

## 1. Undertaking the Activity

1.1 The Grantee agrees to undertake the Activity for the purpose of the Grant in accordance with this Agreement.

1.2 The Grantee is fully responsible for the Activity and for ensuring the performance of all its obligations under this Agreement in accordance with all relevant laws. The Grantee will not be relieved of that responsibility because of:

- (a) the grant or withholding of any approval or the exercise or non-exercise of any right by the Commonwealth; or
- (b) any payment to, or withholding of any payment from, the Grantee under this Agreement.

## 2. Payment of the Grant

2.1 The Commonwealth agrees to pay the Grant to the Grantee in accordance with the Grant Details.

2.2 Notwithstanding any other provision of this Agreement, the Commonwealth may by notice withhold payment of any amount of the Grant and/or take any other action specified in the Supplementary Terms if it reasonably believes that:

- (a) the Grantee has not complied with this Agreement;
- (b) the Grantee is unlikely to be able to perform the Activity or manage the Grant in accordance with this Agreement; or
- (c) there is a serious concern relating to the Grantee or this Agreement that requires investigation.

2.3 A notice under clause 2.2 will contain the reasons for any action taken under clause 2.2 and, where relevant, the steps the Grantee can take to address those reasons.

2.4 The Commonwealth will only be obliged to pay a withheld amount once the Grantee has addressed the reasons contained in a notice under clause 2.2 to the Commonwealth's reasonable satisfaction.

## 3. Acknowledgements

3.1 The Grantee agrees not to make any public announcement, including by social media, in connection with the awarding of the Grant without the Commonwealth's prior written approval.

3.2 The Grantee agrees to acknowledge the Commonwealth's support in all Material, publications and promotional and advertising materials published in connection with this Agreement. The Commonwealth may notify the Grantee of the form of acknowledgement that the Grantee is to use.

## 4. Notices

4.1 Each Party agrees to promptly notify the other Party of anything reasonably likely to adversely affect the undertaking of the Activity, management of the Grant or its performance of any of its other requirements under this Agreement.

4.2 A notice given by a Party under this Agreement must be in writing and addressed to the other Party's representative as set out in the Grant Details or as most recently updated by notice given in accordance with this clause.

4.3 A notice is deemed to be effected:

- (a) if delivered by hand - upon delivery to the relevant address;
- (b) if sent by post - upon delivery to the relevant address; or
- (c) if transmitted electronically - upon actual receipt by the addressee.

4.4 A notice received after 5.00 pm, or on a day that is a Saturday, Sunday or public holiday, in the place of receipt, is deemed to be effected on the next day that is not a Saturday, Sunday or public holiday in that place.

4.5 The Commonwealth may, by notice, advise the Grantee of changes to the Agreement that are minor or of an administrative nature, provided that any such changes do not increase the Grantee's obligations under this Agreement. Such changes, while legally binding, are not variations for the purpose of clause 8.

**5. Relationship between the Parties**

A Party is not by virtue of this Agreement the employee, agent or partner of the other Party and is not authorised to bind or represent the other Party.

**6. Subcontracting**

6.1 The Grantee is responsible for the performance of its obligations under this Agreement, including in relation to any tasks undertaken by subcontractors.

6.2 The Grantee agrees to make available to the Commonwealth the details of any of its subcontractors engaged to perform any tasks in relation to this Agreement upon request.

6.3 The Grantee agrees not to subcontract any part of the performance of the Activity without the Commonwealth's prior written consent. The Commonwealth may impose any conditions it considers reasonable and appropriate when giving its consent.

6.4 The Grantee agrees to remove a subcontractor from the Activity at the reasonable request of the Commonwealth and at no additional cost to the Commonwealth.

**7. Conflict of interest**

7.1 Other than those which have already been disclosed to the Commonwealth, the Grantee warrants that, to the best of its knowledge, at the date of this Agreement neither it nor its officers have any actual, perceived or potential conflicts of interest in relation to the Activity.

7.2 If during the term of the Agreement, any actual, perceived or potential conflict arises or there is any material change to a previously disclosed conflict of interest, the Grantee agrees to:

- (a) notify the Commonwealth promptly and make full disclosure of all relevant information relating to the conflict; and
- (b) take any steps the Commonwealth reasonably requires to resolve or otherwise deal with that conflict.

