reports and data provided to us by you vests in and is owned by us.

15.3 We grant you a royalty free, fee free, non-exclusive licence to use, modify, adapt, communicate, publish and reproduce Our Material for the purpose of performing your obligations under this Agreement.

15.4 You grant us a perpetual, irrevocable, royalty-free, fee free, non-exclusive licence to use, modify, adapt, communicate, publish, reproduce and sub-licence Agreement Material for our governmental purposes. The right to sub-licence in this clause 15.4 does not include a right to commercialise the Agreement Material.

15.5 You:

- (a) must ensure you do not infringe any person's Intellectual Property in connection with the Funded Activity;
- (b) warrant you are entitled to grant the licence in clause 15.4 and will procure all rights, licences and consents from any third party that is necessary to enable you to grant the licence in clause 15.4, including the author's consent so as not to infringe any individual's "moral rights" (as that term is defined in the *Copyright Act 1968* (Cth)) and provide us with copies on our request; and
- (c) if relevant, will respect and protect Intellectual Property in Materials relating to Aboriginal and Torres Strait Islander culture, including taking reasonable steps to obtain consent from the relevant cultural authority.

15.6 If required by us, you must provide, sign, execute, or complete any document that may be necessary or desirable to give effect to clause 15.4.

16. Confidentiality and Privacy

- 16.1 For the purpose of this clause ‘**confidential information**’ means any information relating to this Agreement, whether or not in a material form, which:
- (a) is by its nature confidential;
 - (b) is expressly designated as confidential; or
 - (c) is agreed in writing between the parties as being confidential,
- but does not include information that is or becomes public knowledge other than by breach of this Agreement or the data listed at **Item 14**.
- 16.2 Other than in accordance with this clause 16, a party must not use or disclose any confidential information of the other party without the prior consent of the other party.
- 16.3 The obligations in clause 16.1 will not be breached where the confidential information:
- (a) is disclosed by a party to its Personnel solely in order to perform its obligations or exercise its rights under this Agreement and is covered by confidentiality obligations;
 - (b) is disclosed by us to another department or agency of the Northern Territory, the Parliament, the Administrator, Cabinet, a Minister or any Parliamentary, Ministerial or Cabinet Committee of the Northern Territory or in response to a request by the Legislative Assembly or a Committee of the Legislative Assembly of the Northern Territory or otherwise is required to be disclosed for public accountability reasons;
 - (c) is authorised or required by Law to be disclosed; or
 - (d) is disclosed by a party and is information in a material form in respect of which the party has Intellectual Property rights that permit the disclosure.
- 16.4 In conducting the Funded Activity, you must comply with:
- (a) the Information Privacy Principles set out in Schedule 2 of the *Information Act 2002* (NT) in dealing with “personal information” (as defined under that Act) as if you were a public sector agency; and
 - (b) any other privacy legislation or privacy policy that applies to you,
- and have an appropriate privacy and data protection policy in place that is made available to Clients (a copy of which is to be provided to us on request).
- 16.5 You must immediately notify us if you become aware of a breach or possible breach of:
- (a) the privacy of Clients; or
 - (b) your privacy or confidentiality obligations under this Agreement.

17. Conflicts of Interest

- 17.1 You warrant that, to the best of your knowledge after making diligent inquiry, at the Date of this Agreement no conflict exists or is likely to arise in the performance of your obligations under this Agreement.
- 17.2 You will not, and you will use your best endeavours to ensure that your Personnel do not, engage in any activity or obtain any interest during the Term that is likely to conflict with

your obligations under this Agreement or affect your ability to deliver the Funded Activity fairly, independently and without perception of bias.

17.3 If during the Term a conflict arises or is likely to arise, you must promptly:

- (a) notify us of the conflict making a full disclosure of all relevant information relating to the conflict and setting out the steps you propose to take to resolve or otherwise deal with the conflict; and
- (b) take such steps as you have proposed, and take such steps as we may reasonably require, to resolve or otherwise deal with the conflict.

17.4 If you fail to comply with this clause 17, or we are of the reasonable opinion that you are unable or unwilling to resolve or deal with the conflict or the nature of the conflict is such that it cannot be dealt with to our reasonable satisfaction, we may terminate this Agreement immediately by notice to you and require repayment of that part of the Funding applicable to the period the conflict existed.

