



Australian Government

Department of Social Services

Individualised Grant Agreement (Sector Readiness Fund)

Terms and Conditions

Individualised Grant Agreement (Sector Readiness Fund)

Terms and Conditions

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Definitions and Duration

1 Definitions

- 1.1 In this Agreement, certain words and phrases have defined meanings. They are indicated by initial capital letters (eg, Activity and Activity Period). However, "we" and "you" are not capitalised in this way.
- 1.2 Where a defined word or phrase is used in one clause only, it is usually defined in that clause. Otherwise, the definitions are in clause 40.

2 Duration of the Agreement and Activity

- 2.1 This Agreement starts on the Commencement Date and ends on the Completion Date, unless terminated earlier.
- 2.2 The Activity starts on the Activity Start Date and ends on the Activity End Date, both specified in Item B of the Schedule, unless terminated earlier.

What you must do

3 Your obligations in carrying out the Activity

- 3.1 You must carry out the Activity as required by this Agreement, including meeting all objectives, timeframes and milestones.
- 3.2 In carrying out the Activity, you must:
 - (a) use all proper care; and
 - (b) comply with any codes of ethics, regulations or other industry standards relevant to the Activity; and
 - (c) comply with all relevant laws and in particular, take all reasonable actions to ensure that no fraud occurs; and
 - (d) pay all taxes, duties and government charges imposed in Australia or overseas in connection with this Agreement; and
 - (e) comply with any operational guidelines, Departmental policy or Commonwealth policy notified to you in writing; and
 - (f) notify us immediately if a conflict of interest arises, or could reasonably be perceived by others to have arisen, that may restrict you undertaking the Activity in a fair and independent way; and
 - (g) communicate with us, especially if there is an issue that may delay, stop or adversely affect the Activity; and
 - (h) provide information and documents we reasonably require.
- 3.3 You must also comply with any Supplementary Conditions set out in Annexures to the Schedule, which form part of these Terms and Conditions.
- 3.4 You must provide unsuccessful applicants for Sector Readiness Funding with brief feedback of the reasons they were unsuccessful in their application. Copies of all correspondence and other materials received or created by you in connection with unsuccessful applications must be kept in accordance with clause 5.3. You must, on our request, give to us access to or copies of these materials and feedback in accordance with clause 5.9.

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- 3.5 You must ensure that you enter into and manage contracts with Fund Recipients to ensure that Project Funds are only spent on External Capability Building Services for which the Project was approved (Project Agreements).

4 Your obligation to acknowledge our support

- 4.1 In all Agreement Material you publish, you must acknowledge our financial and other support.
- 4.2 When doing so, you must use any form of acknowledgment we reasonably specify.
- 4.3 You must obtain our prior approval before you make any media or other announcement to the public about this Agreement.

5 Your obligation to keep records and provide reports

- 5.1 You must keep accurate records and accounts including:
- (a) receipts, proof of purchase and invoices, to show how you spend the Grant (including both the Administration Funding and the Sector Readiness Fund) and carry out the Activity; and
 - (b) client records in accordance with this Agreement and any legislative requirements.
- 5.2 You acknowledge that giving false or misleading information to the Department is a serious offence under section 137.1 of the *Criminal Code Act 1995* (Cth).
- 5.3 You must keep these records and accounts in their original form for at least 5 years after the Activity Period or other period as required by legislation.
- 5.4 You must prepare and give us the reports required and specified in the Schedule.
- 5.5 If the Schedule requires you to provide a work plan for all or part of the Activity (Activity Work Plan) you must:
- (a) provide us with a draft of that Activity Work Plan for the Activity at the time specified in Item F of the Schedule which we may approve (with or without conditions) or require you to make changes to; and
 - (b) make any changes that we require to the draft Activity Work Plan and resubmit it to us for our approval within 10 Business Days after we advise you of the required changes.
- 5.6 If we are unable to approve a draft Activity Work Plan for the Activity, we may terminate the Activity or this Agreement in accordance with clause 23.1(b).
- 5.7 Once we have approved a draft Activity Work Plan for the Activity (or part thereof) it will be the approved Activity Work Plan for the Activity (or that part of the Activity) and will form part of this Agreement.
- 5.8 Subject to clause 5.5, if we consider that the form or content of a report is not adequate for our purposes, we can request you to submit a revised report. You must submit that revised report within 30 Business Days of our request, unless we specify a shorter or longer time.

