Grant Funding Agreement Terms and Conditions

Version 1.1 – October 2017

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# DEFINITIONS AND INTERPRETATION

## Definitions

In the Agreement, unless the context otherwise requires:

**Activity** means the initiative or activities described in the Funding Agreement Details.

**Activity Budget** means the budget for the Activity (if any) set out in the Funding Agreement Details.

**Additional Conditions** means the conditions set out in the"Additional Conditions" section of the Funding Agreement Document.

**Additional/New Milestone** has the meaning given to it in clause 3.2(c).

**Agreement** means the agreement formed by execution of the Funding Agreement Document and constituted by the Funding Agreement Document (incorporating the Funding Agreement Details and the Additional Conditions) and these Funding Agreement Terms and Conditions.

**Associate** means any officer, employee, agent, consultant, contractor, nominee, licensee or adviser of Ours.

**Audit** means one or more of an audit, examination, investigation, inspection, review, evaluation, or a similar activity.

**Auditor** means a person who is independent of, and not related in any way to You and is a member of CPA Australia, the Institute of Public Accountants in Australia, the Institute of Chartered Accountants in Australia or the Auditor General.

**Auditor General** means the Auditor General for the State of Western Australia.

**Authorisation** means any consent, authorisation, registration, filing, agreement, notarisation, clearance, certificate, permission, licence, permit, waiver, approval, authority or exemption from, by or within a government agency required under any Law, and includes any renewal of, or variation to, any of them.

**Business Day** means a day which is not a Saturday, Sunday or public holiday in Western Australia.

**Claim** means any proceeding, action, demand or suit (including by way of a claim for contribution or an indemnity).

**Commencement Date** means the date of the Funding Agreement Document or, if the Funding Agreement Document is not dated, the date on which the last of the Parties to execute it, does so.

**Confidential Information** of a Party means that information which is nominated as confidential in the Funding Agreement Details.

**Conflict of Interest** has the meaning given in clause 12.

**Contact Officer** means the representative of a Party referred to in clause 5.

**Copyright Act** means the *Copyright Act* 1968 (Cth).

**Date for Activity Completion** means the date by which You must complete the Activity as set out in the Funding Agreement Details.

**Department** means the department from time to time responsible for the administration of the *Health Services Act* *2016* (WA).

**Event of Default** has the meaning given in clause 10.1.

**Existing Material** means a work (as defined in the Copyright Act), a product or any other material or thing capable of being the subject of Intellectual Property Rights, which satisfies all of the following criteria:

* + 1. the work, product or other material:
			1. was created prior to the Commencement Date; or
			2. is to be created during the Term outside the scope of this Agreement, including any subsequent modifications to such work, product or other material or thing;
		2. the Intellectual Property Rights in the work, product or other material or thing are not owned by the Crown in right of the State of Western Australia or by Us; and
		3. the work, product or other material or thing is required specifically for, or in connection with, the Activity, Records or this Agreement.

**Final Report** has the meaning given in the Funding Agreement Details or, if that term is not defined in the Funding Agreement Details, means the last report which You are obliged to provide to Us under this Agreement.

**Funding** means the amount specified in the Funding Agreement Details and when referring to Funding after it is paid to You, includes any interest accrued on that amount.

**Funding Agreement Details** means the "Funding Agreement Details" section of the Funding Agreement Document.

**Funding Agreement Document** means the document of that name executed by the Parties.

**Funding Agreement Terms and Conditions** means these conditions.

**Insolvency Event** means the happening of any of these events:

1. an order is made, or an application is made to a court for an order, that a body corporate be wound up; or
2. except to reconstruct or amalgamate while solvent, a body corporate:
	1. is wound up or dissolved; or
	2. resolves to wind itself up or otherwise dissolve itself, or gives notice of intention to do so; or
	3. enters into, or resolves to enter into, any form of formal or informal arrangement for the benefit of all or any class of its creditors, including a scheme of arrangement, deed of company arrangement, compromise or composition with, or assignment for the benefit of, all or any class of its creditors; or
3. a liquidator or provisional liquidator is appointed (whether or not under an order), or an application is made to a court for an order, or a meeting is convened or a resolution is passed, to make such an appointment, in respect of a body corporate; or
4. a receiver, manager, receiver and manager, trustee, administrator, controller (as defined in section 9 of the *Corporations Act 2001* (Cth)) or similar officer is appointed, or an application is made to a court for an order, or a meeting is convened, or a resolution is passed, to make such an appointment, in respect of a body corporate; or
5. any step is taken to enforce security over, or a distress, attachment, execution or other similar process is levied, enforced or served out against, any asset or undertaking of a body corporate; or
6. the process of any court or authority is invoked against a body corporate, or any asset or undertaking of a body corporate, to enforce any judgment or order for the payment or money or the recovery of any property; or

### a body corporate:

#### takes any step to obtain protection, or is granted protection, from its creditors under any applicable legislation; or

#### stops or suspends payment of all, or a class of, its debts; or

#### is, or is taken by any applicable legislation to be, or states that it is, or makes a statement from which it may be reasonably deduced that it is:

##### insolvent or unable to pay its debts when they fall due; or

##### the subject of an event described in section 459C(2)(b) or section 585 of the *Corporations Act* 2001 (Cth); or

#### is taken to have failed to comply with a statutory demand as a result of the operation of section 459F(1) of the *Corporations Act* 2001 (Cth); or

#### ceases, or threatens to cease, to carry on all or a material part of its business; or

1. a person becomes an insolvent under administration as defined in section 9 of the *Corporations Act* 2001 (Cth) or action is taken that could result in that event; or
2. anything analogous or having a similar effect to any of the events specified above happens under the law of any applicable jurisdiction.

