



Agreement for Funding of Services

Standard Terms

27 April 2017

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BACKGROUND

- A We are committed to working collaboratively with You in the provision of human services.
- B We and You have a shared interest in ensuring that such services improve the outcomes for the people of New South Wales in a manner that:
- (a) ensures quality of services;
 - (b) is transparent and accountable;
 - (c) demonstrates value for money; and
 - (d) retains a level of flexibility to support innovation.
- C These Standard Terms have been developed to give effect to these principles and are incorporated into and form part of the Agreement.
- D We agree to provide You with Funds to provide the Services, and You agree to use the Funds for the provision of the Services, in accordance with the Agreement.

OPERATIVE TERMS

1 Definitions and interpretation

1.1 Definitions

In the Agreement, the following terms have the following meanings unless the context requires otherwise:

Aboriginal Person	a person of the Aboriginal race of Australia.
Accounting Standards	has the meaning given under the <i>Corporations Act 2001</i> (Cth).
Agreement	the agreement between You and Us for the funding of Services, consisting of the documents stated in clause 2.1(a).
Agreement Material	Material which You or Your Personnel create in connection with the Agreement.
Alleged Misconduct	an allegation which raises a reasonable suspicion of: <ul style="list-style-type: none">(a) misconduct in connection with the Funds or the Services, including serious or persistent harassment or bullying; or(b) a criminal offence having been committed, including theft, fraud or assault.
Assets	any item of tangible property that: <ul style="list-style-type: none">(a) is purchased, leased or otherwise acquired either wholly or in part with the Funds; and(b) either:<ul style="list-style-type: none">(i) has a value greater than or equal to the GST exclusive amount

stated in the Schedule; or

(ii) is stated in the Schedule as being an Asset.

Asset Register a written register which contains details of the Assets, including:

- (a) the date each Asset was purchased, leased or otherwise acquired and the name of any applicable supplier;
- (b) a description of each Asset including (if applicable) any serial or reference number;
- (c) the address at which each Asset is located;
- (d) the purchase, lease or acquisition price of the Asset exclusive of GST;
- (e) the amount of Funds used to purchase, lease or otherwise acquire the Asset; and
- (f) where relevant, the details of any Asset disposals including sale price.

Attachment any document:

- (a) stated as being an "Attachment" in the Schedule; or
- (b) otherwise referred to in the Schedule as forming part of the Agreement.

Auditing Standards has the meaning given under the *Corporations Act 2001* (Cth).

Barred Person means:

- (a) a "disqualified person", or a person who is subject to an "interim bar", under the CPWC Act; or
- (b) a "registrable person" referred to in the *Child Protection (Offenders Registration) Act 2000* (NSW).

Budget the budget (if any) for the expenditure of the Funds that is stated in the Schedule or is otherwise required by the Schedule to be provided in relation to the Services, as may be updated in accordance with the Agreement.

Business Day a day that is not a Saturday, Sunday or a gazetted public holiday in New South Wales.

Change of Control means there is any change in Your direct or indirect beneficial ownership or control.

Claim any claim, right, demand, liability, action, suit, proceeding, charge, cost (including legal costs on a full indemnity basis), loss, damage and expense of any kind, including those arising out of the terms of any settlement.

Confidential Information information disclosed by one party to the other, whether before, on or after the Date of the Agreement, that:

- (a) is by its nature confidential;

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- (b) is designated by a party as being confidential; or
 - (c) the recipient party knows or ought to know is confidential, but does not include information that:
 - (d) is or becomes public knowledge other than by a breach of the Agreement or by any unlawful means;
 - (e) was already in the recipient party's lawful possession without restriction in relation to disclosure before the information was received by the recipient party; or
 - (f) has been independently developed or acquired by the recipient party.
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Conflict of Interest having an interest (whether personal, financial or otherwise) which conflicts, or which may reasonably be perceived as conflicting, with Your ability to fairly, objectively and independently perform Your obligations under the Agreement.

CPWC Act the *Child Protection (Working with Children) Act 2012 (NSW)*.

CYPCP Act the *Children and Young Persons (Care and Protection) Act 1998 (NSW)*.

Date of the Agreement the execution date stated in the Schedule or, if nothing is stated, the date on which We execute the Agreement.

Funds the money for the Services provided to You under the Agreement as more particularly described in the Schedule.

GST has the meaning given in the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

Initial Term the initial term stated in the Schedule.

Insolvency Event means:

- (a) if You are an individual or partnership, You:
 - (i) cannot pay Your debts when they fall due; or
 - (ii) are declared bankrupt;
- (b) in relation to a trust:
 - (i) an application or order is sought or made (and is not stayed or dismissed within 20 Business Days after being sought or made) in any court for the property of the trust to be brought into, or administered by, the court or brought under the court's control; or
 - (ii) the assets of the trust are not sufficient to satisfy the trustee's debts when they fall due and in respect of which the trustee has a right to be indemnified out of the assets of the trust; or
- (c) if You are a body corporate within the meaning of the *Corporations Act 2001 (Cth)*:

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- (i) You cannot pay Your debts when they fall due;
 - (ii) You become insolvent or are deemed to become insolvent under any applicable laws;
 - (iii) a receiver, receiver and manager, administrator (voluntary or otherwise), provisional liquidator, liquidator, controller or like official is appointed in relation to You;
 - (iv) You enter into a scheme of arrangement with Your creditors;
 - (v) a winding up order is made in relation to You;
 - (vi) You assign property for the benefit of creditors or a class of creditors;
 - (vii) a secured creditor of Yours exercises rights to take possession of Your assets or a power of sale; or
 - (viii) You cease to carry on business or threaten to do so.
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Intellectual Property Rights all present and future rights conferred by statute, common law or equity in, or in relation to, copyright, trade marks, patents, designs, inventions and other results of intellectual activity in the industrial, commercial, scientific, literary and artistic fields, whether non-registrable, registrable or patentable, but does not include Moral Rights.

Intervening Event a circumstance beyond Your reasonable control including:

- (a) a fire, flood or natural disaster;
- (b) an explosion;
- (c) an unavoidable accident;
- (d) an act of terrorism; or
- (e) a strike, lockout or other industrial dispute that is not limited to Your workplace.

Material documents, records, software (including source code and object code), goods, images, information and data stored by any means, including all copies and extracts of same.

Milestone any milestone for the Services stated in the Schedule.

Moral Rights has the meaning given under the *Copyright Act 1968* (Cth), which includes the right to:

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

Notified Policies any policies, guidelines or codes of Ours or the NSW Government, as amended or replaced, that are stated in the Schedule or which We notify You about from time to time during the Term.