**8. Variation, assignment and waiver**

8.1 This Agreement may be varied in writing only, signed by both Parties.

8.2 The Grantee cannot assign its obligations, and agrees not to assign its rights, under this Agreement without the Commonwealth's prior approval.

8.3 The Grantee agrees not to enter into negotiations with any other person for the purposes of entering into an arrangement that will require novation of, or involve any assignment of rights under, this Agreement without first consulting the Commonwealth.

8.4 A waiver by a Party of any of its rights under this Agreement is only effective if it is in a signed written notice to the other Party and then only to the extent specified in that notice.

**9. Taxes, duties and government charges**

9.1 The Grantee agrees to pay all taxes, duties and government charges imposed or levied in Australia or overseas in connection with the performance of this Agreement, except as provided by this Agreement.

9.2 If Goods and Services Tax (GST) is payable by a supplier on any supply made under this Agreement, the recipient of the supply will pay to the supplier an amount equal to the GST payable on the supply, in addition to and at the same time that the consideration for the supply is to be provided under this Agreement.

9.3 The Parties acknowledge and agree that they each:

- (a) are registered for GST purposes;
- (b) have quoted their Australian Business Number to the other; and
- (c) must notify the other of any changes to the matters covered by this clause.

9.4 The Grantee agrees that the Commonwealth will issue it with a recipient created tax invoice for any taxable supply it makes under this Agreement.

9.5 The Grantee agrees not to issue tax invoices in respect of any taxable supplies.

9.6 If the Grantee is not, or not required to be, registered for GST, then:

- (a) clauses 9.3(a), 9.4 and 9.5 do not apply; and
- (b) the Grantee agrees to notify the Commonwealth in writing within 7 days of becoming registered for GST if during the term of the Agreement it becomes, or is required to become, registered for GST.

## 10. Spending the Grant

10.1 The Grantee agrees to spend the Grant for the purpose of performing the Activity and otherwise in accordance with this Agreement.

10.2 Within the timeframe specified by the Commonwealth (and if no timeframe is specified, three months) after the Activity Completion Date, and each 12 month anniversary of the Activity's start date during the term of the Activity, the Grantee agrees to provide the Commonwealth with an independently audited financial acquittal report verifying that the Grant has been spent in accordance with this Agreement.

10.3 The reports under clause 10.2 must be audited by:

- (a) a Registered Company Auditor under the *Corporations Act 2001*; or
- (b) a certified Practising Accountant; or
- (c) a member of the National Institute of Accountants; or
- (d) a member of the Institute of Chartered Accountants;

who is not a principal member, shareholder, officer or employee of the Grantee or a related body corporate.

## 11. Repayment

11.1 If any amount of the Grant:

- (a) has been spent other than in accordance with this Agreement; or
  - (b) is additional to the requirements of the Activity;
- then the Commonwealth may by written notice:
- (c) require the Grantee to repay that amount to the Commonwealth;
  - (d) require the Grantee to deal with that amount as directed by the Commonwealth; or
  - (e) deduct the amount from subsequent payments of the Grant or amounts payable under another agreement between the Grantee and the Commonwealth.

11.2 If the Commonwealth issues a notice under this Agreement requiring the Grantee to repay a Grant amount:

- (a) the Grantee must do so within the time period specified in the notice;
- (b) the Grantee must pay interest on any part of the amount that is outstanding at the end of the time period specified in the notice until the outstanding amount is repaid in full; and
- (c) the Commonwealth may recover the amount and any interest under this Agreement as a debt due to the Commonwealth without further proof of the debt being required.

## 12. Record keeping

12.1 The Grantee agrees to keep financial accounts and other records that:

- (a) detail and document the conduct and management of the Activity;
- (b) identify the receipt and expenditure of the Grant [and any Other Contributions] separately within the Grantee's accounts and records so that at all times the Grant is identifiable; and
- (c) enable all receipts and payments related to the Activity to be identified and reported.

12.2 The Grantee agrees to keep the records for five years after the Activity Completion Date or such other time specified in the Grant Details and provide copies of the records to the Commonwealth upon request.