17.5 For the purpose of this clause 17:

- (a) **'associate'** means a person associated or connected with you because:
 - (i) they are a related entity;
 - (ii) of a family relationship;
 - (iii) of a business partnership;
 - (iv) one is a company and the other is a director or manager of the company;
 - (v) one is a private company and the other is a shareholder in the company; or
 - (vi) a chain of relationships can be traced between you and them under one or more of the above sub-paragraphs;
- (b) **'conflict'** means a circumstance in which you, your Personnel or an associate of you or your Personnel is in, or could be perceived to be in, a position to derive personal benefit, financial or non-financial and directly or indirectly, from the Funding or the Funded Activity or may or could be perceived to impair your ability, or your Personnel's ability, to carry out any responsibilities and obligations under this Agreement diligently, independently and impartially; and
- (c) **'related entity'** means:
 - (i) in the case of a company, a related entity within the meaning of section 50 of the *Corporations Act 2001* (Cth), and directors and shareholders of the company and/or a Related Entity;
 - (ii) in the case of other incorporated bodies, a member of the board of management of that body or other person that is in a position of influence in respect of decision making of that body; and
 - (iii) in the case of unincorporated bodies, includes sole traders, members of a partnership, joint venturers, and members of the management committee.

18. Insurance

18.1 You must take out, and maintain, appropriate types and amounts of insurance sufficient to cover your liabilities for your activities and obligations under this Agreement (including those obligations which survive its expiry or sooner termination) and, at a minimum you must obtain and maintain during the Term policies of insurance for:

- (a) workers compensation required by Law;

- (b) general public liability for no less than \$20 million for any one occurrence;
- (c) where you are delivering services of a professional nature as part of the Funded Activity, professional indemnity (and run off cover for a period of at least 3 years);
- (d) loss, damage or theft of Assets to their full replacement value; and
- (e) additional insurance specified in **Item 8** (if any),

and within 5 Business Days of our written request provide us with copies of certificates of currency.

19. Risk and Indemnity

19.1 Except as specified in this Agreement, you accept all risks of this Agreement and the Funded Activity, including the risk of:

- (a) the conduct, administration, management, performance and delivery of the Funded Activity, including all liabilities associated with work health and safety, insurance, environmental issues, and liabilities to third parties (including to your Personnel or suppliers);
- (b) the cost of the Funded Activity and the cost of performing your obligations under this Agreement being greater than anticipated;
- (c) goods or services in connection with the Funded Activity not being supplied or performed in accordance with the requirements of any contract between you and your subcontractors;
- (d) any change in Laws in connection with the Funded Activity; and
- (e) loss of or damage to any property, or injury or death to any person, or any other loss whatsoever or howsoever incurred arising out of or in connection with the Funded Activity.

19.2 To the full extent permitted by Law, you release us and our Personnel from, and indemnify and keep indemnified and hold harmless us and our Personnel against, any all claims, expenses, losses, damages, costs or other liability that we may sustain or incur arising directly or indirectly in connection with the Funded Activity in respect of:

- (a) the risks referred to in clause 19.1;
- (b) death or personal injury or loss of or damage to property;
- (c) any infringement, or alleged infringement, of the Intellectual Property rights or moral rights of any person;
- (d) your breach of any privacy or data security law; and
- (e) any breach of this Agreement by you.

19.3 Your obligation to indemnify us under clause 19.2 is reduced proportionately to the extent that our negligent or wilful act or omission contributed to the relevant liability.

20. Record Keeping

- 20.1 You must keep full and accurate Records, ensure the security of Records, and promptly provide copies of Records to us on request, including records that:
- (a) detail and document the conduct, administration, progress and management of the Funded Activity, including progress and performance against the Objectives, Performance Measures, the Operational Plan and the Budget;
 - (b) evidence receipts and payments related to the Funded Activity and Funding;
 - (c) identify the receipt and expenditure of the Funding (including the Other Contributions) within your accounting records so that at all times the Funding is clearly and separately identifiable;
 - (d) evidence your compliance with your obligations under this Agreement, including clause 12 (Your Personnel) and clause 13 (Subcontracting and Buy Local); and
 - (e) enable the preparation and audit of:
 - (i) income and expenditure statements and balance sheets using the National Standard Chart of Accounts; and
 - (ii) financial records in accordance with Australian Accounting Standards issued by the Australian Accounting Standards Board and Auditing Standards made under s 336 of the *Corporations Act 2001* (Cth).
- 20.2 You must retain Records for a period of 7 years after expiry of the Term or such longer period as may be required by Law.