Objectives	the objectives for the Services stated in the Schedule.
Other Material	any Material which a party owned before the Date of the Agreement or which was created by a party independently of the Agreement.
Performance and Outcome Measures	the performance and outcome measures stated in the Schedule.
Personnel	officers, employees, volunteers, agents, contractors and subcontractors.
Privacy Legislation	the <i>Privacy and Personal Information Protection Act 1998 (NSW)</i> , <i>Health Records and Information Privacy Act 2002 (NSW)</i> , <i>Privacy Act 1988 (Cth)</i> and any codes of practice and principles issued under those Acts.
Public Accountability Body	includes the NSW Auditor-General, the New South Wales Ombudsman, the New South Wales Privacy Commissioner and the Independent Commission Against Corruption.
Records	any documents or other sources of information relating to the Agreement that are compiled, recorded or stored (including in written form, on film or electronically).
Reputational Proceedings	any inquiry, investigation, conciliation, mediation, arbitration or similar proceedings against You or Your Personnel that could, or in Our reasonable opinion has the potential to, have an adverse effect on the reputation of Us, the Services or the NSW Government, including any investigation by the Independent Commission Against Corruption.
Schedule	the document forming part of the Agreement titled "Schedule".
Serious Incident	an incident that: <ul style="list-style-type: none"> (a) is likely to impact on Your ability to provide the Services or otherwise fulfil Your obligations under the Agreement; (b) may affect or has affected Your obligations, or Your performance of Your obligations, under the Agreement and requires an emergency response or involves death, serious injury or any criminal activity; or (c) has or may attract adverse public interest and attention.
Services	means: <ul style="list-style-type: none"> (a) the services stated in the Schedule; (b) any ancillary services that are required in order to provide those services; and (c) Your other functions and responsibilities under the Agreement, as may be varied in accordance with the Agreement.

Standard Terms	these "Standard Terms".
Standards	means: <ul style="list-style-type: none"> (a) applicable Australian Standards and other nationally recognised standards; (b) any standards stated in the Schedule; and (c) any standards which We notify You of from time to time during the Term.
Supplementary Conditions	any supplementary conditions stated in the Schedule.
Target Group	the persons (if any) stated in the Schedule.
Term	the term of the Agreement, comprising the Initial Term and any extension period exercised in accordance with clause 3.
Third Party Material	any Material owned by a third party that is incorporated into the Agreement Material or is used to provide the Services.
Torres Strait Islander Person	a descendant of an indigenous inhabitant of the Torres Strait Islands.
Us, We, Our	the party stated as the "Agency" in the Schedule, or any replacement entity that has taken over the Agency's relevant functions.
You, Your	the party stated as the "Provider" in the Schedule.

1.2 Interpretation

In the Agreement, unless the context requires otherwise:

- (a) a reference to legislation refers to legislation as amended, consolidated, re-enacted or replaced, and includes subordinate legislation;
- (b) the words "including", "include" and "included" are not words of limitation;
- (c) a reference to a clause is a reference to a clause in these Standard Terms;
- (d) reference to a document or agreement includes reference to the document or agreement as amended, novated, supplemented, varied or replaced from time to time;
- (e) a reference to a person includes a natural or legal person;
- (f) a reference to money is to Australian currency;
- (g) a reference to "discretion" means "absolute discretion";
- (h) the plural includes the singular and vice versa;
- (i) where You comprise of more than one person, each of the persons comprising You will be jointly and severally liable under the Agreement;

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- (j) when a time limit falls on a Saturday, Sunday or public holiday in New South Wales, that time limit will be taken to have ended by 5 pm on the next Business Day;
 - (k) the background and headings are included for convenience only and do not affect the interpretation of the Agreement;
 - (l) each defined term includes all grammatical forms of that term; and
 - (m) to the extent that an item is not completed in the Schedule, that item will be taken as "not applicable" for the purposes of the Agreement.

2 Agreement

- 2.1 Parts of the Agreement and order of precedence**
- (a) The Agreement consists of the following parts (in order of precedence):
 - (i) these Standard Terms;
 - (ii) the Schedule; and
 - (iii) any Attachments.
 - (b) Subject to clause 2.1(c), if there is any ambiguity in or inconsistency between the various parts of the Agreement, the ambiguity or inconsistency will be resolved by applying the order of precedence referred to above.
 - (c) The Supplementary Conditions will not prevail over any provisions in the Standard Terms unless it is expressly stated in the Supplementary Conditions that such terms are to prevail.

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- 2.2 No exclusivity** You acknowledge that You are not the exclusive provider of the kinds of services contemplated by the Agreement and We may, at any time and from time to time provide, or engage a third party to provide, services the same as, or similar to, the Services.

3 Term

- 3.1 Initial Term** The Agreement commences on the Date of the Agreement and continues for the Initial Term unless earlier terminated by a party, or extended by Us, in accordance with the Agreement.
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- 3.2 Extension period** We may elect to extend the Term for the extension period (if any) stated in the Schedule by notifying You in writing no later than 30 days prior to the expiry of the Initial Term.

4 Our obligations

- 4.1 General** We agree to provide the Funds to You as outlined in the Agreement.
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- 4.2 Our conduct**
- (a) We agree to liaise and work collaboratively with You to monitor, review and evaluate the Services.
 - (b) Where practicable, We agree to provide You with details of how to access current information, including relevant government policies, procedures and guidelines, applicable to the provision of the Services.

5 Your obligations

- 5.1 Provision of the Services**
- (a) You agree to provide the Services:
 - (i) to any Target Group;
 - (ii) in a proper, timely and efficient manner and to a high ethical and professional standard;
 - (iii) in accordance with any Budget for the Services;
 - (iv) so as to meet any Milestones;
 - (v) with the aim of achieving the Objectives;
 - (vi) in compliance with any Supplementary Conditions; and
 - (vii) in accordance with all other requirements of the Agreement.
 - (b) You remain fully responsible for providing the Services and for otherwise complying with Your obligations under the Agreement and will not be relieved of this responsibility because of:
 - (i) any involvement of Us in the provision of the Services; or
 - (ii) Our payment of Funds to You.

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- 5.2 Compliance with laws, standards and policies**
- You agree that in carrying out the Services You and Your Personnel will:
- (a) comply with all applicable laws (including laws relating to child protection, work health and safety, superannuation, workers compensation, employment screening, privacy, workplace relations and tax);
 - (b) comply with any applicable Notified Policies;
 - (c) comply with any applicable Standards;
 - (d) hold and maintain all licences, approvals, consents, accreditations or registrations that are necessary for You and Your Personnel to provide the Services, including those We reasonably request in writing; and
 - (e) to the extent reasonably practicable, ensure the health and safety of Your Personnel.

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- 5.3 Performance and Outcome Measures**
- (a) You agree to meet or exceed the Performance and Outcome Measures.
 - (b) You agree to put in place systems to record and measure Your performance against the Performance and Outcome Measures.
 - (c) You agree to monitor and report on Your performance against the
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Performance and Outcome Measures in accordance with the requirements stated in the Schedule and any other requirements We notify You of in writing.