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- 5.9 You must, at all reasonable times, allow access to all records, accounts, documents and papers relating to this Agreement, including those relating to how you are carrying out, and receiving or spending the Grant for each Activity and allow copies of these materials to be taken by the following:
- (a) us, or persons authorised by us; or
 - (b) the Commonwealth Auditor-General (including his or her delegate); or
 - (c) an information officer appointed under the *Australian Information Commissioner Act 2010* (Cth) who is performing 'privacy functions' as defined in that Act.
- For the purpose of clause 5.9 the parties agree that:
- (a) '**access**' includes access to your premises (which means premises occupied by you or where any obligation under this Agreement is undertaken and/or wherever any Assets may be located); and
 - (b) you must provide such assistance as may be needed to allow access to all records, accounts, documents and papers relating to this Agreement.
- 5.10 However, you do not have to allow access to, or copies to be made of, Secret and Sacred Material.
- 5.11 You must include provisions in all of your Subcontracts that will enable you to comply with your obligations under this clause 5.

About the Grant

6 Paying the Grant

Subject to parliamentary appropriation, and your compliance with this Agreement, we will pay you the Grant in accordance with Item C and Item F of the Schedule.

7 Not used

8 When can we withhold payment?

- 8.1 We can withhold any or all of a Grant payment if we consider that you:
- (a) have not carried out the Activity in accordance with this Agreement; or
 - (b) have not spent the Grant in accordance with this Agreement; or
 - (c) have breached any other term of this Agreement; or
 - (d) have breached any other agreement.
- 8.2 We will pay the withheld Grant payment under clause 8.1(a) when you have carried out the Activity to which the payment relates, according to the requirements of the Agreement.
- 8.3 For the purposes of clause 8.1(d), being in breach of any other Agreement means being in serious breach of any other agreement under which you

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receive Grants from the Commonwealth (a "serious breach" is one which would entitle the Commonwealth to terminate the other agreement).

9 Spending the Grant

- 9.1 You must spend Grant funds:
- (a) only on carrying out the Activity (or part of the Activity) for which those Grant funds were provided; and
 - (b) in accordance with this Agreement (including in accordance with Item C and the Budget for the Activity specified in the Schedule and the relevant Activity Work Plan).
- 9.2. Subject to any provisions in Item C of the Schedule you agree to hold the Grant payments for that Activity in an account in your name and which you solely control. This account must be held with a deposit-taking institution authorised under the *Banking Act 1959* (Cth) to carry on banking business in Australia.
- 9.3 You are not eligible to be a Fund Recipient, or to receive any Project Funds, under this Agreement. In addition, a Fund Recipient may not be, and you may not pay any part of the Sector Readiness Fund to, a person or entity (including an unincorporated association) that is:
- (a) a State, Territory or Commonwealth government body;
 - (b) your affiliate;
 - (c) your subsidiary;
 - (d) a subcontractor or consortium member of yours as at the Commencement Date;
 - (e) a subcontractor or consortium member of an entity referred to in paragraph (b) or (c) of this clause 9.3 as at the Commencement Date; or
 - (f) a person or entity specified in Supplementary Condition AA.