**Intellectual Property** **Rights** means:

### patents, copyright, rights in circuit layouts, registered designs, trademarks and the right to have confidential information (being information which is capable of being protected by way of an action for breach of confidence) kept confidential; and

### any application or right to apply for registration of any of those rights,

but does not include Moral Rights.

**Law** means all applicable present and future laws including:

### all acts, ordinances, regulations, by-laws, orders, awards and proclamations of the State of Western Australia or the Commonwealth of Australia;

### Authorisations;

### principles of law or equity; and

### the ASX listing rules.

**Liability** means any debt, obligation, cost (including legal costs), expense, Loss, damage, compensation, charge or liability of any kind (whether arising in negligence or otherwise), including those that are prospective or contingent and those the amount of which is not ascertained or ascertainable.

**Loss** includes any loss, cost, expense, damage or liability whether direct, indirect or consequential (including pure economic loss), present or future, ascertained, unascertained, actual, prospective or contingent or any fine or penalty.

**Material** means Existing Material and New Material.

**Milestone** means each milestone set out in the Funding Agreement Details and includes the Date for Activity Completion.

**Milestone Date** means, for a Milestone, the date for achievement of that Milestone set out in the Funding Agreement Details.

**Moral Rights** has the same meaning as in the Copyright Act.

**New Material** means anything created by You under this Agreement in which Intellectual Property Rights subsist.

**Notification** means a notice by Us given in accordance with this Agreement that in Our opinion You have properly complied with and fulfilled all of Your Obligations, including that the Final Report provided by You in accordance with the Funding Agreement Details is satisfactory.

**Obligation** means an obligation in or under the Agreement.

**Party** means Us or You as the context requires, and **Parties** means both of us.

**Personal Health Information** means all health information of or relating to an individual where:

* + - 1. the identity of the individual is apparent or can reasonably be ascertained from the information itself; or
			2. it is reasonably possible for the recipient of the information to identify the individual by using other information that the recipient already holds.

**Records** means records and information of any kind, including originals and copies of all accounts, financial statements, books, files, reports, records, correspondence, documents and other materials created for, or relating to, or used in connection with, the carrying out of the Activity, whether or not containing confidential information, and however such records and information are held, stored or recorded.

**Senior Staff Member** means a staff member of Yours who performs or holds any executive role including the role of chief executive officer, chief financial officer or an equivalent or similar role.

**State Pre-Existing Intellectual Property** means the Intellectual Property Rights or materials (if any) described as such in Additional Conditions.

**Subcontract** has the meaning given in clause 9.

**Term** means the period commencing on the Commencement Date and ending on the date on which We give You a Notification.

**We** means the State of Western Australia and any other entity described as "We" on page 3 of the Funding Agreement Document and **Us** and **Our** have corresponding meanings.

**You** means the person described on page 3 of the Funding Agreement Document and **You** and **Your** have corresponding meanings.

## Interpretation

In the Agreement unless the context otherwise requires:

### words importing the singular include the plural and vice versa;

### words importing any gender include the other genders;

### references to a person include an individual, the estate of an individual and any type of entity or body of persons, including a corporation, an incorporated or unincorporated association or parties in a joint venture, a partnership or a trust and the legal personal representatives, successors and assigns of that person;

### a reference to a statute, ordinance, code, or other law includes regulations, by-laws, rules and other statutory instruments under it for the time being in force and consolidations, amendments, re-enactments, or replacements of any of them (whether of the same or any other legislative authority having jurisdiction);

### references to the Agreement or any other instrument include the Agreement or other instrument as varied or replaced, and notwithstanding any change in the identity of the Parties;

### references to writing include any mode of representing or reproducing words in tangible and permanently visible form, and include e-mail and facsimile transmission;

### an Obligation incurred in favour of two or more persons is enforceable by them jointly and severally;

### if a word or a phrase is defined, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;

### references to the Agreement include its recitals, schedules and annexures;

### headings are inserted for ease of reference only and are to be ignored in construing the Agreement;

### references to time are local time in Perth, Western Australia;

### where time is to be reckoned from a day or event, that day or the day of that event is to be included;

### references to currency are to Australian currency unless otherwise stated;

### no rule of construction applies to the disadvantage of a Party on the basis that the Party put forward the Agreement or any part thereof;

### a reference to any thing is a reference to the whole and each part of it, and a reference to a group of persons is a reference to all of them collectively, to any two or more of them collectively and to each of them individually;

### when the day or last day for doing an act is not a Business Day, then the day or last day for doing the act will be the directly preceding Business Day;

### if the word “including” or “includes” is used, the words, “without limitation” are taken to immediately follow;

### the expression "without limiting Our rights under the Agreement" and similar expressions are to be read as if the words "or at law or in equity" immediately followed them; and

### the phrases "described in", "set out" and "specified in" are all to be read as if the words "expressly or impliedly" appeared immediately before them.