- 5.4 Complaints** Where the Services are provided to members of the public, You agree to:
- (a) have in place during the Term a complaints process which is regularly reviewed and updated to deal with any complaints about the Services;
 - (b) maintain and keep updated a complaints register that contains accurate and comprehensive details of all complaints received in relation to the Services in accordance with the requirements of clause 19.2;
 - (c) ensure that Your 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 Us or a relevant complaints agency;
 - (d) provide Us, or any person We nominate, with access to Your complaints register and any other material relevant to any complaint, where requested to do so; and
 - (e) keep and implement a document outlining Your procedure for dealing with complaints about the Services and make it available for viewing by any person on request.
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- 5.5 Aboriginal and Torres Strait Islander service provision**
- (a) You agree to use best endeavours to ensure that the Services are culturally accessible to Aboriginal Persons and/or Torres Strait Islander Persons having regard to the diversity of needs of such persons, including the needs of persons from urban, regional and remote areas.
 - (b) Where the Target Group for the Services are Aboriginal Persons and/or Torres Strait Islander Persons, You agree to use best endeavours to engage relevant individuals, families, cultural custodians, clan and language groups, community organisations, communities and/or representatives deemed appropriate by the community in the design, provision and evaluation of the Services so that the Services are appropriate to local community and cultural needs.
 - (c) You agree to provide Us with evidence of Your compliance with this clause 5.5 upon request.
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6 Personnel and subcontractors

- 6.1 Personnel**
- (a) You are solely responsible for:
 - (i) all Personnel employed or otherwise supported from the Funds or engaged in relation to the Agreement; and
 - (ii) the payment of all wages, entitlements, superannuation, payroll and any other tax and associated costs applicable to Your
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Personnel.

- (b) You agree to use appropriately trained, qualified and experienced Personnel who hold all legally required authorisations, accreditations, permits and clearances necessary to carry out their roles in relation to the Services.
 - (c) Before any Personnel undertake any function or role in relation to the Services, You agree to:
 - (i) ensure that such 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 national criminal record check or other probity check of the Personnel is relevant to and may impact on the suitability of the Personnel to perform their function or role in relation to the Services; and
 - (iii) provide Us with evidence to Our satisfaction of Your compliance with clauses 6.1(c)(i) and 6.1(c)(ii).
 - (d) Without limiting any other terms of the Agreement, if the Services involve child-related work under the CPWC Act, You agree to:
 - (i) if You are an “employer” for the purposes of section 9 of the CPWC Act, ensure that all mandatory employment screening (referred to in the CPWC Act as the “working with children check clearance”) has been undertaken on all Personnel engaged to work in “child-related work” (as defined in the CPWC Act), prior to such Personnel performing any such work; and
 - (ii) have risk assessment procedures and risk plans in place to ensure compliance with the CPWC Act.
 - (e) You agree to ensure that a person who is a Barred Person, or who is otherwise undesirable to work with children, does not undertake “child-related work” (as defined in the CPWC Act) under or in relation to the Agreement.
 - (f) You agree to:
 - (i) identify and comply with Your statutory obligations when engaging others in “child-related work” (as defined in the CPWC Act);
 - (ii) ensure that Your Personnel are aware of and comply with their own statutory obligations in relation to such “child-related work”; and
 - (iii) ensure that You and Your Personnel do not engage in any conduct that may bring Us into disrepute or lead to Reputational Proceedings being commenced.
 - (g) You agree to give Us on request such information as We may reasonably require in order for Us to assess Your compliance with this
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clause 6.1.

- 6.2 Objections to and removal of Personnel**
- (a) We may object to any Personnel allocated by You to provide the Services where such Personnel have engaged in misconduct or cannot perform the inherent requirements of the Services. Where We make any such objection to Your Personnel:
 - (i) You agree not to allocate such Personnel to the Services; and
 - (ii) We will consult with You about the objection.
 - (b) Without limiting any other term of the Agreement, We may require the immediate removal of Personnel from undertaking any function or role in relation to the Services where, in Our reasonable opinion, the Personnel represents an unacceptable risk to any person who receives the benefit of the Services.

- 6.3 Subcontracting**
- (a) In this clause 6.3, "subcontract" includes entering into a joint venture, partnership or agency relationship.
 - (b) You agree not to subcontract the whole or any part of the Services without Our prior written consent except to the extent stated in the Schedule.
 - (c) We may in Our discretion:
 - (i) approve or not approve the engagement of any subcontractor; and
 - (ii) impose any conditions on Our approval of a subcontractor that We consider appropriate.
 - (d) You agree:
 - (i) that subcontracting of any part of the Services by You does not in any way reduce Your responsibility for those Services;
 - (ii) You are liable for any subcontractor's acts and omissions as if they were Your own;
 - (iii) that any subcontract You enter into with a subcontractor in relation to the Services must be consistent with the Agreement; and
 - (iv) to ensure that all subcontractors comply with the terms of the Agreement as if they were a party to it.
 - (e) We may at any time require You to immediately cease using any subcontractor on reasonable grounds by notice in writing to You and You agree to comply with any such notice.

7 Conflicts of Interest

- 7.1 Warranty**
- You warrant that:
- (a) as far as You are aware and after making diligent enquiries, at the Date of the Agreement no Conflict of Interest exists or is likely to arise in
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relation to the Agreement; and

- (b) You will not (and agree to take all reasonable steps to ensure Your Personnel do not) engage in any activity or obtain any interest that gives rise to a Conflict of Interest.

7.2 Dealing with Conflicts of Interest

If You become aware of an actual or possible Conflict of Interest, You agree to:

- (a) notify Us immediately in writing of the Conflict of Interest, making full disclosure of all relevant information relating to the Conflict of Interest and setting out the steps You propose to take to resolve or otherwise deal with the Conflict of Interest; and
- (b) take such steps as We may reasonably require of You to manage, eliminate, resolve or otherwise deal with the Conflict of Interest to Our satisfaction.

8 Notifications

8.1 Notification as soon as reasonably practicable

Without limiting any other term of the Agreement, You agree to notify Us in writing as soon as reasonably practicable of any of the following:

- (a) changes to Your name, address and contact details;
- (b) any actual or proposed material change in Your constitution, rules or memorandum or articles of association (to the extent relevant) which:
 - (i) will or may affect Your ability to provide the Services; or
 - (ii) would have affected Our original decision to approve the provision of the Funds to You;
- (c) any relevant matters that You reasonably think might affect Your ability to provide the Services or otherwise meet Your obligations under the Agreement; or
- (d) any Change of Control that materially affects Your ability to provide the Services.