21. Monitoring and Meetings

- 21.1 During the Term, the parties will undertake the activities and attend the meetings specified in **Item 12** (and attend meetings at any other times reasonably requested by a party), for the purposes of mutually managing and monitoring:
- (a) the implementation, conduct, performance and progress of the delivery of the Funded Activity;
 - (b) expenditure of the Funding; and
 - (c) compliance with this Agreement,
- including:
- (d) tracking against Performance Measures and Objectives;
 - (e) sharing relevant information and data;
 - (f) providing updates on staffing and resourcing, including other potential sources of funding;
 - (g) managing risks and potential conflicts;
 - (h) early identification and resolution of potential issues; and
 - (i) considering how the Funded Activity could be delivered more efficiently and effectively,
- and the parties must provide such information and documentation to each other as is reasonably requested for these purposes.

- 21.2 As reasonably required by us, you must participate in studies, assessments, reviews and other activities intended to enhance priorities, analyse or evaluate the success of the Funded Activity for program development and future planning purposes, including allowing third parties access to the Premises and making relevant reports, records, data and other information available to us and third parties nominated by us.

22. Acknowledgment of Funding

- 22.1 You must acknowledge the financial and other support you receive from us:
- (a) in all publications, promotional and advertising materials, public announcements and activities by you or on your behalf in relation to the Funded Activity in a form approved by us; and
 - (b) by inviting our senior representatives (including the relevant Minister) to any formal public opening of the Funded Activity.

23. Reports and Acquittal

- 23.1 You must provide all Reports in such format as we may require at the times specified in **Item 10**, in accordance with this clause 23.
- 23.2 Reports on the performance of the Funded Activity must include the following details for the applicable period:
- (a) amounts of Funding and Other Contributions received;
 - (b) receipt of and use of revenue from fees charged to Clients (if any);
 - (c) your progress and performance against the Objectives, Performance Measures and Operational Plan;
 - (d) your compliance with clause 13 (Subcontracting and Buy Local); and
 - (e) the progress of expenditure of Funding against the Budget.
- 23.3 Reports requiring you to acquit Funding must include the following details for the applicable period:
- (a) a detailed statement of receipts and expenditure in respect of the Funding;
 - (b) if required by us, audited financial reports by an independent third party auditor and a definitive statement as to whether the financial accounts are complete and accurate;
 - (c) a certificate provided by your Chief Executive Officer or equivalent certifying:
 - (i) you have complied with this Agreement;
 - (ii) the Funding and Other Contributions were used in accordance with this Agreement; and
 - (iii) you are able to pay all your debts as and when they fall due; and
 - (d) a copy of the Register of Assets required under clause 25.5 (if applicable).
- 23.4 Any final Report must include:
- (a) a comprehensive report on actual performance against the Objectives, Performance Measures, the Operational Plan and the Budget during the Term, including whether they were achieved and if not, why not;

- (b) confirm your compliance with clause 13 (Subcontracting and Buy Local); and
- (c) final acquittal that meets the requirements of clause 23.3, and is audited in accordance with the Australian Auditing Standards made under s 336 of the *Corporations Act 2001* (Cth) from time to time by an appropriately qualified member of the Institute of Chartered Accountants in Australia, CPA Australia, or the Institute of Public Accountants.

23.5 We may, acting reasonably, at any time by written direction (specifying the format, content, and substantiating documentation sought) require you to provide other reports or information with respect to the Funded Activity or the Funding.

24. Audit and Performance Review

24.1 In addition to any other right we may have under this Agreement, we may, at any time, after giving you 2 Business Days' notice, conduct an audit or performance review with respect to the Funded Activity and inspect and/or audit your Records (a 'review').

24.2 We may conduct a review ourselves or may engage a third party to conduct the review on our behalf. The review will be undertaken at our cost.

24.3 You must cooperate with us and provide all Records and other information and assistance reasonably requested for the purpose of the review, including access to your Personnel, Records and Premises if required.

25. Assets

25.1 For the purpose of this clause 25, 'dispose' means to sell, mortgage or encumber, lease or sub-lease, licence or sub-licence, assign or otherwise transfer (with or without consideration), or give up ownership or the right to occupy or use, or to enter into an agreement to do any of the preceding acts.