## Your organisation

### If You are a partnership, joint venture or consortium of 2 or more persons:

#### all persons comprising that arrangement are jointly and severally liable for the full performance of Your Obligations;

#### each person who comprises You is deemed to agree to do all things necessary to enable Your Obligations to be undertaken;

#### the act of one person who comprises You binds the other persons who comprise You; and

#### an Event of Default by one person who comprises You constitutes an Event of Default by You.

### If You are or comprise a partnership, the Agreement will not terminate automatically on the death, retirement or resignation of one or more members of that partnership.

## Your obligations

A reference in the Agreement to You doing or not doing any thing includes a reference to You ensuring that Your employees, contractors, sub-contractors and agents do or do not do that thing (as the case may be).

# FUNDING

### On and subject to the terms of the Agreement, We agree to pay to You the Funding in the manner set out in the Funding Agreement Details.

### You must use the Funding to carry out the Activity and for no other purpose.

### If the Funding is insufficient for You to properly fulfil all of Your Obligations, then You must still fulfil Your Obligations at Your own cost.

### You acknowledge and agree that:

#### the Funding is the entirety of funding which We are prepared to provide for the Activity; and

#### We are under no obligation to, and have given You no undertaking or assurance that We will, provide any further Funding to You.

# YOUR OBLIGATIONS

## Expenditure

### You must undertake expenditure for the Activity in accordance with any Activity Budget and otherwise in a commercially prudent and reasonable manner.

### Unless We otherwise agree, You must keep all Funding paid to You in an account which You control in Your name with an authorised deposit-taking institution within the meaning of the *Banking Act* 1959 (Cth), until expended in accordance with the Agreement.

## Progress of Activity

### You must carry out the Activity in accordance with this Agreement.

### In carrying out the Activity, You must achieve all Milestones by their corresponding Milestone Dates, including completing the Activity by the Date for Activity Completion.

### Without limiting Our rights under the Agreement, if You fail to achieve a Milestone by its corresponding Milestone Date, the following will apply:

#### We may at any time impose additional milestones in relation to any aspect of the Activity or replace any Milestones with new milestones (Additional/New Milestone), in each case specifying a new Milestone Date for each Additional/New Milestone;

#### in carrying out the Activity, You must achieve each Additional/New Milestone by its corresponding Milestone Date; and

#### if You fail to achieve an Additional/New Milestone by its corresponding Milestone Date, We have the same rights as set out in this clause 3.2 to at any time impose new or replacement milestones.

## No Changes

You must not make any changes to the Activity or any agreed budget (including any Activity Budget) without Our prior consent.

## No Endorsement

You agree that nothing in the Agreement constitutes an endorsement by Us of any goods or services provided by You.

## Authorisations

You:

### must obtain and maintain all Authorisations required in relation to the Activity; and

### acknowledge and agree that We are not responsible for obtaining or maintaining any Authorisations required in relation to the Activity.

## Access to Land

You must maintain such tenure of land required for or relevant to the Activity as is necessary to enable You to comply with Your Obligations. If the Activity is being undertaken on land that is not owned, leased or managed by You, You must obtain and have in place during the Term the written consent of the person who owns or is leasing that land to carry out the Activity on that land.

## Your General Undertakings

You must:

### at all times duly perform and observe Your Obligations and promptly inform Us of any occurrence that might adversely affect Your ability to do so in a material way;

### undertake Your Obligations with integrity, good faith and probity in accordance with good corporate governance practices;

### comply with all Law;

### cooperate fully with Us in the administration of the Agreement;

### carry out all aspects of the Activity and fulfil Your Obligations in a competent, diligent, satisfactory and professional manner, and to a high standard;

### provide funding and other resources, including human resources, adequate to properly discharge Your Obligations;

### liaise as appropriate with stakeholders in the Activity to ensure strong stakeholder ownership of and involvement in the Activity where required; and

### use best endeavours to obtain additional financial investment in the Activity where necessary.

## Negation of Employment, Partnership and Agency

### The reference to "partner" in clauses 3.8(b) and 3.8(c) is to a "partner" within the legal meaning of that term.

### You must not represent Yourself, and must ensure that Your employees, contractors, sub-contractors or agents do not represent themselves, as being an employee, partner or agent of Ours or as otherwise able to bind or represent Us.

### You will not, by virtue of the Agreement, be or for any purpose be deemed to be, an employee, partner, or agent of Ours, or have any power or authority to bind or represent Us.

## Notification

### We intend to provide You with the Notification once We consider that You have properly complied with and fulfilled all of Your Obligations including that the Final Report provided by You in accordance with the Funding Agreement Details is satisfactory.

### You acknowledge and agree that receipt of the Notification does not in any way preclude, or operate as a waiver of, the exercise or enforcement of any right power or remedy of Ours under the Agreement or under any Law in relation to any Obligation of Yours which We subsequently discover has not been properly complied with by You.

# ASSETS AND EQUIPMENT

## Purchase of assets and equipment

### Funding must only be used for the capital cost of any physical item such as plant or equipment.

### Applicants must ensure that recurrent costs have been planned for and approved to be funded by the asset owner.

# RECORDS, REPORTING AND AUDIT

## Records and reporting

### You must:

#### provide Us with information or documentation (relating in any way to the Activity or the Agreement) requested by Us;

#### keep and maintain accurate, complete, up-to-date and properly detailed written records of income, expenditure, activities and progress in relation to the Agreement and the Activity;

#### ensure that all such information or documentation (as the case may be) is accurate, complete, up-to-date, properly detailed and not in any way misleading or deceptive;

#### provide Us within 5 Business Days of any request with written evidence (to Our satisfaction) that You are solvent and financially viable and secure and have the expertise and operational capability and capacity to carry out the Activity;

#### keep copies of all written Records for 7 years after receipt of the Notification by You; and

#### establish a separate account or cost centre within Your financial system solely for the Funding.

### You must provide Us with quarterly, annual or other progress reports containing the information and within the timeframes set out in the Funding Agreement Details.