8.2 Immediate notification

Without limiting any other term of the Agreement, You agree to notify Us in writing immediately of any of the following:

- (a) any non-compliance with applicable work health and safety laws;
 - (b) any actual or proposed action relating to an Insolvency Event;
 - (c) any current, pending or threatened Reputational Proceedings;
 - (d) any Alleged Misconduct or Serious Incident; or
 - (e) the occurrence of any other circumstances as may be stated in the Schedule.
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- 9.1 Payment**
- (a) We agree to pay the Funds to You at the times and in the amounts stated in the Schedule subject to You meeting Your obligations under the Agreement to Our reasonable satisfaction.
 - (b) You agree to:
 - (i) immediately deposit and keep all Funds that We pay to You in an account with an Australian branch of an established bank, building society or credit union that is solely controlled by You and allows for the Funds to be separately identified;
 - (ii) notify Us upon request of Your account details for the purpose of paying You the Funds or if Your account details change; and
 - (iii) comply with any other requirements in respect of the Funds as may be stated in the Schedule.
 - (c) You agree that payment of all or part of the Funds to You is not an admission by Us that You have met Your obligations under the Agreement.
 - (d) Unless otherwise expressly provided in the Agreement, You are responsible for all costs and expenses in relation to the Services and the performance of Your obligations under the Agreement.

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- 9.2 Budget**
- (a) If stated in the Schedule, You agree to provide Us with an updated Budget.
 - (b) You agree to:
 - (i) ensure that any updated Budget is prepared diligently, effectively and to a high professional standard and consistent with any conditions stated in the Schedule; and
 - (ii) provide the updated Budget to Us for review on or before the date or dates stated in the Schedule.
 - (c) An updated Budget is subject to acceptance or rejection in accordance with clause 19.1. The incorporation of the updated Budget into the Agreement is not a variation to the Agreement.

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- 9.3 Use of the Funds**
- Unless We otherwise provide Our prior written consent, You agree to:
- (a) use the Funds only:
 - (i) to provide the Services, or to procure any Assets required for the Services as stated in the Schedule, in accordance with the Agreement;
 - (ii) in accordance with the Budget and any Budget conditions stated in the Schedule; and
 - (iii) in accordance with any time periods stated in the Schedule for the expenditure of the Funds; and
 - (b) not commit any Funds for expenditure where such expenditure is likely

to occur after the end of the Term.

- 9.4 Interest** You agree to:
- (a) use and deal with any interest earned on the Funds as if that interest is part of the Funds;
 - (b) only use interest earned on the Funds for the purposes of the Agreement; and
 - (c) report to Us on the amount of any interest earned on the Funds.
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- 9.5 Unspent or misspent Funds during the Term** If at any time during the Term We form the reasonable opinion, after having discussed or made a reasonable attempt to discuss the matter with You, that:
- (a) You have received Funds that have not been spent or contractually committed for the Services in accordance with the Agreement, including as a result of You having a surplus or underspend for the Services; or
 - (b) any Funds cannot be shown to Our reasonable satisfaction to have been spent or contractually committed in accordance with the Agreement,
- then, at Our discretion, We may by written notice to You:
- (c) require You to repay that part of the Funds and any interest earned on the Funds, and You agree to repay Us the amount set out in the notice within 20 Business Days;
 - (d) allow You to keep the Funds and any interest earned on the Funds;
 - (e) make an adjustment to any future payments to You during the Term; or
 - (f) require You to otherwise deal with the Funds and any interest earned on the Funds as directed by Us.
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- 9.6 Unspent Funds at the end of the Term** Without limiting any other term of the Agreement, within 20 Business Days following the expiry or termination of the Agreement You agree to repay to Us any Funds (and any interest earned on such Funds) that:
- (a) have not been spent or contractually committed to be paid to a third party in relation to the Services in a way that can be identified in a written contractual arrangement with that third party; or
 - (b) cannot be shown to Our reasonable satisfaction to have been spent or committed in accordance with the Agreement.
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- 9.7 Increases in the Funds**
- (a) We may, in Our discretion, increase the amount of the Funds from time to time without a variation to the Agreement.
 - (b) We may make an Indexation increase of the Funds to You from time to time, without a variation to the Agreement. For the purposes of this clause "Indexation" means a percentage increase of Funds as determined by Us.
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- 9.8 Additional** (a) Subject to Us notifying You otherwise, You agree to notify Us within 10
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contributions

Business Days of entering into any arrangement or agreement under which You receive, or are entitled to receive, any additional monetary or in-kind contribution for the Services (or any other activity that is the same as or similar to the Services) that is not stated in the Schedule. The notice must include:

- (i) details of the provider of the additional contribution;
 - (ii) the amount of any such additional contribution; and
 - (iii) the purpose for which the additional contribution will be used.
- (b) We may in Our discretion and in addition to any other rights under this Agreement, withhold or reduce the amount of the Funds payable to you under this Agreement by the amount that You receive, or are entitled to receive, as referred to in clause 9.8(a).

10 GST**10.1 Definitions**

In this clause 10:

- (a) "**GST Act**" means *A New Tax System (Goods and Services Tax) Act 1999* (Cth);
- (b) "**GST Law**" has the same meaning as 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 have the same meaning as in the GST Law.

**10.2 Consideration
GST exclusive**

Unless otherwise stated in the Agreement, amounts payable, and consideration to be provided, under any provision of the Agreement exclude GST.

10.3 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 at the time the recipient pays or provides any part of the consideration for 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 in the Schedule.

10.4 Tax invoice

Except where clause 10.7 applies:

- (a) the supplier agrees to deliver a tax invoice or an adjustment note to the recipient before the supplier is entitled to payment of an amount under clause 10.3(a); and
 - (b) the recipient can withhold payment of the amount payable under clause 10.3(a) until the supplier provides a tax invoice or an adjustment
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note as appropriate.

10.5 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 10.3(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.

10.6 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.

10.7 Issuing recipient created tax invoices and adjustment notes Where You make a taxable supply under or in connection with the Agreement, the parties agree that:

- (a) We, where permitted by the GST Law and Rulings, may issue a recipient created tax invoice for the supply by You in accordance with the GST Law and Rulings, and We will retain the original or the copy; and
- (b) where We issue You with a recipient created tax invoice pursuant to clause 10.7(a):
 - (i) You will not issue tax invoices in relation to the supply; and
 - (ii) We, and not You, will issue an adjustment note to Us for any adjustment event that arises in relation to the supply, and We will retain the original or the copy.

10.8 Acknowledgements The parties acknowledge and agree that each party is registered for GST at the Date of 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.