10 Accounting for the Grant

- 10.1 You must provide the reports in the form and at the times set out in the Schedule or otherwise notified to you in writing.
- 10.2 Not used.
- 10.3 Where specified in Item E or F of the Schedule, or where we otherwise require, a financial report must be independently audited.
- 10.4 A financial report consists of an income and expenditure statement in relation to the Grant. Each financial report must:

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- (a) be in accordance with the Agreement, applicable Australian Accounting Standards¹ and based on proper accounts and records; and
- (b) verify that you have spent the Grant provided on the Activity and in accordance with this Agreement; and
- (c) provide the Grant information specified in Item E.4 of the Schedule; and
- (d) include any other matters (in addition to the matters set out in the Schedule) we require to allow us to meet obligations under the Commonwealth financial framework; and
- (e) be certified by:
 - (i) your board;
 - (ii) your chief executive officer; or
 - (iii) an officer with authority to do so.

10.5 If we request an independently audited financial report it must be audited by:

- (a) a Registered Company Auditor under the *Corporations Act 2001* (Cth); or
- (b) a member of CPA Australia; or
- (c) a member of the Institute of Public Accountants in Australia; or
- (d) a member of the Institute of Chartered Accountants in Australia.

The auditor must not be a principal member, shareholder, officer or employee of yours or of a Related Body Corporate as defined in the Corporations Act. Reports must be audited in accordance with Australian Audit Standards² and the income and expense statement must be accompanied by the auditor's opinion.

10.6 At any time up to 5 years after the Activity End Date, we may ask you to send us:

- (a) original receipts or other documents which account for the expenditure of the Grant; and/or
- (b) a statutory declaration made in accordance with the *Statutory Declarations Act 1959* (Cth) accounting for the expenditure of the Grant.

11 Repaying the Grant

11.1 If:

- (a) we overpay you an amount; or

¹ Refer Australian Accounting Standards Board [Australian Accounting Standards Board website](#)

² as maintained by the Auditing and Assurance Standards Board(AASB) [AASB Website](#)

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- (b) we pay you an amount that you incorrectly claim; or
 - (c) we pay you an amount that you are unable to spend in accordance with this Agreement; or
 - (d) you spend an amount other than in accordance with this Agreement, you must pay us that amount of the Grant (or any lesser amount of which we notify you in writing).
- 11.2 In the event that a Grant amount is repayable to us under both this clause 11 and clause 23A, clause 23A takes precedence.
- 11.3 If you must repay an amount under clause 11.1:
- (a) you must do so within 20 Business Days after we give you a notice in writing; and
 - (b) you must pay Interest on any part of the amount that is outstanding after the end of the 20 Business Days until the date that the outstanding amount is repaid in full; and
 - (c) we may recover the amount and any Interest as a debt due to the Commonwealth.
- 11.4 We can recover all or any of the amount and Interest by deducting it from subsequent amounts we pay you under this Agreement or any other agreement we have with you.

12 Taxes, duties and government charges

- 12.1 Organisation is registered or required to be registered for GST
- 12.1.1 In this clause:
 - (a) the term '**GST Act**' means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);
 - (b) the terms '**supply**', '**supplier**', '**taxable supply**', '**tax invoice**', '**GST**', '**input tax credit**', '**decreasing adjustment**' and '**adjustment note**' have the same meaning as given in the GST Act; and
 - (c) the term '**RCTI**' means a 'recipient created tax invoice' as defined in the GST Act. For the purpose of this Agreement, an RCTI is a tax invoice belonging to a class of tax invoices that the Australian Commissioner of Taxation has determined in writing may be issued by the receiver of the supply; and
 - (d) '**receiver of the supply**' has the same meaning as the term 'recipient' has in the GST Act.
 - 12.1.2 You must 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 clause.
 - 12.1.3 If one party ('**supplier**') makes a taxable supply to the other party ('**receiver of the supply**') under this Agreement the receiver of the supply will pay without set-off, on provision of a tax invoice or RCTI, an additional amount to the supplier equal to the GST imposed on the supply in question.