25.2 You must use the Funding to acquire the Approved Assets (if any).

25.3 You may otherwise acquire an Asset using the Funding where:

- (a) it has a market value of less than \$10,000 and it is necessary for delivery of the Funded Activity; or
- (b) it has a market value of \$10,000 or more and we give our prior consent, which consent is at our discretion and subject to such conditions as we see fit.

25.4 You must:

- (a) use Assets to support delivery of the Funded Activity and for no other purpose (including the personal use of your Personnel);
- (b) own and, if applicable, register Assets in your name;
- (c) maintain Assets in good working order, regularly service Assets, maintain any warranty over the Asset, and maintain Asset registration and licensing (if applicable);
- (d) hold all Assets securely and safeguard them against theft, loss, damage and unauthorised use;
- (e) maintain appropriate insurances for any Assets;

- (f) be fully responsible for, and bear all risks arising in relation to, the use or disposal of any Asset;
- (g) permit us to access and inspect Assets on reasonable notice;
- (h) not use an Asset as any form of security or otherwise encumber an Asset without our prior consent; and
- (i) comply with our reasonable requests with respect to the use of an Asset.

25.5 You must:

- (a) maintain an '**asset register**' of all Assets recording the Asset description (including serial number), date of acquisition and acquisition price, location, proportion of the Funding used to acquire, the expected useful life, the depreciated value, and (where disposed of) details of disposal including the transferee, method and amount;
- (b) keep all financial, insurance and other records necessary to support the details contained or required to be contained in the asset register (including proof of purchase, tax invoices, photographs of the Asset, registration documents, warranties and the like); and
- (c) promptly provide us with a copy of the asset register and financial, insurance and other records with respect to the Assets on our request.

25.6 You must not dispose or otherwise part with possession of any Asset, or deal with or use any Asset other than in accordance with this Agreement without our prior consent.

25.7 If in our opinion you have ceased to use an Asset primarily for the purpose of the Funded Activity during the Term, we may at our option, and subject to any conditions (including paying an amount):

- (a) direct you to transfer the Asset to us or to another person and you must do so within 10 Business Days;
- (b) direct you to dispose of the Asset and pay to us an amount equal to the market value of the Asset (or some lesser amount at our discretion); or
- (c) approve you retaining or using the Asset permanently for your own purposes.

25.8 Subject to compliance with any relevant Law, you irrevocably appoint us as your attorney for the purpose of taking any action, including signing any document, under this clause 25 and this Agreement is evidence of that appointment.

25.9 If you fail to comply with this clause 25, we may by notice require you to repay to us the acquisition price of the Asset (or some lesser amount at our discretion), which will be deemed to be a debt due and payable by you to us, and Interest on the debt will accrue from the earlier of the date of disposal or the date in the notice the amount is required to be repaid.

26. Problems and Corrective Action

- 26.1 You must promptly notify us of an actual or likely material delay in or issue with delivery of the Funded Activity or meeting a Performance Measure (a '**problem**').
- 26.2 If you notify us of a problem, or if we are of the opinion there may be a problem and we give you notice of the problem, then you must, if requested by us, within 5 Business Days prepare and submit to us for our approval a '**corrective action plan**' detailing the:
- (a) existence, nature and extent of the problem;
 - (b) consequences of the problem and in particular the consequences on the performance or service delivery of the Funded Activity, including the Performance Measures that are likely to be affected; and
 - (c) steps you will take to rectify, overcome or minimise the effects of the problem including the resources required and timeframes in which the steps are to occur,
- and if we do not approve the corrective action plan you must:
- (d) amend the corrective action plan to take account of our comments; and
 - (e) resubmit the corrective action plan to us within 5 Business Days for our further approval.
- 26.3 At any time during the process under clause 26.2 we may, at our discretion, exercise our right to withhold the Funding and/or suspend the Funding and performance of the Funded Activity.
- 26.4 If the corrective action plan is approved by us, any suspension will cease and you must complete all of the steps and activities in the approved corrective action plan within the specified timeframes.
- 26.5 Notwithstanding any other provision of this Agreement, if:
- (a) the problem is, in our opinion, not reasonably capable of remedy;
 - (b) if you fail to comply with clause 26.1, 26.2 or 26.4; or
 - (c) a corrective action plan resubmitted under clause 26.2(e) is rejected by us,
- we may immediately terminate this Agreement by notice.
- 26.6 Nothing in this clause 26 operates as a waiver of any of our rights that existed before termination under this Agreement or limits the rights or remedies we may have against you under this Agreement or at Law in connection with the problem.