11 Assets

11.1 Obligations regarding Assets

- (a) You agree to:
 - (i) comply with any obligations relating to the Assets stated in the Schedule, including any Supplementary Conditions;
 - (ii) not use the Funds to procure Assets unless You are procuring Assets that are stated in the Budget or the Schedule and We have given Our prior written approval to procure those Assets;
 - (iii) ensure You receive value for money in procuring any Assets;
 - (iv) unless otherwise stated in the Schedule, use each Asset solely

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- for the purpose of providing the Services for which the Asset has been acquired;
- (v) hold all Assets securely and safeguard the Assets against theft, loss, damage or unauthorised use;
 - (vi) maintain the Assets in good working order;
 - (vii) maintain appropriate insurance in respect of the Assets;
 - (viii) be responsible for maintaining any necessary registration and licensing of the Assets;
 - (ix) not encumber or dispose of any Asset, or deal with or use an Asset, other than in accordance with this clause without Our prior written approval;
 - (x) not dispose of an Asset without Our prior written approval; and
 - (xi) be fully responsible for, and bear all risk relating to, the use and any approved disposal of the Assets.
- (b) If we provide our prior written approval to the disposal of an Asset during the Term, You agree at Our direction to:
- (i) pay to Us within 20 Business Days of the date of the disposal, the written down value of the Asset using the Australian Taxation Office depreciation rates to calculate the depreciation of the Asset;
 - (ii) pay to Us within 20 Business Days of the date of the disposal, the proceeds of the disposal, less an amount equal to the sum of Your proportionate contribution to the purchase price of the Asset and Your reasonable costs of disposal of the Asset; or
 - (iii) use the funds from the disposal of the Asset for a purpose approved in writing by Us.
- (c) On expiry or termination of the Agreement, You agree at Our direction to:
- (i) pay to Us within 20 Business Days, the written down value of the Asset using the Australian Taxation Office depreciation rates to calculate the depreciation of the Asset;
 - (ii) dispose of the Asset for the best price reasonably obtainable and pay to Us within 20 Business Days of the date of the disposal the proceeds of the disposal, less an amount equal to the sum of Your proportionate contribution to the purchase price of the Asset and Your reasonable costs of disposing of the Asset; or
 - (iii) use the Asset on such terms and conditions as may be approved in writing by Us.
- (d) You agree that the proceeds from any disposal of any Asset are to be treated as if they are part of the Funds.

11.2 Ownership of Assets

Unless otherwise stated in the Schedule, You will be the legal and beneficial owner of any assets (including the Assets) purchased with the Funds.

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- 11.3 Register of Assets** You agree to:
- (a) record all Assets in an Asset Register; and
 - (b) provide a copy of the Asset Register to Us as part of any reporting requirements or when requested by Us.

12 Suspension

- 12.1 Suspension of Funds and Services**
- (a) We may immediately suspend the whole or any part of the payment of the Funds or require you to suspend Your use of the whole or any part of the Funds, by giving written notice to You, if:
 - (i) You have failed, or in Our reasonable opinion are likely to fail, to provide the Services in accordance with the Agreement;
 - (ii) You have spent the Funds other than in accordance with the Agreement;
 - (iii) Your provision of the Services is affected by an Intervening Event;
 - (iv) You have breached any other term of the Agreement;
 - (v) We reasonably suspect that You are not financially stable;
 - (vi) You or any of Your Personnel have breached, or We reasonably suspect You have breached, any laws relating to the Services; or
 - (vii) You suspend the Services otherwise than as permitted by the Agreement.
 - (b) We may, by giving written notice to You, require You to reduce the Services to be provided under the Agreement to reflect any suspension or withholding of all or part of the Funds under clause 12.1(a).
 - (c) A notice under clause 12.1(a) or (b) will contain the reasons for any payment being withheld or the requirement for any Services to be reduced and the steps You can take to address those reasons.

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- 12.2 Addressing issues in a suspension notice**
- (a) Subject to any other right of Ours under the Agreement, We will pay any Funds withheld as a result of any suspension under clauses 12.1(a) or (b) once You have addressed the reasons contained in a notice under those clauses to Our reasonable satisfaction.
 - (b) If You have failed to address the reasons contained in a notice under clauses 12.1(a) or (b) to Our reasonable satisfaction within 20 Business Days of receipt of the notice, We may exercise Our rights under clause 13.
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13 Termination and expiry

- 13.1 Termination for cause** Without limiting Our other rights under the Agreement, We may terminate the Agreement with immediate effect by giving notice to You, if:
- (a) You breach a provision of the Agreement and You fail to remedy the breach within 20 Business Days following receipt of a notice requiring You to do so (or such longer period as We may specify);
 - (b) You repeatedly breach a provision of the Agreement and We have provided You with an opportunity to remedy those breaches, whether or not You have remedied those breaches;
 - (c) We are reasonably satisfied that any statement provided by You and relied upon by Us to approve the Funds is incorrect, incomplete, false or misleading in way which would have affected the original decision to approve the Funds;
 - (d) You have a Change of Control that We reasonably believe will have an adverse impact on the decision to pay the Funds or Your ability to perform Your obligations under the Agreement;
 - (e) You suffer an Insolvency Event;
 - (f) to the extent relevant, a change to Your constitution, rules, memorandum or articles of association or operations means that You are no longer eligible for the Funds or You are no longer able to comply with the Agreement;
 - (g) You no longer have the requisite authorisations, licenses, accreditation, registrations or consents to be legally capable of providing the Services or performing Your obligations under the Agreement; or
 - (h) You have failed to notify Us of a Conflict of Interest, You are unable or unwilling to resolve the Conflict of Interest to Our reasonable satisfaction or, in Our opinion, a Conflict of Interest exists which prevents Your performance of the Agreement.
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- 13.2 Termination without fault**
- (a) We may terminate the Agreement at any time by giving You a minimum of 45 days' notice where We are required to cease providing Funds to You because of changes to the State budget or any guidelines or policies of the State or Commonwealth Government.
 - (b) Without limiting clause 13.2(a), either party may terminate the Agreement at any time for any reason by giving the other party at least 6 months' written notice.
 - (c) The party electing to terminate under this clause 13.2 agrees to pay any reasonable costs directly and necessarily incurred by the other party as a result of the termination under this clause 13.2 (excluding any loss of profits or income) as long as the costs are proven to the terminating party's reasonable satisfaction.
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- 13.3 Consequences of expiry or termination**
- (a) On expiry or termination of the Agreement, We may direct You to:
 - (i) promptly deliver to Us or Our nominee; or
 - (ii) destroy,all of Our Confidential Information and any Agreement Material and Records that You hold or control that are required for the provision of the Services and the performance of Your obligations under the Agreement, and You agree to comply with any such direction.
 - (b) Our liability to You on termination of the Agreement (including under clause 13.2) is limited to the amount of unpaid Funds remaining at the date of termination of the Agreement.
 - (c) On expiry or termination of the Agreement, You agree to:
 - (i) repay any unspent Funds in accordance with clause 9.6;
 - (ii) deal with any Asset in accordance with clause 11.1(c);
 - (iii) within 20 Business Days of the expiry or termination of the Agreement, provide Us with any outstanding reports or data due to Us under the Agreement;
 - (iv) provide Us with any reports and Records that We reasonably require of You; and
 - (v) provide Us with all reasonable assistance to ensure the orderly transition of the Services and Assets to Us or Our nominee. Where the Agreement is terminated under clause 13.1, You agree to provide this assistance to Us at Your cost.