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- 12.1.4 If an amount on account of GST has been included in the consideration for a supply under this Agreement, the amount of GST is as specified GST in Items C and F of the Schedule to this Agreement.
- 12.1.5 If an amount on account of GST has been included in the consideration for a supply under this Agreement and the supply is not a taxable supply for any reason, the supplier must, on demand, refund the amount paid on account of GST to the receiver of the supply.
- 12.1.6 No party may claim or retain from the other party any amount in relation to a supply made under this Agreement for which the first party can obtain an input tax credit or decreasing adjustment.
- 12.1.7 The parties acknowledge and agree that each party:
- (a) is registered for GST purposes;
 - (b) has quoted its Australian Business Number to the other; and
 - (c) must tell the other of any changes to the matters covered by this clause.
- 12.1.8 We (as the receiver of the supply) will issue RCTI(s) and any adjustment notes for any taxable supplies you make to us under this Agreement within 28 days of us determining the value of the taxable supplies in question.
- 12.1.9 You must not issue tax invoices or adjustment notes for taxable supplies you make to us under this Agreement.
- 12.1.10 Both parties must comply with the determination scheduled to GST Ruling 2000/10.
- 12.1.11 We will not issue RCTI(s) or adjustment notes for taxable supplies you make to us under this Agreement at any time that either party fails to comply with any of the requirements in clauses 12.1.7 to 12.1.11.

Assets

13 Assets

- 13.1 This clause only applies if Assets are purchased with the Grant.
- 13.2 You can only use the Grant to purchase the Assets we have specified in Item H of the Schedule.
- 13.3 You must obtain our prior approval in writing if you want to use the Grant to purchase Assets not specified in Item H of the Schedule.
- 13.4 You own the Assets purchased with the Grant unless Item H of the Schedule states otherwise.

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Material and Information

14 Intellectual Property Rights

- 14.1 As between us and you, you own the Intellectual Property Rights in all Your Material.
- 14.2 We own all Commonwealth Material, including Intellectual Property Rights in that Material.
- 14.3 You must obtain from each Fund Recipient a permanent, irrevocable, free, worldwide, non-exclusive licence, including a right of sublicense, to use, communicate, reproduce, publish (including under an Open Access Licence) and adapt its Project Material and any Existing Project Material for the purpose of this Agreement and any other non-commercial purpose. This licence must allow you to grant us the licence specified in clause 14.4 in respect of that Project Material and Existing Project Material.
- 14.4 You grant us a licence to use, communicate, reproduce, publish (including under an Open Access Licence) and adapt the Intellectual Property Rights in all of the Agreement Material and Existing Material, for the purpose of this Agreement and any other non-commercial purpose. This licence is permanent, irrevocable, free, worldwide, non-exclusive and includes a right of sublicense.
- 14.5 Notwithstanding clause 14.3, you must ensure that you:
- (a) use Your Material, Project Material and Existing Project Material only for the purpose of performing Your obligations under this Agreement; and
 - (b) only provide Your Material, Project Material and Existing Project Material to some or all of your members, or otherwise publish that Material, in accordance with our prior and express written agreement.
- 14.5 We license you to use the Commonwealth Material (including copying it and supplying it to others), but only for the purposes of this Agreement.
- 14.6 You must ensure that you have the right, or will have the right at the relevant time, to deal with the Intellectual Property Rights in the Agreement Material and any Existing Material under this clause 14.
- 14.7 If we require, you must bring into existence, sign or otherwise deal with any document which we consider is necessary or desirable to give effect to this clause 14.
- 14.8 You must obtain, or require the relevant Fund Recipient to obtain, from each author of any Agreement Material or Existing Material, a written consent to the Specified Acts. The consent must cover Specified Acts done before or after the date of the consent, and whether done by us or by someone

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claiming under or through us. If we ask, you must give us the original of the consent.

15 Safekeeping and return of Commonwealth Material

- 15.1 You must keep safe and maintain all Commonwealth Material. You accept all risk relating to that Material.
- 15.2 Unless we otherwise direct, you must promptly return all Commonwealth Material when this Agreement ends or is terminated.