### 13. Reporting, liaison and review

13.1 The Grantee agrees to provide the Reporting Material specified in the Grant Details to the Commonwealth.

13.2 In addition to the obligations in clause 13.1, the Grantee agrees to:

- (a) liaise with and provide assistance and information to the Commonwealth as reasonably required by the Commonwealth; and
- (b) comply with the Commonwealth's reasonable requests, directions and monitoring requirements, in relation to the Activity and any Commonwealth review or evaluation of it.

13.3 If the Commonwealth acting reasonably has concerns regarding the performance of the Activity or the management of the Grant, the Commonwealth may by written notice require the Grantee to provide one or more additional reports, containing the information and by the date(s), specified in the notice.

13.4 If, at any time, a Party reasonably believes that the Activity is unlikely to fully meet the purpose of the Grant, or there are Activity risks that need to be addressed, that Party may provide written notice to the other Party setting out its reasons for that belief and proposing steps that could be taken to better achieve that purpose or address those risks. The Parties agree to work co-operatively to:

- (a) consider, and negotiate in good faith, any change proposed under this clause 13.4; and
- (b) implement any such change that is agreed by the Parties by executing a variation to this Agreement under clause 8.1.

13.5 Except to the extent the Parties agree a variation under clause 8.1, clause 13.4 does not limit any of a Party's other rights under this Agreement.

13.6 The Grantee acknowledges that the giving of false or misleading information to the Commonwealth is a serious offence under the *Criminal Code Act 1995* (Cth).

### 14. Privacy

14.1 When dealing with Personal Information in carrying out the Activity, the Grantee agrees:

- (a) to comply with the requirements of the *Privacy Act 1988* (Cth);
- (b) not to do anything which, if done by the Commonwealth, would be a breach of an Australian Privacy Principle;
- (c) to ensure that any of the Grantee's subcontractors or personnel who deal with Personal Information for the purposes of this Agreement are aware of the requirements of the *Privacy Act 1988* (Cth) and the Grantee's obligations under this clause; and
- (d) to immediately notify the Commonwealth if the Grantee becomes aware of an actual or possible breach of this clause by the Grantee or any of the Grantee's subcontractors or personnel.

14.2 In carrying out the Activity, the Grantee agrees not to send any Personal Information outside Australia without the Commonwealth's prior written approval. The Commonwealth may impose any conditions it considers appropriate when giving its approval.

### 15. Confidentiality

15.1 The Parties agree not to disclose each other's confidential information without the other Party's prior written consent unless required or authorised by law or Parliament to disclose.

15.2 The Commonwealth may disclose the Grantee's confidential information where;

- (a) the Commonwealth is providing information about the Activity or Grant in accordance with Commonwealth accountability and reporting requirements;
- (b) the Commonwealth is disclosing the information to a Minister of the Australian Government, a House or Committee of the Commonwealth Parliament; or
- (c) the Commonwealth is disclosing the information to its personnel or another Commonwealth agency where this serves the Commonwealth's legitimate interests.

**16. Insurance**

16.1 The Grantee agrees to maintain adequate insurance for as long as any obligations remain in connection with this Agreement and provide proof of insurance to the Commonwealth upon request.

**17. Intellectual property**

17.1 Subject to clause 17.2, the Grantee owns the Intellectual Property Rights in Activity Material and Reporting Material.

17.2 This Agreement does not affect the ownership of Intellectual Property Rights in Existing Material.

17.3 The Grantee provides the Commonwealth a permanent, non-exclusive, irrevocable, royalty-free licence to use, modify, communicate, reproduce, publish, adapt and sub-license the Reporting Material for Commonwealth Purposes.

17.4 The licence in clause 17.3 does not apply to Activity Material.

**18. Dispute resolution**

18.1 The Parties agree not to initiate legal proceedings in relation to a dispute arising under this Agreement unless they have first tried and failed to resolve the dispute by negotiation.

18.2 Unless clause 18.3 applies, the Parties agree to continue to perform their respective obligations under this Agreement when a dispute exists.

18.3 The Parties may agree to suspend performance of the Agreement pending resolution of the dispute.

18.4 Failing settlement by negotiation in accordance with clause 18.1, the Parties may agree to refer the dispute to an independent third person with power to intervene and direct some form of resolution, in which case the Parties will be bound by that resolution. If the Parties do not agree to refer the dispute to an independent third person, either Party may initiate legal proceedings.