27. Unspent, Unacquitted and Misused Funds

- 27.1 Except in the last financial reporting period of the Term (in which case clause 27.2 applies), Where you are fully compliant with this Agreement, and with our written approval, Unspent Funds may be carried over into the next financial reporting period, and those Unspent Funds must be used for the Funded Activity, be identified in subsequent Reports, and be acquitted in accordance with this Agreement.
- 27.2 Without limiting our rights under this Agreement, if:
- (a) the Funding or any part of it is:

- (i) Unspent Funds at the end of the Term; or
- (ii) Unacquitted Funds;
- (b) at any time we form the reasonable opinion that you or your Personnel have Misused Funds; or
- (c) any clause of this Agreement permits us to require repayment of Funding,
we may at our option by notice:
- (d) require you to hold or use those funds as directed by us on such conditions as we see fit;
- (e) require you to repay all or part of those funds (which will be deemed to be a debt due and payable by you to us), and you must repay to us the amount set out in the notice within the time specified in the notice; or
- (f) deduct and set off an equivalent amount from future Funding payable to you under this Agreement.

27.3 If you fail to comply with a notice issued under clause 27.2 you must pay to us Interest on the amount for the period it remains due and unpaid.

27.4 Without prejudice to any of our rights or remedies under this Agreement, we may deduct and set off any amount you owe to us under this Agreement against future payments under any other agreement we may have with you.

28. Goods and Services Tax

28.1 For the purpose of this clause 28 unless the context otherwise requires:

- (a) '**Determination**' means the determination by the Australian Taxation Office entitled *A New Tax System (Goods and Services Tax) Act 1999 Classes of Recipient Created Tax Invoice Determination (No. 1) 2000*, as amended from time to time;
- (b) '**GST**' means any tax imposed on supply by or through the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) ('**the Act**');
- (c) '**Grantor**' means us;
- (d) '**Grantee**' means you;
- (e) '**Grant monies**' means any monies provided by the Grantor to the Grantee under this Agreement; and
- (f) where any other term used in this clause 28 is referred to in the Act it shall have the meaning which it bears in the Act.

28.2 The parties acknowledge and agree that any supply under this Agreement is made:

- (a) in connection with the receipt of the Grant monies;
- (b) on the condition that failure to provide the supply shall allow the Grantor to insist that the Grantee return the grant monies.

28.3 If you are not registered or not required to be registered for GST you must not charge for or collect GST.

28.4 The following provisions of this clause 28.4 apply where the Grantee is or is required to be registered for GST and a Recipient Created Tax Invoice ('**RCTI**') is required:

- (a) The Grant monies provided for under this Agreement are inclusive of GST and therefore the Grantor will not be liable to pay the Grantee any additional amounts, over and above the Grant monies, for any GST incurred by the Grantee on the receipt of Grant monies.
- (b) The Grantor and the Grantee agree that if the Grantee is registered for GST purposes the Grantor will issue to the Grantee an RCTI in respect of the Grant monies on the following terms and conditions:
 - (i) both the Grantor and the Grantee acknowledge that they are or will be registered for GST when the invoice is issued and the RCTI must show the Grantee's Australian Business Number ("ABN");
 - (ii) the Grantor and Grantee must reasonably comply with their obligations under the Act and any rulings or determinations issued by the Tax Commissioner;
 - (iii) the Grantee agrees that the Grantor can issue tax invoices in respect of the Grant monies and any adjustment notes where necessary;
 - (iv) the Grantee will not issue tax invoices in respect of the supplies;
 - (v) the Grantee will notify the Grantor if it ceases to be registered for GST purposes; and
 - (vi) the Grantor will notify the Grantee if it ceases to be registered for GST purposes or if it ceases to satisfy any of the requirements of the Determination.
- (c) If the Grantee ceases to be registered for GST, the Grantee shall repay to the Grantor an amount equal to 1/11 of the consideration less the actual GST incurred by the Grantee

28.5 The following provisions of this clause 28.5 apply where the Grantee is or is required to be registered for GST and a compliant tax invoice is required:

- (a) The Grant monies provided for under this Agreement are inclusive of GST and therefore the Grantor will not be liable to pay the Grantee any additional amounts, over and above the Grant monies, for any GST incurred by the Grantee on the receipt of Grant monies.
- (b) The Grantee shall provide the Grantor with a tax invoice and/or adjustments notes in relation to the Grant monies prior to an amount being paid by the Grantor under this Agreement and shall do all things reasonably necessary to assist the Grantor to enable it to claim and obtain any input tax credit available to it in respect of the Grant monies.
- (c) If the Grantee ceases to be registered for GST, the Grantee shall repay to the Grantor an amount equal to 1/11 of the consideration less the actual GST incurred by the Grantee.

