

**AGREED TERMS****1. TERM**

- 1.1 This Agreement commences on the Commencement Date and continues until the Expiry Date, unless terminated earlier or extended under clause 1.2.
- 1.2 This Agreement may be extended by the Council for the Extension Period(s) by giving reasonable notice in writing prior to the Expiry Date.

**2. CONTACT PERSONS**

The persons named in the *Grant Funding Details* document as the Contact Persons are the first point of contact between the Parties and are responsible for overseeing the effective administration of this Agreement including variations and extensions.

**3. PAYMENT OF THE FUNDING**

- 3.1 Subject to the Recipient complying with its obligations in this Agreement at all times during the Term, the Council will pay the Funding to the Recipient as specified in the *Grant Funding Details* document.

**4. GST**

- 4.1 Subject to this clause, 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.
- 4.2 Subject to clause 4.3 and 4.4 the Recipient represents that:
  - (a) the ABN shown in the *Grant Funding Details* document is the Recipient's ABN; and
  - (b) it is registered under the *A New Tax System (Australian Business Number) Act 1999* (Cth).
- 4.3 If the Recipient is not registered for GST, then GST must not be charged on supplies made under this Agreement.
- 4.4 If the Recipient does not have an ABN, the Council may be obliged under the *Taxation Administration Act 1953* to deduct a withholding from the Funding and will not be obliged to gross up the Funding or provide any other compensation to the Recipient.

**5. INVOICING**

- 5.1 Each party agrees to do all things, including providing valid tax invoices and other documentation necessary to enable the other party to claim any input tax credit, adjustment or refund in relation to any amount of GST in respect of any supply made in connection with this Agreement.
- 5.2 The Recipient may invoice the Council for payment in respect of the Funding after the Commencement Date and the Council will not be obliged to pay any amount under this Agreement until it receives the applicable tax invoice.

**6. USE OF THE FUNDING**

The Recipient agrees to use the Funding for the sole purpose of undertaking the Funded Activities.

**7. PROVISION OF INFORMATION**

- 7.1 The Recipient must immediately inform the Council of anything reasonably likely to affect the performance of the Funded Activities, including:
  - (a) any significant changes to the nature and/or scope of the activities conducted by the Recipient;
  - (b) any actual, perceived or potential conflict of interest arising in relation to this Agreement (and must notify what actions have been taken to address that conflict).

- 7.2 At the conclusion of the Term, the Recipient must provide a statement, in the form required by the Council and signed by the Recipient, verifying that the Funded Activities have been undertaken and the Funding was spent In accordance with this Agreement.

## **8. RECORD KEEPING AND REPORTING**

- 8.1 The Recipient agrees to maintain records of the performance of the Funded Activities and the expenditure of the Funding throughout the Term.
- 8.2 The Recipient must:
- (a) submit the reports and other documents and must attend meetings, as specified in the *Grant Funding Details* document; and
  - (b) provide any other report as reasonably required by the Council (including as to the form and content of that report) in relation to the Funded Activities.
- 8.3 Where the report is a financial acquittal report, the Council, in its absolute discretion may require that the Recipient procure that the acquittal report be independently audited. The Recipient must pay the cost of any audit required by the Council in accordance with this clause 8.3.

## **9. REPAYMENT OF FUNDING**

- 9.1 If at the expiry or termination of this Agreement any part of the Funding:
- (a) has been spent other than on the Funded Activities; or
  - (b) remains unexpended or is otherwise additional to the requirements of the Funded Activities,
- the Recipient agrees to repay that amount to the Council, unless the Council agrees otherwise in writing.
- 9.2 The Recipient may submit a written request for retention or carryover of any unexpended amounts of the Funding specifying:
- (a) the amount to be retained or carried over; and
  - (b) the purpose or activities for which the unexpended amount will be used.
- 9.3 The Council must consider the Recipient's request and notify the Recipient in writing whether it:
- (a) agrees that the Recipient may retain or carry over all or part of the unexpended amount; or
  - (b) requires the Recipient to repay all or part of that amount as notified by the Council, to the Council within 30 days of receipt of the notice from the Council.

## **10. ACKNOWLEDGEMENT OF COUNCIL**

- 10.1 The Recipient will acknowledge the Council's support in any material published in connection with this Agreement and agrees to use any form of acknowledgment the Council reasonably specifies.

## **11. COMPLIANCE WITH LAWS AND POLICIES**

- 11.1 The Recipient must comply with:
- (a) the laws in force in the State of South Australia in performing its obligations under this Agreement; and
  - (b) any other policies notified by the Council in writing at the Commencement Date, including without limitation the Policies and Guidelines specified in the *Grant Funding Details* document.
- 11.2 The Recipient must ensure that all persons engaged to work on the Funding Activities obtain and maintain all relevant licences, registrations or other approvals required by applicable laws or as directed by the Council, including but not limited to police checks and working with children checks.

**12. CONFIDENTIAL INFORMATION**

- 12.1 Subject to this clause 12, neither Party may disclose any Confidential Information belonging to the other Party without prior written consent, except:
- (a) as genuinely and necessarily required for the purpose of this Agreement;
  - (b) to an employee, agent or adviser of that Party, on a “need to know” and confidential basis;
  - (c) as required by law or a court order;
  - (d) in accordance with Council policies or practice; or
  - (e) for the purposes of prosecuting or defending proceedings.