18.5 Each Party will bear their own costs in complying with this clause 18, and the Parties will share equally the cost of any third person engaged under clause 18.4.

18.6 The procedure for dispute resolution under this clause does not apply to any action relating to termination, cancellation or urgent interlocutory relief.

**19. Reduction, Suspension and Termination****19.1 Reduction in scope of agreement for fault**

19.1.1 If the Grantee does not comply with an obligation under this Agreement and the Commonwealth believes that the non-compliance is incapable of remedy, or if the Grantee has failed to comply with a notice to remedy, the Commonwealth may by written notice reduce the scope of the Agreement.

19.1.2 The Grantee agrees, on receipt of the notice of reduction, to:

- (a) stop or reduce the performance of the Grantee's obligations as specified in the notice;
- (b) take all available steps to minimise loss resulting from the reduction;
- (c) continue performing any part of the Activity or the Agreement not affected by the notice if requested to do so by the Commonwealth; and
- (d) report on, and return any part of, the Grant to the Commonwealth, or otherwise deal with the Grant, as directed by the Commonwealth.

19.1.3 In the event of reduction under clause 19.1.1, the amount of the Grant will be reduced in proportion to the reduction in the scope of the Agreement.

**19.2 Suspension**

19.2.1 If:

- (a) the Grantee does not comply with an obligation under this Agreement and the Commonwealth believes that the non-compliance is capable of remedy;

(b) the Commonwealth reasonably believes that the Grantee is unlikely to be able to perform the Activity or manage the Grant in accordance with this Agreement; or

(c) the Commonwealth reasonably believes that there is a serious concern relating to the Grantee or this Agreement that requires investigation;

the Commonwealth may by written notice:

(d) immediately suspend the Grantee from further performance of the Activity (including expenditure of the Grant); and/or

(e) require that the non-compliance or inability be remedied, or the investigation be completed, within the time specified in the notice.

#### 19.2.2 If the Grantee:

(a) remedies the non-compliance or inability specified in the notice to the Commonwealth's reasonable satisfaction, or the Commonwealth reasonably concludes that the concern is unsubstantiated, the Commonwealth may direct the Grantee to recommence performing the Activity; or

(b) fails to remedy the non-compliance or inability within the time specified, or the Commonwealth reasonably concludes that the concern is likely to be substantiated, the Commonwealth may reduce the scope of the Agreement in accordance with clause 19.1 or terminate the Agreement immediately by giving a second notice in accordance with clause 19.3.

#### 19.3 Termination for fault

##### 19.3.1 The Commonwealth may terminate this Agreement by notice where the Grantee has:

(a) failed to comply with an obligation under this Agreement and the Commonwealth believes that the non-compliance is incapable of remedy or where clause 19.2.2.b applies; or

(b) provided false or misleading statements in relation to the Grant; or

(c) become bankrupt or insolvent, entered into a scheme of arrangement with creditors, or come under any form of external administration.

##### 19.3.2 The Grantee agrees, on receipt of the notice of termination, to:

(a) stop the performance of the Grantee's obligations;

(b) take all available steps to minimise loss resulting from the termination; and

(c) report on, and return any part of, the Grant to the Commonwealth, or otherwise deal with the Grant, as directed by the Commonwealth.

#### **20. Cancellation or reduction for convenience**

##### 20.1 The Commonwealth may cancel or reduce the scope of this Agreement by notice, due to:

(a) a change in government policy; or

(b) a Change in the Control of the Grantee which the Commonwealth reasonably believes will negatively affect the Grantee's ability to comply with this Agreement.

##### 20.2 On receipt of a notice of reduction or cancellation under this clause, the Grantee agrees to:

(a) stop or reduce the performance of the Grantee's obligations as specified in the notice;

(b) take all available steps to minimise loss resulting from that reduction or cancellation;

(c) continue performing any part of the Activity or the Agreement not affected by the notice if requested to do so by the Commonwealth; and

(d) report on, and return any part of, the Grant to the Commonwealth, or otherwise deal with the Grant, as directed by the Commonwealth.