16 Privacy issues

- 16.1 You agree, in conducting each Activity:
- (a) not to do anything which, if done by the Commonwealth, would be a breach of the requirements of Division 2 of Part III of the *Privacy Act 1988*; and
 - (b) to comply with any of our directions, guidelines, determinations or recommendations, to the extent that they are consistent with your obligations referred to in clause 16.1(a).
- 16.2 If you become aware of any breach or possible breach of this clause 16, you must notify us immediately.
- 16.3 You acknowledge that the Commonwealth (including us) may disclose or publish details about this Agreement or the Activity. The details may include (but are not limited to) your name, the Grant amount for this Agreement and/or the Activity and the location where the Activity is being delivered or performed.
- 16.4 You must obtain any Subcontractor's express consent for the disclosure to us of the Subcontractor's identity (and their Personal Information, if the Subcontractor is an individual). The consent obtained must extend to allowing us to disclose for reporting purposes the Subcontractor's identity and the existence and nature of the Subcontract.

Disclosure of Information

17.1 Confidential Information

17.1.1 In this clause 17.1, "Confidential Information" means information that:

- (a) is described in Item K of the Schedule; or
- (b) the parties agree in writing after the date of this Agreement is confidential information for the purposes of this Agreement; or
- (c) is Secret and Sacred Material,

and excludes any Project Material or other Project information and this Agreement.

17.1.2 Subject to clause 17.1.3, a party must not disclose Confidential Information to anyone, without the prior written consent of the other party.

17.1.3 A party can disclose Confidential Information to the extent that it:

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- (a) is disclosed to its internal management personnel, solely to enable effective management or auditing of Agreement-related activities; or
- (b) is disclosed by us to the responsible Minister; or
- (c) is disclosed by us, in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia; or
- (d) is shared within a party, or with another agency, where this serves the Commonwealth's legitimate interests; or
- (d) is authorised or required by law to be disclosed; or
- (e) is in the public domain otherwise than due to a breach of this clause 17.1.

17.1.4 Where a party discloses Confidential Information to another person under clause 17.1.3 that party must:

- (a) notify the receiving party that the information is confidential; and
- (b) not provide the information unless the receiving person agrees to keep the information confidential.

17.1.5 You agree to secure all of our Confidential Information against loss and unauthorised access, use, modification or disclosure.

17.2 Freedom of Information

17.2.1 In this clause 17.2, “document” and “Commonwealth contract” have the same meaning as in the *Freedom of Information Act 1982* (Cth).

17.2.2 This clause 17.2 applies to the extent that this Agreement is a Commonwealth contract.

17.2.3 Where we have received a request for access to a document created by you or a Subcontractor, or in your possession or that of your Subcontractor, which relates to the performance of this Agreement (and not to the entry into this Agreement), we may at any time by written notice require you to provide the document to us and you must, at no additional cost to us, promptly comply with the notice.

17.2.4 You must include provisions in all of your Subcontracts that will enable you to comply with your obligations under this clause 17.2.

18 Confidentiality deeds

18.1 If we ask, you must promptly arrange for any of your Subcontractors, employees, and volunteers to promptly give us a signed confidentiality deed relating to the use and non-disclosure of our Confidential Information.

18.2 You must use the form of confidentiality deed we provide.

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Working with Vulnerable Persons