14 Intervening Events

- 14.1 Obligations relating to Intervening Events**
- (a) You agree to notify Us if You are, or reasonably believe You will be, prevented from performing Your obligations under the Agreement due to an Intervening Event.
 - (b) The notice under clause 14.1(a) must contain details of the Intervening Event including the extent the Intervening Event has affected or may affect Your obligations under the Agreement.
 - (c) You agree to take all reasonable steps to remove, overcome or minimise the effects of an Intervening Event on the performance of Your obligations under the Agreement.

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- 14.2 Consequences of an Intervening Event**
- (a) We may terminate the Agreement if You cannot provide the Services for more than 2 calendar months due to an Intervening Event.
 - (b) We can arrange another provider for the Services while the Services are suspended due to an Intervening Event, without being liable to You.
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15 Reviews and other rights

15.1 Review

You agree to:

- (a) liaise with Us; and
- (b) comply with all of Our reasonable requests, directions and requirements,

in relation to any monitoring, review or evaluation of the Services that is conducted by or for Us.

15.2 Access to premises and records

(a) You agree that at any time during the Term and for a period of 7 years after the expiry or termination of the Agreement You will give Us, any persons nominated by Us and any Public Accountability Body access to:

- (i) Your premises or the premises where the Services are or were provided;
- (ii) the premises at which any Assets are located; and
- (iii) copies of any Records held or created by You in relation to the Agreement,

for purposes associated with the Agreement, including to:

- (iv) monitor or review the Services, including to assess the effectiveness of the Services or to support improvements in the provision of the Services; and
 - (v) review, audit or investigate Your performance under the Agreement.
- (b) We will, whenever practicable, provide You with reasonable prior notice of any access referred to in clause 15.2(a).
- (c) When accessing premises and/or Records in accordance with this clause 15.2, We will use Our best endeavours to minimise interference to Your employees and the conduct of the Services.
- (d) You agree to ensure that any subcontract You enter into for the purposes of the Agreement allows the persons referred to in clause 15.2(a) to have the access contemplated by clause 15.2(a).
- (e) Nothing in this clause 15.2 limits or restricts in any way the authority or rights of any Public Accountability Body.

15.3 Cooperation and assistance

You agree to:

- (a) cooperate with and assist Us and any of the other persons referred to in clause 15.2(a) to have the information and access contemplated by clause 15.2(a);
 - (b) participate in any performance reviews requested by Us from time to time, including in respect of Your compliance with the Performance and Outcome Measures;
 - (c) give full and free access to Your Material and Personnel necessary to conduct a review, audit or investigation of Your performance under the
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Agreement; and

- (d) allow Us and any of the other persons referred to in clause 15.2(a) to inspect and copy any information necessary to conduct such review, audit or investigation.

16 Intellectual Property Rights

- 16.1 Ownership of Intellectual Property Rights**
- (a) Subject to clause 19.4(e) and except as otherwise stated in the Schedule:
- (i) You own all Intellectual Property Rights in the Agreement Material upon its creation; and
 - (ii) nothing in the Agreement affects ownership of Intellectual Property Rights in either party's Other Material or in any Third Party Material.
- (b) If the Services provided in accordance with the Agreement involve or impact on the cultural and intellectual property rights of Aboriginal Persons and/or Torres Strait Islander Persons, the parties recognise the need to respect those rights, and where practicable agree to take measures to protect those rights.
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- 16.2 Licensing of Intellectual Property Rights**
- (a) Unless the Schedule provides otherwise, You grant Us a perpetual, irrevocable, royalty-free, worldwide, non-exclusive and transferrable licence (including the right to sub-license) to use, copy, modify and exploit the Agreement Material.
- (b) You grant Us a perpetual, irrevocable, royalty-free, worldwide, non-exclusive and transferrable licence (including the right to sub-license) to use, copy, modify and exploit the Third Party Materials and Your Other Material, but only in conjunction with the Agreement Material.
- (c) You agree to promptly provide Us with copies of any Agreement Material upon request.
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- 16.3 Use of Intellectual Property Rights**
- (a) You agree to ensure that in complying with the Agreement, You and Your Personnel do not infringe any person's Intellectual Property Rights or Moral Rights or authorise the infringement of any such rights.
- (b) Without limiting clause 16.3(a), You agree that:
- (i) Our use of any Agreement Material, Third Party Material or Other Material provided by You pursuant to the Agreement will not infringe the Intellectual Property Rights or Moral Rights of any person; and
 - (ii) You will ensure that at all relevant times You hold all necessary rights and consents to allow Us to exercise Our rights under this clause 16.
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- 16.4 Moral Rights**
- (a) You agree to obtain all necessary consents to any act or omission that might otherwise infringe a person's Moral Rights under or in connection
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with the Agreement, including acts or omissions that occurred before, on or after the Date of the Agreement.

- (b) You agree to provide Us with written copies of the consents referred to in clause 16.4(a) on request and immediately notify Us if You cannot obtain any such consent.

17 Confidential, sensitive and cultural information

- 17.1 Confidential Information**
- (a) Subject to clause 17.1(b), each party agrees to not disclose Confidential Information of the other party without the prior written approval of such other party.
- (b) Subject to clause 17.1(d), a party may disclose Confidential Information of the other party to the extent that the Confidential Information is:
- (i) reasonably required by any persons performing obligations in relation to the Agreement or to a party's legal and professional advisors, provided that the Confidential Information is used solely for the purpose of complying with the Agreement;
 - (ii) authorised or required by law to be disclosed;
 - (iii) publicised and reported by Us or the NSW Government on the awarding of the Funds;
 - (iv) shared by Us with another government agency, body or Minister for their legitimate interests; or
 - (v) disclosed in order to give the public information about any action that We take in relation to the Agreement.
- (c) If requested by Us, You agree to arrange for Your Personnel to sign individual confidentiality deeds (in a form suitable to Us) and promptly provide Us with signed copies.
- (d) Nothing in the Agreement authorises or requires a party to disclose information that is contrary to any law.

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- 17.2 Information of a sensitive or cultural nature**
- We will not publish any information that You reasonably consider to be, and identify to Us as being, of a sensitive or cultural nature unless:
- (a) We consult with You; or
 - (b) it is in accordance with clause 17.1.

18 Privacy

- 18.1 Compliance with Privacy Legislation**
- (a) In providing the Services under this Agreement, You agree to comply with the Privacy Legislation as if You are Us.
 - (b) In performing Your obligations under the Agreement You agree to comply with any direction of Us in respect of compliance with the Privacy Legislation.
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- 18.2 Other privacy obligations**
- (a) Without limiting Your other obligations under the Agreement, You agree to immediately notify Us if You have reasonable grounds to believe that there has been a breach of the Privacy Legislation in connection with the Services or the Agreement.
 - (b) You will take all reasonable steps to ensure that relevant persons are made aware that the information You collect in relation to the Services may be provided to Us for the purposes of auditing or assessing Your compliance with the Agreement.