29. Dispute Resolution

- 29.1 The parties agree not to initiate legal proceedings in relation to a dispute arising under this Agreement unless they have first tried and failed to resolve the dispute in accordance with this clause 29.
- 29.2 Subject to clause 29.7, a party wishing to claim a dispute has arisen must give notice to the other party setting out the particulars of the dispute (a '**dispute notice**') and the parties must promptly undertake appropriate investigations and use their reasonable endeavours to attempt to resolve the dispute.
- 29.3 If the dispute remains unresolved 14 days after service of the dispute notice (or such longer period as is agreed by the parties), the parties must refer the dispute to their respective Chief Executive Officers (or equivalent) for negotiation.
- 29.4 The parties may at any time agree to refer the dispute to an agreed independent third person for mediation, and each party will bear its own costs of the mediation.
- 29.5 If the dispute remains unresolved 60 days after service of the dispute notice (or such longer period as is agreed by the parties), either party may initiate court proceedings.
- 29.6 Notwithstanding the existence of a dispute, but subject to termination in accordance with this Agreement, each party must continue to perform its obligations under this Agreement.
- 29.7 The dispute resolution process under this clause 29 does not apply to an action by either party to terminate pursuant to an express right to do so under this Agreement, or the exercise by us of our rights and your obligations under clauses 6 (Public Accountability), 24 (Audit and Performance Review), 26 (Problems and Corrective Action), 27 (Unspent, Unacquitted and Misused Funds), or 30 (Suspension of Funded Activity).

30. Suspension of Funded Activity

- 30.1 We may, at any time by notice, immediately suspend the performance of the Funded Activity if:
- (a) any clause of this Agreement allows for suspension;
 - (b) we hold concerns for the immediate safety of a Client;
 - (c) we are satisfied that you have not complied with, or are not complying with, any of your material obligations under this Agreement;
 - (d) you or your Personnel are reasonably suspected to have Misused Funds;
 - (e) you have shown an inability or unwillingness to deliver the Funded Activity in accordance with this Agreement;
 - (f) you have shown an inability to properly manage the Funding, the Budget or your finances or assets;
 - (g) we reasonably hold concerns that you are not financially stable; or
 - (h) you or your Personnel are reasonably suspected to have breached any Law material to the delivery or operation of the Funded Activity,
- and you must cease delivery of the Funded Activity until such time as:

- (i) we advise you in writing that the matter has been resolved or addressed to our satisfaction and the suspension is lifted; or
- (j) we give you notice under clause 32.

30.2 Notwithstanding clause 30.1, at our discretion we may permit you to continue delivery of the Funded Activity where, in our opinion, continued service delivery is critical, on such terms and conditions as we may specify.

30.3 Nothing in this clause 30 limits our rights to terminate this Agreement under clause 32.

31. Reduction of Scope or Funding

31.1 We may by notice reduce the scope of this Agreement and/or reduce the Funding:

- (a) to reflect any period in which the performance of the Funded Activity is suspended under clause 30.1; or
- (b) where as a result of any change in Northern Territory or Commonwealth government policy:
 - (i) the Funding will be reduced; or
 - (ii) payment of monies to us which form part or all of the Funding (for example, under a Commonwealth funding agreement) will be reduced,

and this Agreement will be varied accordingly.

31.2 In consultation with you, we may amend the Operational Plan and the Budget to reflect any variation under clause 31.1.

31.3 Nothing in this clause 31 limits our rights to terminate this Agreement under clause 32.

32. Termination

32.1 If a party does not comply with any of its obligations under this Agreement, then the other party may give notice requiring the non-compliance to be remedied within the timeframe specified in the notice and, if not remedied within that time, may immediately terminate this Agreement by giving a second notice.

32.2 Notwithstanding clause 32.1, we may terminate this Agreement immediately by notice where:

- (a) where you have failed to comply with a material obligation under this Agreement and we reasonably believe the non-compliance is incapable of remedy;
- (b) any clause of this Agreement allows for termination for breach or non-compliance with it;
- (c) you have made materially false or misleading statements to us in connection with the Funding or the Funded Activity;
- (d) subject to an applicable Law, you are unable to pay your debts as and when they become due and payable or you become bankrupt or you are put under external administration or have a liquidator appointed or proceedings are commenced against you with a view to obtaining an order for winding up; or
- (e) you materially breach any Law.