**13. PRIVACY**

- 13.1 The Recipient must comply with the *Privacy Act 1988* (Cth) (“**Privacy Act**”) and the Australian Privacy Principles established under that Act in undertaking its obligations under this Agreement including in relation to all Personal Information received created or held by it for the purposes of this Agreement.
- 13.2 The Recipient must promptly notify the Council if it fails to comply with this clause or if it becomes aware of any actual or threatened disclosure of or unauthorised access to Personal Information.
- 13.3 For the purposes of this clause, “**Personal Information**” has the same meaning as in the Privacy Act.

**14. INSURANCE**

- 14.1 The Recipient must effect and maintain the insurance specified in Attachment 1 for not less than the amount specified in the *Grant Funding Details* document during the Term.

**15. DISPUTE RESOLUTION**

- 15.1 Either Party may give the other a notice in writing (“**dispute notice**”) setting out the details of the dispute.
- 15.2 Within seven days or such other period as may be agreed by the Parties, the Contact Persons must meet and use reasonable endeavours to resolve the dispute.
- 15.3 Subject to clause 15.4 the parties agreed not to initiate legal proceedings in relation to a dispute unless they have tried and failed to resolve the dispute by negotiation.
- 15.4 The procedure for dispute resolution does not apply to action relating to termination or urgent litigation.

**16. TERMINATION FOR DEFAULT**

- 16.1 Where the Council reasonably believes the Recipient has:
- (a) breached this Agreement, including by misapplication of the Funding; or
  - (b) provided false or misleading statements in its application for the Funding; or
  - (c) become bankrupt or insolvent, entered into a scheme of arrangement with creditors, or come under any form of external administration,
- then the Council may, upon giving written notice to the Recipient:
- (d) withhold funds not already paid;
  - (e) withhold future funding from the Recipient; and/or
  - (f) terminate this Agreement.

**17. EFFECT OF ENDING THIS AGREEMENT**

- 17.1 Any termination of this Agreement does not affect any accrued right of either Party.
- 17.2 Despite termination or expiry of this Agreement, this clause 17 and clauses 6, 7, 8, 9, 10, 12, 13, 14 and those Special Conditions that by their nature remain in force, will survive.

**18. NO FURTHER OBLIGATION**

- 18.1 The Recipient acknowledges that the Grant represents a one-off contribution by the Council towards the Funded Activities, and the Recipient agrees any request for subsequent funding will require a new application to the Council. The Council is under no obligation to agree to pay any subsequent funding to the Recipient.
- 18.2 The Recipient acknowledges the Council will not be liable to reimburse the Recipient for any losses or cost over runs that may result from the recipient undertaking the Funded Activities.

**19. COUNTERPARTS**

This Agreement may be executed in any number of counterparts each of which is taken to be an original. All of those counterparts taken together constitute one instrument. An executed counterpart may be delivered by email.

**20. GENERAL PROVISIONS**

- 20.1 This Agreement is governed by the laws in the State of South Australia and the courts of the State of South Australia have exclusive jurisdiction in connection with this Agreement.
- 20.2 This Agreement constitutes the entire agreement between the Parties in respect of the matters dealt with in this Agreement and supersedes all prior agreements, understanding and negotiations in respect of the matters dealt with in this Agreement.
- 20.3 The Recipient must not assign, encumber or otherwise transfer any of its rights or obligations under this Agreement without the written approval of the Council which approval shall not be unreasonably withheld.
- 20.4 This Agreement may only be varied by the parties' signed written agreement.
- 20.5 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.
- 20.6 Each word, phrase, sentence, paragraph and clause of this Agreement is severable. Severance of any part of this Agreement will not affect any other part of this Agreement.

**21. INTERPRETATION**

- 21.1 In this Agreement (unless the context requires otherwise):
- (a) a reference to any legislation includes all legislation, regulations and other forms of statutory instrument issued under that legislation, and any modification, consolidation, amendment, re-enactment or substitution of that legislation;
  - (b) a word in the singular includes the plural and vice versa;
  - (c) a reference to two or more persons is a reference to those persons jointly and severally;
  - (d) a reference to dollars is to Australian dollars; and
  - (e) a reference to a Party includes that party's administrators, successors and permitted assigns.

**22. DEFINITIONS**

In this Agreement:

- (a) "**Confidential Information**" means information which is identified as confidential information by a Party, but does not include this Agreement;
- (b) "**Extension Period(s)**" means the period(s) specified in the *Grant Funding Details* document;
- (c) "**Funding**" means the funds payable under this Agreement specified in the *Grant Funding Details* document;
- (d) "**GST**" means the tax imposed by the GST Law;
- (e) "**Party**" means a party to this Agreement;
- (f) "**Special Conditions**" means the conditions specified in the *Special Conditions* document; and
- (g) "**Term**" means the period specified in clause 1.1, including any Extension Periods.

**23. SPECIAL CONDITIONS**

The special conditions (if any) in the *Special Conditions* document form part of this Agreement and will take priority over this *Standard Terms and Conditions* document to the extent of any inconsistency.