19 Vulnerable Persons, Police Checks and Criminal Offences

- 19.1 Unless otherwise specified in the Schedule, this clause 19 applies if the Activity or any part of the Activity involves working with, or contact with, Vulnerable Persons.
- 19.2 Before engaging or deploying any Person (whether as an officer, employee, contractor, or volunteer) in relation to any part of the Activity, you must:
- (a) conduct a Police Check for that Person or where relevant, confirm a similar check by appropriate authorities has occurred;
 - (b) confirm that no Commonwealth, State or Territory law prohibits that Person from being engaged in a capacity where they may have contact with Vulnerable Persons; and
 - (c) comply with all other legal requirements of the place where the Activity, or part of the Activity, is being conducted in relation to engaging or deploying persons in a capacity where they may have contact with Vulnerable Persons.
- 19.3 For the purposes of clause 19.2(a) you do not have to conduct a Police Check for a Person where they have a current Working with Children (NSW) check or an equivalent check in another jurisdiction that is current.
- 19.4 You agree:
- (a) if a Police Check or other relevant check by authorities indicates that a Person has a Serious Record, or a Criminal or Court Record, not to engage, deploy or redeploy the Person unless you have conducted and documented a risk assessment of that Person;
 - (b) within 24 hours of becoming aware of a Person being charged or convicted of any Serious Offence or Other Offence, to conduct and document a risk assessment in accordance with clauses 19.5 to 19.6 to determine whether to allow that Person to continue performing the Activity or any part of the Activity; and
 - (c) to document the actions you will take as a result of conducting the risk assessment.
- 19.5 You will be wholly responsible for conducting any risk assessment, assessing its outcome and deciding to engage, deploy or redeploy a Person with a Serious Record, Criminal or Court Record, to work on the Activity, or any part of the Activity.
- 19.6 In undertaking your risk assessment under clauses 19.4 and 19.5 you agree to take into account the following factors:
- (a) whether the Person's Serious Record, Criminal or Court Record is directly relevant to the role the Person will or is likely to perform in relation to the Activity or any part of the Activity;

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- (b) the length of time that has passed since the Person's conviction and the Person's record since that time;
 - (c) the nature of the offence pertaining to the Serious Record, Criminal or Court Record and the circumstances in which it occurred;
 - (d) whether the offence involved Vulnerable Persons;
 - (e) the nature of the Activity and the circumstances in which the Person will or is likely to have contact with Vulnerable Persons;
 - (f) the particular role the Person is proposed to undertake or is currently undertaking in relation to the Activity and whether the fact the Person has a Serious Record, Criminal or Court Record is reasonably likely to impair the Person's ability to perform or continue to perform the inherent requirements of that role; and
 - (g) the Person's suitability based on their merit, experience and references to perform the role they are proposed to undertake or are currently undertaking in relation to the Activity or any part of the Activity.
- 19.7 After taking into account the factors set out in clause 19.6, you agree to then determine whether it is reasonably necessary to:
- (a) not engage, deploy or redeploy the Person in relation to the Activity or any part of the Activity; or
 - (b) remove the Person from working in any position or acting in any capacity in relation to the Activity or any part of the Activity which involves working or having contact with Vulnerable Persons; or
 - (c) make particular arrangements or impose conditions under which the Person's role in relation to the Activity or any part of the Activity and, where relevant, contact with Vulnerable Persons is to occur; or
 - (d) take steps to protect the physical, psychological or emotional wellbeing of the Vulnerable Persons to whom the Activity relates.
- 19.8 If we require you must promptly provide evidence, in a form we require, that you have complied with the requirements of this clause 19.
- 19.9 You agree to reflect your obligations under this clause 19 in all Subcontracts you enter into in relation to the Activity or part of the Activity.
- 19.10 In this clause 19:
- (a) "**Child**" means an individual under the age of 18;
 - (b) "**Criminal or Court Record**" means any record of any Other Offence;
 - (c) "**Other Offence**" means a conviction, finding of guilt, on-the-spot fine for, or court order relating to:
 - (i) an apprehended violence or protection order made against the Person; or
 - (ii) one or more traffic offences involving speeding more than 30 kilometres over the speed limit, injury to a person or damage to property; or