20.3 In the event of reduction or cancellation under this clause, the Commonwealth will be liable only to:

- (a) pay any part of the Grant due and owing to the Grantee under this Agreement at the date of the notice; and
- (b) reimburse any reasonable and substantiated expenses the Grantee unavoidably incurs that relate directly and entirely to the reduction in scope or cancellation of the Agreement.

20.4 In the event of reduction, the amount of the Grant will be reduced in proportion to the reduction in the scope of the Agreement.

20.5 The Commonwealth's liability to pay any amount under this clause is:

- (a) subject to the Grantee's compliance with this Agreement; and
- (b) limited to an amount that when added to all other amounts already paid under the Agreement will not exceed the total amount of the Grant.

20.6 The Grantee will not be entitled to compensation for loss of prospective profits or benefits that would have been conferred on the Grantee but for the cancellation or reduction in scope of the Agreement under clause 20.1.

20.7 The Commonwealth will act reasonably in exercising its rights under this clause.

## 21. Survival

The following clauses survive termination, cancellation or expiry of this Agreement:

- clause 10 (Spending the Grant);
- clause 11 (Repayment);
- clause 12 (Record keeping);
- clause 13 (Reporting);
- clause 14 (Privacy);
- clause 15 (Confidentiality);
- clause 16 (Insurance);
- clause 17 (Intellectual property);
- clause 19 (Reduction, Suspension and Termination);
- clause 21 (Survival);
- clause 22 Definitions; and
- Any other clause which expressly or by implication from its nature is meant to survive.

## 22. Definitions

In this Agreement, unless the contrary appears:

- **Activity** means the activity described in the Grant Details and includes the provisions of the Reporting Material.
- **Activity Completion Date** means the date or event specified in the Grant Details.
- **Activity Material** means any Material, other than Reporting Material, created or developed by the Grantee as a result of the Activity and includes any Existing Material that is incorporated in or supplied with the Activity Material.
- **Agreement** means the Grant Details, Supplementary Terms (if any), the Commonwealth Standard Grant Conditions and any other document referenced or incorporated in the Grant Details.
- **Agreement End Date** means the date or event specified in the Grant Details.
- **Australian Privacy Principle** has the same meaning as in the *Privacy Act 1988*.
- **Change in the Control** means any change in any person(s) who directly exercise effective control over the Grantee.

- **Commonwealth** means the Commonwealth of Australia as represented by the Commonwealth entity specified in the Agreement and includes, where relevant, its officers, employees, contractors and agents.
- **Commonwealth Purposes** includes the following:
  - a. the Commonwealth verifying and assessing grant proposals, including a grant application;
  - b. the Commonwealth administering, monitoring, reporting on, auditing, publicising and evaluating a grant program or exercising its rights under this Agreement;
  - c. the Commonwealth preparing, managing, reporting on, auditing and evaluating agreements, including this Agreement; and
  - d. the Commonwealth developing and publishing policies, programs, guidelines and reports, including Commonwealth annual reports;but in all cases:
  - e. excludes the commercialisation (being for-profit use) of the Material by the Commonwealth.
- **Commonwealth Standard Grant Conditions** means this document.
- **Existing Material** means Material developed independently of this Agreement that is incorporated in or supplied as part of Reporting Material or Activity Material.
- **Grant** means the money, or any part of it, payable by the Commonwealth to the Grantee for the Activity as specified in the Grant Details [and includes any interest earned by the Grantee on that money once the Grant has been paid to the Grantee].
- **Grantee** means the legal entity other than the Commonwealth specified in the Agreement and includes, where relevant, its officers, employees, contractors and agents.
- **Grant Details** means the document titled Grant Details that forms part of this Agreement.
- **Intellectual Property Rights** means all copyright, patents, registered and unregistered trademarks (including service marks), registered designs, and other rights resulting from intellectual activity (other than moral rights under the *Copyright Act 1968*).
- **Material** includes documents, equipment, software (including source code and object code versions), goods, information and data stored by any means including all copies and extracts of them.
- **Party** means the Grantee or the Commonwealth.
- **Personal Information** has the same meaning as in the *Privacy Act 1988*.
- **Records** includes documents, information and data stored by any means and all copies and extracts of the same.
- **Reporting Material** means all Material which the Grantee is required to provide to the Commonwealth for reporting purposes as specified in the Grant Details and includes any Existing Material that is incorporated in or supplied with the Reporting Material.