### You must provide Us with a Final Report within 3 months after receipt by You of any written request from Us to do so or of any earlier termination of the Agreement.

## Audit

### At any time until 2 years after receipt of the Notification by You or 2 years after any earlier termination of the Agreement, We may arrange for an Audit to be carried out in respect of either or both of the Activity and the Agreement by Us, an Auditor or any other person that We wish to carry out the Audit. If We arrange for an Audit:

#### We must notify You that We have arranged or will arrange for an Audit to be carried out; and

#### You must allow all persons appointed by Us to carry out the Audit to have full access to the records and premises in Your control or possession for the purpose of carrying out the Audit.

# CONTACT OFFICERS

### The Parties agree to appoint Contact Officers. The Contact Officer for each Party is authorised to act for that Party in relation to the Agreement and is the first point of contact for the other Party in relation to any disputes arising under the Agreement.

### The details of each Party's Contact Officer are set out in the Funding Agreement Details.

### If a Party changes its Contact Officer that Party will notify the other Party in writing of the new contact details within 5 Business Days after the change.

### If You are a partnership, joint venture or consortium of 2 or more persons, Your Contact Officer has authority to bind the partnership, joint venture or consortium and each of its members.

# REPAYMENT AND RETENTION OF THE FUNDING

### Within 20 Business Days after receipt of the Notification by You or 20 Business Days after any earlier termination of the Agreement You must repay to Us any Funding that We have paid and that has not been used or committed in accordance with the Agreement.

### If You spend any amount of the Funding other than in accordance with this Agreement, You must repay the amount of Funding which We (acting reasonably) believe has not been spent in accordance with the Agreement, to Us as We direct You.

# CLAIMS, LIABILITY AND INDEMNITY

## Claims

### You must:

#### notify Us of any actual, pending or threatened Claim against You as soon as practicable after You first become aware of that Claim;

#### notify Us immediately if You are in breach of any Law, receive an audit qualification, or breach, fail to obtain or are under scrutiny through an inquiry or decree in respect to (as applicable) any Authorisation or agreement, order or award binding on You or which You require in order to carry out one or both of the Activity or Your business; and

#### notify Us immediately if You become aware of any fraud or corruption in relation to the Activity, the Funding or the Agreement.

## Liability

### We are not responsible or liable in any way for the success or otherwise of the Activity or for any losses suffered by You in carrying out the Activity. You release Us from all Liability in relation to one or more of the Activity, the Agreement and any related matter and agree that You will not make a Claim against Us or any of the Associates arising directly or indirectly in relation to one or more of the Activity, the Agreement and any related matter. This clause 7 may be pleaded by Us or an Associate as a bar to any proceedings commenced by You against Us or an Associate in relation to one or more of the Activity, the Agreement and any related matter.

## Indemnity

### You agree to indemnify Us from and against all Claims or Liability incurred by or brought against Us or any of Our officers, employees and agents caused by, arising out of or relating directly or indirectly to any:

#### Event of Default; or

#### wilful act or omission of You or Your employees, contractors, officers or agents; or

#### breach of a Law by You or any of Your employees, contractors, officers or agents.

#### Your liability under this clause will be reduced proportionally to the extent that any Claims or Liabilities result from Our negligence or that of Our officers, employees or agents.

# *FREEDOM OF INFORMATION ACT 1992* (WA), *FINANCIAL MANAGEMENT ACT 2006* (WA) AND *AUDITOR GENERAL ACT 2006* (WA)

### The Agreement and information regarding it is subject to the *Freedom of Information Act* 1992 (WA). We may publicly disclose information in relation to the Agreement, including its terms and Your details.

### Despite any express or implied provision of the Agreement to the contrary, nothing in the Agreement in any way alters, limits or affects the operation of the *Auditor General Act* 2006 (WA)*,* the *Financial Management Act* 2006 (WA)or Your obligations (if any) in relation to these Acts. To the extent required by law, You must allow the Auditor General, or an authorised representative, to have access to and Audit Your records and information concerning the Agreement and the Activity.

# SUBCONTRACTING

### You may only subcontract all or part of the Activity with Our prior consent.

### You agree that You are:

#### responsible for the delivery and carrying out of the Activity, notwithstanding that any part of the Activity is subcontracted; and

#### accountable to Us for any acts or omissions of any subcontractor in carrying out all or part of the Activity as though they were Your own acts or omissions.

### You agree that You will, if requested by Us, supply to Us a copy of any Subcontract, which copy may exclude commercially sensitive information.

### You must include in any Subcontract provisions consistent with clauses 4, 12, 16 and 17 and whichever of clauses 14 and 15 applies, as if a reference in them to You were a reference to the subcontractor.