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- (iii) a crime or offence involving the consumption, dealing in, possession or handling of alcohol, a prohibited drug, narcotic or other prohibited substance; or
- (iv) a crime or offence involving violence against or the injury, but excluding the death of a person; or
- (v) a minor crime or offence involving dishonesty, other than those crimes or offences referred to in paragraph (c) of this clause.
- (d) **"Person"** means each of your officers, employees, contractors and volunteers;
- (e) **"Police Check"** means a formal inquiry made to the relevant police authority in each Australian State or Territory where you know the Person has resided, designed to obtain details of the Person's criminal conviction or a finding of guilt in all places (within and outside Australia);
- (f) **"Serious Record"** means a conviction or any finding of guilt for a Serious Offence;
- (g) **"Serious Offence"** means:
 - (i) a crime or offence involving the death of a person;
 - (ii) a sex-related offence or a crime, including sexual assault (whether against an adult or Child); Child pornography, or an indecent act involving a Child;
 - (iii) a crime or offence involving dishonesty that is not minor;
 - (iv) fraud, money laundering, insider dealing or any other financial offence or crime, including those under legislation relating to companies, banking, insurance or other financial services.
- (h) **"Vulnerable Person"** means:
 - (i) a Child; or
 - (ii) an individual aged 18 years and above who is or may be unable to take care of themselves, or is unable to protect themselves against harm or exploitation by reason of age, illness, trauma or disability, or any other reason.

Dealing with Risk

20 Indemnity

20.1 You indemnify us against the following:

- (a) all liability; and
- (b) all losses, costs, and expenses

(including those set out in clause 20.2 if caused by the circumstances set out in clause 20.3.)

20.2 The losses, costs, and expenses against which you indemnify us include:

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- (a) loss of or damage to our property; and
 - (b) loss or expense in dealing with any claim against us (including legal costs on a solicitor/own client basis, the cost of time spent, resources used and disbursements paid).
- 20.3 For the purposes of clause 20.1, you indemnify us in circumstances where our liability, loss, cost or expense was caused by:
- (a) your (including any of your personnel and any Subcontractors') act or omission in carrying out this Agreement, but only where you (or your personnel or Subcontractor) were at fault; or
 - (b) your breach of this Agreement; or
 - (c) our use of the Agreement Material or Existing Material (including where a third party makes a claim against us over the ownership of or right to use Intellectual Property Rights or Moral Rights in the Agreement Material or Existing Material).
- 20.4 Your liability to indemnify us under this clause 20 is reduced proportionately to the extent that our own fault caused our loss.
- 20.5 Our right to be indemnified under this clause 20 is in addition to any other remedy we have at law or under this Agreement. However, we are not entitled to be compensated for more than our actual loss.

21 Insurance

- 21.1 You agree to have current and adequate insurance appropriate to the Activity. Any additional requirements are specified in Item G of the Schedule.
- 21.2 If we ask, you must provide certificates of currency for the insurance and/or a warranty from your insurer that the policy extends to and will cover potential liability arising under this Agreement.
- 21.3 This clause 21 continues to operate for as long as any obligations remain in connection with this Agreement.

Terminating the Agreement

22 Our right to terminate, or reduce the scope of, the Agreement

- 22.1 Even though you are not in default, we can terminate this Agreement, or reduce its scope, at any time by giving you written notice.
- 22.2 If, under clause 22.1, we terminate this Agreement or reduce its scope, we are only liable to you for:
- (a) payments that were due to you before the date of termination or reduction; and
 - (b) reasonable costs you incur as a direct result of the termination or reduction (but subject to clauses 22.4, 22.5 and 22.6).

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- 22.3 If we terminate or reduce the scope of this Agreement under clause 22.1, you must:
- (a) immediately stop carrying out your obligations under this Agreement (or, in the case of a reduction in scope, the obligations removed by the reduction); and
 - (b) immediately do everything you can to lessen all losses, costs and expenses that you may suffer from the termination or reduction including terminating all of the Project Agreements and any Subcontracts you entered into for the Activity; and
 - (c) repay the Grant amount (if any) specified in clause 23A and we may recover that amount from you as a debt due to the Commonwealth.
- 22.4 We need only pay you the reasonable costs in clause 22.2(b) if you:
- (a) comply strictly with this clause 22; and
 - (b) provide written evidence to satisfy us of the amounts claimed.
- 22.5 We are not liable to pay you compensation for any loss of profits or benefits that you would have received had the termination or reduction not occurred.
- 22.6 We will not be liable to pay any amount under clause 22.2(a) or 22.2(b) in respect of the Activity which would, when added to any Grant amount already paid to you under this Agreement for the part of the Activity performed by you (as opposed to a Fund Recipient), together exceed \$1,000,000 GST exclusive.