19 Documents, Records and reports

- 19.1 Submission of documents**
- (a) We may:
 - (i) review any document, or any resubmitted document, prepared and required to be submitted by You under the Agreement; and
 - (ii) within 10 Business Days of the submission by You of such document or resubmitted document (or such later time as we may advise), accept or reject the document.
 - (b) If any document is rejected, You agree to address any comments made by Us in relation to the document and resubmit the amended document to Us for review.

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- 19.2 Record keeping**
- (a) You agree to keep full and accurate Records in relation to the Agreement:
 - (i) in accordance with applicable Notified Policies, Standards, Accounting Standards and laws;
 - (ii) for the Term and for a period of 7 years after the expiry or termination of the Agreement or such longer period as may be required by law or specified by Us in writing; and
 - (iii) in such a way so as to allow the Records to be easily accessed, retrieved and used by Us.
 - (b) You agree to keep sufficient Records so that:
 - (i) all accounting and financial transactions, including receipts, proof of purchases, invoices and payment information relating to the Funds are clearly separate and identified from Your other financial and operational accounts and records;
 - (ii) if required by Us or law, financial statements can be prepared in accordance with Accounting Standards;
 - (iii) if required by Us or law, accounts and records can be audited in accordance with Auditing Standards;
 - (iv) proper operational records are able to verify Your performance of Your obligations under the Agreement; and
 - (v) any Asset Register is maintained in accordance with the Agreement.
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- (c) You agree to dispose of the Records referred to in this clause 19.2, once they are no longer required to be maintained in accordance with clause 19.2, in accordance with sound records management practice or as otherwise specified in writing by Us and in accordance with all laws. This clause 19.2(c) does not apply to the extent that You are required to retain a Record for Your internal governance and compliance purposes.

19.3 GIPA Act

- (a) You acknowledge that We may disclose certain information in relation to the Agreement in accordance with Our obligations under the *Government Information (Public Access) Act 2009 (NSW) (GIPA Act)*, including making certain information about the Agreement publicly available in any register of contracts We are required to maintain under the GIPA Act.
- (b) You agree to, within 7 Business Days of receiving a written request from Us, provide Us with immediate access to the following information contained in records held by You:
- (i) information that relates directly to the performance of the Services by You;
 - (ii) information collected by You from members of the public to whom You provide, or offer to provide, the Services; and
 - (iii) information received by You from Us to enable You to provide the Services.
- (c) For the purpose of clause 19.3(b), "information" does not include:
- (i) information that discloses or would tend to disclose Your financing arrangements, financing modelling, cost structure or profit margins;
 - (ii) information that You are prohibited from disclosing to Us by provision made by or under any Act of any State or Territory, or of the Commonwealth; or
 - (iii) information that, if disclosed to Us, could reasonably be expected to place You at a substantial commercial disadvantage in relation to Us, whether at present or in the future.
- (d) You agree to provide copies of any of the information requested by Us in accordance with clause 19.3(b) at Your own cost.

19.4 Reports and information

- (a) You agree to provide Us with all reports and information at the times and in the format reasonably specified by Us from time to time during the Term, including in accordance with any reporting requirements:
- (i) stated in the Schedule and elsewhere in the Agreement; or
 - (ii) that We may otherwise notify You of from time to time during the Term.
- (b) You agree to provide reports and information in accordance with, if required by Us:
- (i) applicable policies or guidelines which We specify; and

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- (ii) relevant Accounting Standards.
 - (c) In addition to any requirements to provide reports or information to Us, You agree to provide Us with any information, records or reports in relation to the Services, the expenditure of the Funds or Your obligations under the Agreement, when requested to do so by Us.
 - (d) All reports and information provided by You to Us will be of a standard, and provided in a way, reasonably acceptable to Us.
 - (e) Unless otherwise stated in the Schedule, You agree:
 - (i) to transfer to us all Intellectual Property Rights in any reports provided by You under the Agreement; and
 - (ii) that You must not publish or provide the reports to any third parties without Our prior written consent.
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19.5 Government information sharing

Without limiting or otherwise restricting any other clause of the Agreement:

- (a) You authorise Us to make information concerning You available to other NSW Government agencies, including any information provided by You to Us and any information relating to Your performance under the Agreement;
- (b) You acknowledge that information about You from any source, including substantiated reports of unsatisfactory performance, may be taken into account by NSW Government agencies considering whether to offer You future opportunities for NSW Government work;
- (c) You agree that the communication of such information to any NSW Government agency is a communication falling within section 30 of the *Defamation Act 2005* (NSW); and
- (d) You release and indemnify Us and the State of New South Wales from and against any claim in respect of any matter arising out of such communications.

20 Insurance and indemnity

20.1 Insurance

- (a) Subject to clause 20.1(b), You agree to take out and maintain adequate insurance policies with a reputable insurer(s):
 - (i) to comply with Your legal obligations and cover Your business and operational risks in relation to the Agreement; and
 - (ii) for the Term, except for those policies providing cover on a 'claims made' basis, which You agree to maintain for the Term and a period of at least six years thereafter.
 - (b) Without affecting Your obligations under clause 20.1(a), You agree to effect and maintain any insurance stated in the Schedule on the terms stated in the Schedule.
 - (c) If We request, You agree to give Us satisfactory evidence of the insurance policies You are required to effect and maintain under the
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Agreement.

- (d) You agree to immediately notify Us of any event which affects or may affect Your compliance with this clause 20.1.
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20.2 Indemnity

- (a) You agree to indemnify, and keep indemnified, Us and Our Personnel (each an **Indemnified Person**) against any Claim that may be made or brought by any person against Us and Our Personnel arising out of or in connection with:
- (i) any unlawful, negligent, reckless or deliberately wrongful act or omission of You or Your Personnel in relation to the Agreement;
 - (ii) a breach or claimed breach by You or Your Personnel of a third party's Intellectual Property Rights or Moral Rights that relates to Your performance of the Agreement; or
 - (iii) any death, personal injury or loss of or damage to property relating to You or Your Personnel's performance of the Agreement.
- (b) Your liability to indemnify under clause 20.2(a) will be reduced proportionally to the extent that any unlawful, negligent or deliberately wrongful act or omission of an Indemnified Person caused or contributed to the Claim.
- (c) You agree to notify Us immediately if You become aware of any Claim or likely Claim, against You or Your Personnel relating to the Agreement.
- (d) We hold on trust for the Indemnified Persons the benefit of the indemnity provided by You under clause 20.2(a).