# DEFAULT AND TERMINATION

## Event of Default by You

An Event of Default occurs if:

### You breach any of Your Obligations and that breach (if remediable) continues without remedy for 5 Business Days (or such longer period We specify) after We have given You notice of the breach and required You to remedy it; or

### You breach any of Your Obligations and that breach cannot be remedied; or

### You fail to achieve a Milestone by its corresponding Milestone Date or You have failed, or in Our reasonable opinion, are likely to fail, to deliver the Activity in accordance with the Agreement; or

### You are or become subject to an Insolvency Event; or

### You repudiate the Agreement; or

### a material warranty given by or representation made by You is or becomes untrue; or

### any of You or Your officer, employee, subcontractor or agent has breached, or is suspected to have breached, any Law relevant to the Activity or Your operations; or

### in Our reasonable opinion, Our reputation or that of the Government of Western Australia is, or is likely to be, damaged by Your act or omission; or

### You fail to notify Us of a Conflict of Interest, or are unable or unwilling to resolve or deal with a Conflict of Interest as required by Us, under clause 12.

## Effect of Event of Default

### If an Event of Default occurs, We may in addition to Our other rights under the Agreement and at Law do any one or more of the following by giving You notice:

### terminate the Agreement, in which case the Agreement will be terminated from the date specified in Our notice; or

### suspend the performance of Our Obligations until such time as We are satisfied in Our absolute discretion that the Event of Default has been remedied, in which case Our obligations will be suspended from the date specified in the notice.

## No further Funding and recovery of Funding

If the Agreement is terminated under clause 10.2, or terminated unlawfully by You, then in addition to Our other rights under the Agreement and at Law:

### We have no further obligation to pay You any part of the Funding which has not yet been paid to You; and

### You must repay to Us within 15 Business Days from the termination date specified by Us all Funding paid to You under the Agreement that has not been spent or committed for expenditure by the termination date specified by Us.

## Termination – change in policy

* + 1. If there is a change in Our policy or State Government policy which impacts on the Agreement, We may terminate the Agreement by giving You notice. If We do so, You must:
			1. comply with any instructions given in Our notice in relation to the Activity or Your Obligations; and
			2. take all reasonable measures to minimise Your Loss resulting from Our notice.
		2. If We terminate the Agreement under clause 10.4(a), We will pay You, subject to clause 10.4(c):
			1. any amount of the Funding which was already due and payable to You at the date of Our notice; and
			2. to the extent they are not covered by any Funding amount We pay to you under clause 10.4(b)(i), an amount equal to Your reasonable expenses which are directly related to the termination of the Agreement and which You have incurred despite Your compliance with clause 10.4(a)(ii),

up to a maximum of the total amount of Funding.

* + 1. We will not pay You:
			1. any amount under clause 10.4(b) if an Event of Default subsists; or
			2. any other amounts, including any amounts in relation to compensation for loss of profits or loss of opportunity.

## Transition of Activity

On expiry or termination of the Agreement for any reason or if You cease to carry out the Activity, You will, on request by Us:

### give to Us or to another person as We direct any Records held by You or any subcontractor engaged by You; and

### return to Us any material of Ours which We gave to You or any material which contains State Pre-Existing Intellectual Property.

# NOTICES

## Notices

Any notice or other communication that may or must be given under the Agreement:

### must be in writing;

### must be given by the Contact Officer of the Party giving notice or by another authorised officer of that Party (who must be a Senior Staff Member) if the Contact Officer is unable to give a notice or communication in a particular instance;

### subject to clause 11.2, must be:

#### hand-delivered or sent by prepaid post to the address of the Party receiving that notice or other communication set out in the Funding Agreement Details;

#### transmitted by electronic mail to the email address of the Party receiving the notice or other communication set out in the Funding Agreement Details or to another email address as notified in writing by the relevant Party; or

#### where the Agreement provides that You must notify Us of, or provide Us with, any occurrence or thing, hand-delivered or sent by prepaid post to Our address or facsimile number set out in the Funding Agreement Details;

### subject to paragraph (e), is taken to be received:

#### in the case of hand delivery, on the date of delivery;

#### in the case of post, on the seventh Business Day after posting; and

#### in the case of email, on the date the email is sent if the Party giving the notice has a confirmation report or any other written evidence that the email has reached the recipient's mailbox; and

### if received after 5.00 pm or on a day other than a Business Day, is taken to be received on the next Business Day.

## Confidential Information in notices

You must ensure that a notice containing Confidential Information or Personal Health Information is not sent by e-mail unless that e-mail is encrypted.

# CONFLICT OF INTEREST

### In this clause 12, "Conflict of Interest" means an actual, potential or perceived conflict of interest arising for or in connection with You, a Senior Staff Member or Your personnel in connection with the Activity or with anything You are required to do under this Agreement.

### You warrant that, to the best of Your knowledge and belief after making diligent inquiry:

#### You have no Conflict of Interest; and

#### no Conflict of Interest is likely to arise during the Term.

### You must take all reasonable steps to ensure that no Conflict of Interest arises or subsists during the Term.

### If during the Term You become aware of a Conflict of Interest or any matter that gives rise to a Conflict of Interest, You must:

#### immediately give notice to Us of the Conflict of Interest, providing details and all relevant information as to the Conflict of Interest and of the steps You propose to take to resolve or manage it; and

#### take such steps as We may reasonably require You to take to resolve or manage the Conflict of Interest.

# ASSIGNMENT

### You must not, nor attempt to, assign, sell, transfer, novate, encumber or otherwise dispose of or deal with any of:

#### the Funding; or

#### Your rights under the Agreement or Your Obligations; or

#### any asset purchased with the Funding at a cost of more than $6,000; or

#### any Intellectual Property Rights in New Material,

#### without Our prior consent. We may at any time assign or transfer Our rights under the Agreement and Our Obligations as We see fit.