- 32.3 We may terminate this Agreement if, as a result of any change in Northern Territory or Commonwealth government policy, the Funding or payment of monies to us which form part or all of the Funding will cease, be redirected or be materially reduced such that, in our opinion, the Funded Activity is no longer feasible. If we terminate under this clause 32.3:
- (a) you must do everything possible to mitigate all losses, costs, and expenses that you may incur as a result of the termination; and
 - (b) we will, subject to your compliance with this Agreement, reimburse you any reasonable and substantiated expenses (other than loss of profit or income) that you unavoidably incur that relate directly and entirely to the losses that you suffer because of the effect of the termination on your subcontracts directly related to the Funded Activity (not exceeding the balance of Funding payable by us for the Funded Activity) and you agree this is your sole remedy for termination.
- 32.4 In addition to any other rights a party has to terminate this Agreement, either party may, acting in good faith, terminate this Agreement by giving 6 months' notice to the other party.
- 32.5 This clause 32 does not limit any other rights or remedies that may be available to us under this Agreement or at Law.

33. Transition Out

- 33.1 Notwithstanding any other provision of this Agreement, on expiry or the sooner termination of this Agreement you must ensure that any Clients who reasonably require continued assistance receive continuity of service and are safely transferred to an appropriate service provider.
- 33.2 If required by us by notice, within the timeframe specified in the notice, you must develop a plan for the transition of the Funded Activity from you to a new provider on expiry or sooner termination of the Agreement (the '**transition out plan**').
- 33.3 The transition out plan must include:
- (a) a single contact person, with contact details, with responsibility for your transition out activities;
 - (b) details of the transition out activities to be performed by you;
 - (c) the transition out support sought from us;
 - (d) a proposal to transfer Assets and any equipment, personnel, licences, data and records;
 - (e) the timeframe for the transition (the '**transition out period**'); and
 - (f) key dates for transition out activities during the transition out period; and
 - (g) how you will continue to meet your obligations to Clients and to your Personnel during the transition out period.
- 33.4 During the transition out period and until such time as your transition out activities are complete, you must:
- (b) comply with the transition out plan;
 - (c) continue to provide the Funded Activity; and
 - (d) cooperate with and provide all reasonable assistance and make available all required information (including strategic and administrative reports and data) to support the transition in of a new provider.

- 33.5 Development and compliance with the transition out plan is at your expense and must not impose any charge on us or the new provider in relation to transition out activities.

34. Notices and Day to Day Communications

- 34.1 The parties' contact person for day to day communications regarding the delivery of the Funded Activity is the person specified as the Primary Contact Person in the Contract Details.
- 34.2 Any notice required or permitted to be given under this Agreement must be served by hand delivery, prepaid registered post, or email, to the Address for Service of Notices specified in the Contract Details.
- 34.3 A notice is deemed to have been received:
- (e) if served by hand delivery, upon delivery;
 - (f) if sent by prepaid registered post, on the third Business Day after posting; and
 - (g) if sent by email, on the first to occur of:
 - (i) when the sender receives an automated message confirming delivery; or
 - (ii) four hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message within that time that the email has not been delivered or the addressee is 'out of the office' or similar,and if sent later than 4.00pm (addressee's time) on a Business Day, it is deemed to be received at 9.00am on the next Business Day in the place of receipt.
- 34.4 Either party may change their Address for Service of Notices or Primary Contact Person by giving notice of the change to the other party.

35. Force Majeure

- 35.1 For the purpose of this clause 35, a '**force majeure event**' means an event or circumstance due to a natural disaster, terrorism, war, flood, fire, pandemic, protected industrial action (but not action involving solely the employees or subcontractors of the affected party), provided that event or circumstance is outside of the control of the affected party and:
- (a) could not have been reasonably avoided by the exercise of due diligence by the affected party;
 - (b) is not caused or contributed to by the affected party or its Personnel; and
 - (c) is not a result of an event or circumstance that is known by the parties at the Date of this Agreement.
- 35.2 If a party is unable or likely to be unable, wholly or in part, to carry out any of its obligations under this Agreement by reason of a force majeure event that party must:
- (a) promptly give notice to the other party including full particulars of the event, its likely duration, the obligations affected by it, and the extent of its effect on those obligations, and the steps taken or that will be taken to rectify it; and
 - (b) take all reasonable steps to avoid, reduce, overcome, rectify or minimise the effect of the force majeure event,
- and, subject to clause 35.4, the parties' affected obligations (including our obligation to pay Funding) are suspended and necessary timeframes extended as long as that event continues.