21 Acknowledgement and publicity

21.1 Acknowledgement and publicity

- (a) You agree to acknowledge the funding support You receive from Us in any publications, advertising and promotional materials in the form and manner as may be stated in the Schedule or as reasonably requested by Us from time to time.
- (b) You agree to notify Us before making any press or other announcements or releases relating to the Agreement, unless it is to promote the Services or is required to be made by law.
- (c) You agree to not use Our logo or trademarks without Our prior written approval.
- (d) You acknowledge that We or the NSW Government may publicise the awarding of the Funds at any time after they are awarded, including:
- (i) Your name;
 - (ii) the amount of the Funds provided;
 - (iii) the title and brief description of the Services; and
 - (iv) any results or outcomes arising out of the Funds.
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21.2 No restriction on advocacy activities	Nothing in the Agreement restricts the ability of You or Your Personnel from entering into public debate or advocacy activities, subject to You complying with Your obligations relating to confidentiality, privacy and Conflict of Interest.
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22 Dispute resolution

22.1 Resolving disputes	<p>(a) This clause 22.1 applies to any dispute which arises between the parties in relation to the Agreement.</p> <p>(b) Subject to clause 22.1(g), each party agrees to not commence or maintain any action or proceedings in any court, tribunal or otherwise without first complying with the process set out in clauses 22.1(c) to (f).</p> <p>(c) If a party considers that a dispute has arisen it may issue a written notice to the other party, setting out reasonable particulars of the matters in dispute (Dispute Notice).</p> <p>(d) After the issue of a Dispute Notice the nominated representatives of the parties stated in the Schedule must promptly, and not later than 5 Business Days after receipt of the Dispute Notice, hold good faith discussions with a view to trying to resolve the dispute.</p> <p>(e) If the dispute has not been resolved within 10 Business Days after receipt of the Dispute Notice (or such longer period as agreed by the parties), then the dispute must be referred to the senior representatives of the parties stated in the Schedule who must hold good faith discussions with a view to trying to resolve the dispute.</p> <p>(f) If the dispute has not been resolved within 20 Business Days after receipt of the Dispute Notice (or such longer period as agreed by the parties), either party may pursue its rights and remedies under the Agreement as it sees fit.</p> <p>(g) Nothing in this clause 22 prevents either party from instituting court proceedings to seek urgent injunctive, interlocutory or declaratory relief.</p> <p>(h) If, after complying with the process set out in clauses 22.1(c) to (f), the parties agree to refer the dispute to a form of alternative dispute resolution to seek to resolve the dispute, then each party agrees to bear its own costs in relation to that form of alternative dispute resolution and bear equally the cost of any person engaged to resolve the dispute under any such process.</p>
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22.2 Continue to perform	Notwithstanding the existence of a dispute, the parties agree to continue to perform their obligations under the Agreement, unless the nature of the dispute renders it impossible to do so.
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23 Notices and communication

23.1 Notice requirements	(a) Any notice, request, or other communication to be given or served under the Agreement must be:
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- (i) in writing;
 - (ii) signed by a duly authorised officer of the sender; and
 - (iii) delivered to the physical address or electronic mail address of the other party's representative as stated in the Schedule or as last notified by the other party.
- (b) A notice to be given or served pursuant to clause 12 or 13 must be delivered to the other party's physical address and electronic mail address.

- 23.2 Receipt of notices**
- (a) Subject to clause 23.2(b), any notice, request or other communication in relation to the Agreement will be deemed to be received:
- (i) if delivered by hand, on the date of delivery;
 - (ii) if it is sent by post within Australia, upon the expiry of 2 Business Days after the date on which it was posted or, or if it is sent by post outside Australia, upon the expiry of 7 Business Days after the date on which it was posted; and
 - (iii) if transmitted by electronic mail, at the time when the electronic mail becomes capable of being retrieved by the other party at the electronic mail address designated by the other party.
- (b) If a notice, request or other communication is delivered or received on a non-Business Day or after 5 pm in the place it is sent to, it will be deemed to have been given at 9 am on the next Business Day there.

24 General provisions

- 24.1 Governing law and jurisdiction** The Agreement is governed by the laws of New South Wales and the parties submit to the non-exclusive jurisdiction of the courts of New South Wales and any courts competent to hear appeals from those courts.

- 24.2 Entire agreement** The Agreement represents the entire agreement between You and Us in relation to the Services and the Funds and supersedes all prior representations, communications, agreements, statements and understandings, whether oral or in writing in relation to its subject matter.

- 24.3 Variations** The Agreement can only be varied by a written document executed by both You and Us.

- 24.4 Relationship of the parties and Your status**
- (a) The parties acknowledge and agree that nothing in the Agreement creates any employment, partnership, agency or joint venture relationship between the parties.
 - (b) A party does not have authority to bind the other party or incur any liability or make any representation on behalf of the other party.
 - (c) You warrant that:
 - (i) You are a legal entity capable of entering into the Agreement;

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- (ii) the execution of the Agreement and the provision of the Services complies with all laws; and
 - (iii) all authorisations, accreditations, licences, registrations and consents required to be obtained to provide the Services have been obtained and are valid and continuing and that You are not aware of any breaches of these.
- (d) If You provide any or all of the Services in the capacity of trustee, You warrant that You:
- (i) are the sole trustee of the relevant trust and have been validly appointed;
 - (ii) have full and valid power, authority, consents and approvals under the relevant trust to execute the Agreement and carry out the transactions contemplated by the Agreement; and
 - (iii) have the right to be indemnified out of the assets of the relevant trust for all liabilities incurred by You under the Agreement.
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- 24.5 Assignment and novation**
- (a) We may assign Our rights, or delegate or novate Our rights and obligations, under the Agreement to any New South Wales Government department, agency or public body created or authorised by law to administer Our functions or discharge Our role without Your consent. You agree to execute any documents We require in order to give effect to such arrangements.
 - (b) You cannot assign Your rights or claim to novate Your rights and obligations under the Agreement without Our prior written consent.
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- 24.6 Survival**
- Clauses 7, 8, 9.6, 11, 13, 15, 16, 17, 18, 19, 20, 21, 22, and 24.6 continue to apply after termination or expiry of the Agreement, along with any other clause that should by its nature survive.
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- 24.7 Severability**
- If any part of the Agreement is prohibited, void, voidable, illegal or unenforceable, it is severed from the Agreement without affecting the remaining parts of the Agreement.
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- 24.8 Waiver**
- (a) A right or remedy created by the Agreement cannot be waived except in writing signed by the party entitled to that right.
 - (b) Delay by a party in exercising a right or remedy does not constitute a waiver of that right or remedy, nor does a waiver (either wholly or in part) by a party of a right operate as a subsequent waiver of the same right or of any other right of that party.
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- 24.9 Further assurances**
- Each party agrees to promptly execute all documents and do all other things reasonably necessary or desirable to give effect to the arrangements under the Agreement.
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24.10 Costs and expenses

- (a) Each party agrees that it will bear its own legal costs and disbursements relating to the negotiation, preparation, execution and carrying into effect of the Agreement.
- (b) You agree to pay all stamp duty assessed on or in relation to the Agreement and any instrument or transaction required by or necessary to give effect to the Agreement.

24.11 Counterparts

The parties may execute the Agreement by counterparts, which together will constitute one agreement.