### For the purposes of this clause 13, You will be deemed to have assigned Your rights under the Agreement or Your Obligations if:

#### any act, matter or thing is done or occurs, the effect of which is, in Our opinion, to transfer, directly or indirectly, the management or control of You to another person; or

#### there is a change of control of You within the meaning of the *Corporations Act* 2001 (Cth).

### You must provide Us with evidence of Your legal status if requested by Us and will give notice to Us within 5 Business Days of any changes to Your legal status coming into effect. For the purposes of this clause 13(c), legal status includes the matter of who has the management or control of You.

# WE OWN ACTIVITY INTELLECTUAL PROPERTY

##  Application of clause

This clause applies unless the Funding Agreement Details provide that clause 15 applies.

## Intellectual Property Rights owned by Us

### The Intellectual Property Rights in New Material will be owned by Us. You automatically assign the entire future Intellectual Property Rights in all New Material to Us upon their creation.

## Existing Material

* + 1. Nothing in clause 14.2 affects the ownership of any Intellectual Property Rights in any Existing Material.
		2. Unless the Funding Agreement Details provide that this clause 14.3 does not apply, You:

#### grant, and You must ensure that any other owner of any Intellectual Property Rights in any Existing Material grants, to Us in writing, an irrevocable, perpetual, royalty-free, non-exclusive licence to exercise any or all of the rights of an owner of Intellectual Property Rights in the Existing Material during the remainder of the duration of the Intellectual Property Rights in that Existing Material; and

#### must, if a third party owns Moral Rights in any Existing Material, obtain a written consent and waiver from the third party owner in relation to his or her Moral Rights to enable Us to use the Existing Material without regard to the third party’s Moral Rights.

### At Our request, You will provide Us with copies of any Records which contain New Material.

### You warrant that:

#### You have the right to grant the licences granted under clause 14.3(b)(i);

#### no Intellectual Property Rights, or Moral Rights in any Material, is or will be owned by any third party unless:

##### if a third party owns any Intellectual Property Rights in the Material, You have obtained a written licence from the third party owner to the same effect as the licence referred to in clause 14.3(b)(i); and

##### if a third party owns Moral Rights in the Material, You have obtained a written consent and waiver from the third party owner in relation to his or her Moral Rights to enable Us or third parties to use the Material without regard to the third party's Moral Rights;

#### the Material will not infringe the Intellectual Property Rights or Moral Rights of any third party; and

#### all Your personnel:

##### who are employed or engaged solely for the purposes of the Activity are employed or engaged under written agreements under which all Intellectual Property Rights in any New Material vest in Us on the creation of that New Material; and

##### who are not employed or engaged solely for the purposes of the Activity are employed or engaged under written agreements under which all Intellectual Property Rights in any work (as defined in the Copyright Act), product or other material or thing created by the personnel vest in You on the creation of that work, product or other material or thing.

## Indemnity

You indemnify and will keep indemnified Us and all Our respective officers, employees and agents from and against all costs, losses, expenses, actions, suits, demands, claims, damages and other liabilities resulting from Your failure to comply with this clause 14, including any breach of warranty under clause 14.3, or otherwise resulting from the actual or alleged infringement of the Intellectual Property Rights or the Moral Rights of any third party by You.

## Management of New Material

### You will properly manage the New Material and Intellectual Property Rights in it to allow Us to enjoy the full benefit of it in accordance with the rights granted to us under or pursuant to this clause 14, which may include, subject to clause 14.5(b), You taking any necessary action to register and protect the Intellectual Property Rights in New Material.

### Where You are likely to incur substantial costs in relation to action required to be taken under clause 14.5(a), We will discuss the matter with You with a view to each Party bearing in relation to the required action a proportion of the cost which reflects the benefit which that Party can be expected to derive from the required action.

### You must not without Our prior consent accept funding from another source or assistance from a third party, or otherwise involve any person in the carrying out of the Activity, on terms that would detract from or otherwise limit any rights granted to Us under or pursuant to this clause 14.

## Licence granted by Us

Unless the Funding Agreement Details provide that this clause 14.6 does not apply, We grant to You an irrevocable, perpetual, royalty-free, non-exclusive and non-transferable licence to use Intellectual Property Rights in New Material for and in relation to the Activity during the Term.

# YOU OWN ACTIVITY INTELLECTUAL PROPERTY

## Application of clause

This clause applies if the Funding Agreement Details provide that it does.

## Ownership of Intellectual Property Rights in New Material

We acknowledge that the entire future Intellectual Property Rights in all New Material are to be owned by You upon their creation.

## Licence of Intellectual Property Rights in New Material

You:

### grant to Us an irrevocable, perpetual, royalty-free, non-exclusive licence to exercise any or all of the rights of an owner of Intellectual Property Rights in the New Material during the remainder of the duration of the Intellectual Property Rights in that New Material; and

### must, if a third party owns Moral Rights in any New Material, obtain a written consent and waiver from the third party owner in relation to his or her Moral Rights to enable Us to use the New Material without regard to the third party’s Moral Rights.