- 35.3 You must promptly notify us when the force majeure event has ended or abated to an extent that permits the carrying out of affected obligations.
- 35.4 If a force majeure event continues to prevent the affected party from carrying out any of its material obligations for more than 60 days in a row, either party may immediately terminate this Agreement by notice to the other party and neither party will be entitled to seek damages or compensation of any kind from the other in relation to losses suffered because of such termination.

36. General

Variation

- 36.1 No variation of this Agreement will be effective unless in writing and signed by the authorised representatives of each the parties.
- 36.2 Notwithstanding clause 36.1, we may by notice unilaterally vary these General Conditions in the event we consider changes necessary as a result of a change in Northern Territory or Commonwealth government policy or any change in Laws associated with the Funding or Funded Activity.

Compliance with Laws

- 36.3 Without limiting any other provision of this Agreement, you must at all times comply with all Laws applicable to the Funded Activity.

Your Warranties

- 36.4 You warrant that you:
- (a) are properly established and constituted at Law;
 - (b) have the power and authority to enter into this Agreement; and
 - (c) meet and will stay in compliance for the Term with all Laws, including those under which you are incorporated.

Entire Agreement

- 36.5 This Agreement contains the entire agreement between the parties with respect to the Funding for, and delivery of, the Funded Activity, and supersedes all prior agreements, representations and understandings between the parties with respect to its subject matter.

Relationship

- 36.6 The parties do not intend to create a relationship of agency, trust, employment, joint venture or partnership. Neither party has any right or authority to assume, create or represent any obligation or responsibility, express or implied, on behalf of the other, nor to bind or represent the other party in any way.
- 36.7 We are not a party to any arrangement you enter with a third party in connection with your obligations under this Agreement and we will not be responsible for any monies you owe to any third party.

Transfer and Assignment

- 36.8 You must not transfer, assign or otherwise dispose of any of your rights, duties, benefits, obligations or interests under this Agreement without our prior consent, which may be withheld at our absolute discretion.

Severance

- 36.9 If a court determines that a word, phrase, sentence, paragraph or provision of this Agreement is unenforceable, illegal or void then it will be severed and the rest of this Agreement will continue in effect.

Waiver

- 36.10 A failure by a party to enforce an obligation, make a claim, or exercise a right or remedy, under this Agreement, including consequent upon a breach, will not constitute a waiver of the obligation, claim, right or remedy, unless the waiver is in writing and signed by an authorised representative of that party.

Governing Law

- 36.11 The laws of the Northern Territory apply to this Agreement. The parties submit to the jurisdiction of the courts of the Northern Territory.

Counterparts

- 36.12 This Agreement may be executed in any number of counterparts. The signed counterparts, taken together, will be deemed to form one binding agreement.

Electronic Signatures

- 36.13 To the extent permitted by Law, a party may validly execute this agreement by attaching electronic signature(s) to this agreement using a recognised electronic signature platform.

Costs

- 36.14 Each party must pay its own costs and expenses (including legal costs) of and incidental to the preparation, negotiation and execution of this Agreement, and all transactions contemplated by it.

Further Acts

- 36.15 The parties must, at their own expense, do everything reasonably necessary (including executing documents and permitting registration of documents where necessary) to give full effect to this Agreement.

Survival

- 36.16 The expiry or termination of this Agreement does not affect the continued operation of a clause, right or obligation, which expressly or by its nature survives the termination or expiry of this Agreement to the full extent necessary for their enforcement and for the protection of the party in whose favour they operate.
- 36.17 Without limiting clause 36.16, the following clauses will survive the expiry or termination of this Agreement: 6 (Public Accountability), 8.4 (Other Contributions), 15 (Intellectual Property), 16 (Confidentiality and Privacy), 18 (Insurance), 19 (Risk and Indemnity), 20 (Record Keeping), 23 (Reports and Acquittal), 24 (Audit and Performance Review), 25 (Assets), 27 (Unspent, Unacquitted and Misused Funds), 33 (Transition Out).