## Existing Material - Licence

### Nothing in clause 15.3 affects the ownership of any Intellectual Property Rights in any Existing Material.

### Unless the Funding Agreement Details provide that this clause 15.4(b) does not apply, You:

#### grant, and must ensure that any other owner of any Intellectual Property Rights in any Existing Material grants, to Us in writing, an irrevocable, perpetual, royalty-free, non-exclusive licence to exercise any or all of the rights of an owner of Intellectual Property Rights in the Existing Material during the remainder of the duration of the Intellectual Property Rights in that Existing Material; and

#### must, if a third party owns Moral Rights in any Existing Material, obtain a written consent and waiver from the third party owner in relation to his or her Moral Rights to enable Us to use the Existing Material without regard to the third party’s Moral Rights.

## Warranty

You warrant that:

### You have the right to grant the licences granted under clause 15.4(b)(i);

### no Intellectual Property Rights or Moral Rights in any Material are or will be owned by any third party unless:

#### if a third party owns any Intellectual Property Rights in the Material, You have obtained a written licence from the third party owner to the same effect as the licence referred to in clause 15.4(b)(i); and

#### if a third party owns Moral Rights in the Material, You have obtained a written consent and waiver from the third party owner in relation to his or her Moral Rights to enable Us to use the Material without regard to the third party’s Moral Rights; and

### the Material will not infringe the Intellectual Property Rights of any third party.

## Intellectual Property Rights Indemnity

You indemnify and will keep indemnified Us and all Our respective officers, employees and agents from and against all costs, losses, expenses, actions, suits, demands, claims, damages and other liabilities resulting from Your failure to comply with this clause 15, including any breach of warranty under clause 15.5, or otherwise resulting from the actual or alleged infringement of the Intellectual Property Rights or the Moral Rights of any third party by You.

## Management of New Material

### You will properly manage the New Material and Intellectual Property Rights in it to allow Us to enjoy the full benefit of it in accordance with the rights granted to Us under or pursuant to this clause 15, which may include, subject to clause 15.7(b), You taking any necessary action to register and protect the Intellectual Property Rights in New Material.

### Where You are likely to incur substantial costs in relation to action required to be taken under clause 15.7(a), We will discuss the matter with You with a view to each Party bearing in relation to the required action a proportion of the cost which reflects the benefit which that Party can be expected to derive from the required action.

### You must not without Our prior consent accept funding from another source or assistance from a third party, or otherwise involve any person in the carrying out of the Activity, on terms that would detract from or otherwise limit any rights granted to Us under or pursuant to this clause 15.

# INSURANCE

### You must take out and maintain insurance in relation to all Your insurable liabilities as specified in the Funding Agreement Details. The insurance must be on the terms, for the period of time and for the amounts specified in the Funding Agreement Details.

### Any policy of insurance which You take out pursuant to clause 16(a) must be taken out with a reputable and solvent insurer acceptable to Us which carries on insurance business in Australia and is authorised in Australia to operate as an insurance company.

### You must:

#### punctually pay all premiums and amounts necessary for effecting and keeping current the insurance required under clause 16(a);

#### not vary or cancel any insurance required under clause 16(a) or allow it to lapse during the Term or otherwise do or allow to be done anything which may vitiate, invalidate, prejudice or render ineffective the insurance or entitle the insurer to refuse a claim; and

#### without limiting clause 16(c)(ii), promptly reinstate any insurance required under clause 16(a) if it lapses or if cover is exhausted.

### You must give to Us sufficient evidence of the insurances required under clause 16(a) (including, if requested, a copy of any policy) and provide a certificate of currency of insurance as requested by Us.

### You must maintain the insurance required under clause 16(a) for the period specified in the Funding Agreement Details. If no period is specified in the Funding Agreement Details, then:

#### the insurances (except for professional indemnity insurance) required under clause 16(a) are to be maintained throughout the Term; and

#### professional indemnity insurance required under clause 16(a) is to be maintained throughout the Term and for a period of 6 years after the expiration or termination of the Agreement.

# MEDIA AND PUBLICITY

### The Parties must coordinate joint communications when dealing with the media and stakeholders in the Activity in relation to the Activity on issues of significance or mutual concern, including circulating draft media statements, advertising proposals and advertisements between the Parties for comment prior to publication.

### You must liaise with Us prior to releasing, and gain Our written approval prior to the release of, any media statement, advertising proposal or advertisement by You in relation to the Activity.

# OUR CONSENT AND DISCRETION

### Where You are required to obtain Our consent or approval under the Agreement, You must:

#### request Our consent or approval in writing a reasonable time before the date on which the consent or approval is required by You; and

#### provide any information or documentation required or requested by Us.

### When You request Our consent or approval, We may:

#### withhold Our consent or approval at Our absolute discretion; or

#### provide Our consent or approval outright, or subject to any terms or conditions We consider appropriate.

### Our consent or approval will not take effect unless provided in writing.

### You must comply with the terms and conditions of any consent or approval given by Us.

### Where we are required or entitled under or in connection with the Agreement to accept or assess evidence, be satisfied as to a matter, form a belief as to any matter or to or otherwise make any decision, We may exercise Our absolute discretion in doing any of these things.

# RELATIONSHIP AND REPRESENTATIONS AND WARRANTIES

### The Parties agree and acknowledge that:

#### nothing in the Agreement creates any joint venture, partnership, employment or agency relationship between them; and

#### neither Party has authority to incur any liability or make any representation on behalf of the other.

### You represent and warrant to Us that:

#### You are a legal entity validly constituted and capable of entering into the Agreement and, if You are incorporated, that You comply with all Laws under which You are incorporated; and

#### You do not enter into the Agreement in the capacity of a trustee of any trust, unless We have agreed to you doing so.

# GOODS AND SERVICES TAX (GST)

### For the purposes of this clause 20 and the remainder of the Agreement:

#### “GST Act” means *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and includes all associated legislation and regulations; and

#### the terms “GST”, “recipient-created tax invoice”, “registered”, “supply”, “tax invoice”, and “taxable supply” have the same meanings as in the GST Act.

### If GST is or becomes payable by a Party (Supplier) in relation to any supply that it makes under, in connection with, or resulting from, the Agreement, then (unless the consideration for that supply is expressly stated to include GST) in addition to any consideration provided by a Party (Supplied Party) for that supply, the Supplied Party must pay to the Supplier the amount of any GST for which the Supplier is liable in relation to that supply (Additional Amount) at the same time as the relevant consideration or any part of it is provided. This obligation is conditional upon the prior issue by the Supplier to the Supplied Party of a tax invoice and where the Supplier has not issued the Supplied Party with a tax invoice by the time the consideration is paid, the Supplied Party is only required to pay to the Supplier the amount of GST for which the Supplier is liable in relation to that supply within 10 Business Days of receipt of a Tax Invoice.

### If the Funding is consideration for the supply of anything under the Agreement which is a taxable supply under the GST Act, the Funding is exclusive of GST.

### We may raise a recipient-created tax invoice (RCTI) for the Funding amount identified in the Funding Agreement Details through Our internal processes. The terms of the RCTI are governed by the following:

#### You warrant that You have an Australian Business Number and are registered for GST;

#### You will immediately notify Us in writing of any change to Your registration;

#### if any supply is made by You after the date of the Agreement in connection with the Funding, We may issue a RCTI in respect of the supply and if We do so, then You will not issue a tax invoice in respect of that supply notwithstanding this clause 20 of the Agreement;

#### the Parties may agree that the provisions of the agreement to use recipient-created tax invoices will not apply in respect of a particular supply, in which case You will issue a tax invoice in respect of that supply;

#### either Party may terminate agreement to use RCTIs at any time by giving notice to the other Party; and

#### We will indemnify You and keep You indemnified for any liability for GST and any related penalty or interest charge that may arise from a statement of GST payable on the supply for which We issue a recipient-created tax invoice under the Agreement.

# CONFIDENTIAL INFORMATION

## Confidential Information

You and We agree to treat each other's Confidential Information as confidential and to not disclose it to any third party without the other Party's prior written consent, except:

### where necessary for the purposes of complying with an Obligation; or

### to the extent that the Confidential Information is public knowledge (other than because of a breach of this clause by the Party); or

### as required by any law, judicial or parliamentary body or governmental agency; or

### in Our case, in order to comply with Parliamentary, Ministerial, financial or other Governmental requirements or conventions as to accountability or disclosure; or

### where required (and only to the extent required) to the Party's professional advisers, and the Party must ensure that such professional advisers are bound by the confidentiality obligations imposed on the Party under this clause 21.

## Personal Health Information

You agree to treat Personal Health Information as Confidential Information for the purposes of clause 21.1.

# STATE

### The Department acts for and on behalf of the State of Western Australia and may at any time perform any of Our Obligations and exercise Our rights and powers in and under the Agreement, including taking any actions, making any requests and giving or withholding any consents or approvals which We have the right or obligation to take, make, give or withhold under the Agreement or at Law.

### You agree to treat any notices or other communications (including any requests) from the Department as being from and on behalf of Us.

### Where You have any Obligation to remit or pay monies to Us, You must make payment to Us in the manner requested by Us, including making payment into a bank account nominated by Us if so requested, which may be a bank account held in Our name.

# WAIVER

### No right of a Party under the Agreement will be deemed to be waived except in writing signed by that Party.

### A waiver by either Party will not prejudice that Party’s rights in relation to any further breach of the Agreement by the other Party.

### Any failure to enforce any part of the Agreement, or any forbearance, delay or indulgence granted by one Party to the other Party, will not be construed as a waiver of any rights under the Agreement or under any Law.

# SURVIVAL OF TERMS

Without limiting the extent to which any term of the Agreement continues in operation after the end of the Term, clauses 4, 5, 6, 7.2, 7.3, 8, 10.3, 10.4, 10.5, 11.2, 14, 15, 16 and 21 continue in operation after the end of the Term.

# ENTIRE AGREEMENT

The Agreement constitutes the entire, full and complete understanding and agreement between the Parties in relation to its subject matter and supersedes all prior communications, negotiations, arrangements and agreements between the Parties with respect to the subject matter of this Agreement.

# VARIATION

Any modification, amendment or other variation to the Agreement must be made in writing, and must, unless We notify You otherwise, be duly executed by both Parties.

# RIGHTS AND REMEDIES

The rights, powers and remedies in the Agreement are in addition to, and not exclusive of, the rights, powers and remedies existing at law or in equity.

# GOVERNING LAW

The Agreement is governed by the laws in force in Western Australia. Each Party irrevocably submits unconditionally to the non-exclusive jurisdiction of the Courts of Western Australia and of all Courts competent to hear appeals therefrom in relation to any legal action, suit or proceeding arising out of or with respect to the Agreement.

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