23 Our right to terminate for your default or financial circumstances

- 23.1 We can terminate this Agreement immediately by notice to you if any of the following occur:
- (a) you breach any of your obligations under this Agreement and we consider that the breach cannot be rectified;
 - (b) you breach any of your obligations under this Agreement and you do not rectify the breach within 10 Business Days after we give you a notice to rectify it;
 - (c) we are satisfied on reasonable grounds that you are unable or unwilling to satisfy the terms of this Agreement;
 - (d) in relation to this Agreement or Activity, you breach a law of the Commonwealth, or of a State or Territory;
 - (e) we consider that our decision to approve the Grant was affected by a statement in your application for Grant that was incorrect, incomplete, false or misleading;
 - (f) we consider that the range or quality of Projects that you are recommending for funding under the Activity is insufficient to meet the Program's objectives or the outcomes specified in Annexure D of the Schedule.
 - (g) you are unable to pay all of your debts as and when they fall due;
 - (h) you have come under external administration, or have applied to come under external administration, or have received a notice requiring you

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to show cause why you should not come under external administration. This includes any external administration referred to in:

- (i) Chapter 5 of the *Corporations Act 2001* (Cth), or equivalent provisions in State or Territory legislation concerning incorporated associations; or
- (ii) Chapter 11 of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth); or

- (i) you have become bankrupt or entered into a scheme of arrangement with creditors.

23.2 If we terminate this Agreement under this clause 23, you must repay the amount of the Grant amount (if any) specified in clause 23A and we can recover that amount from you as a debt due to the Commonwealth.

23.3 If we purport to terminate the Agreement under this clause 23 and that termination is determined by a competent authority not to be properly a termination under this clause 23, then that termination by us will be deemed to be a termination under clause 22 effective from the date of the notice of termination referred to in clause 23.1.

23.4 This clause 23 does not affect our other rights under this Agreement, or otherwise at law.

23A Repayment of the Grant and Project Funds, including at the end of the Activity or on termination

23A.1 You must, in relation to each Project Agreement:

- (a) take all reasonable steps to recover from a Fund Recipient any amount of Project Funds that it is required to pay to you under a Project Agreement (as well as your reasonable costs of recovering that amount from the Fund Recipient) as if section 11 of the *Public Governance, Performance and Accountability Rule 2014* applied to you; and
- (b) only agree to waive any payment or other obligation, or write off any amount, that a Fund Recipient owes to you under a Project Agreement if you have obtained our prior and express written approval to that waiver or write off. We may make our approval subject to conditions, in which case you must comply with those conditions.

23A.2 Subject to clause 23A.3, if you have Project Funds that you will not pay to the intended Fund Recipient, or that you recover from a Fund Recipient, during the Activity Period, you must either:

- (a) allocate those Project Funds to another Fund Recipient for its Project; or
- (b) repay those Project Funds to us within 60 days of you becoming aware that the Project Funds will not be paid to the intended Fund Recipient or your recovery of those Project Funds (whichever applies).

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- 23A.3 At the end of the Activity Period, or the earlier termination of this Agreement, you must pay us the following Grant amounts:
- (a) any Grant amount that you have received from us and which we consider has not been spent, and is not due and payable, by you for the purpose of the Activity in accordance with this Agreement as at the end of the Activity Period or the date we provide the notice of termination to you under clause 22 or 23 of this Agreement (whichever applies); and
 - (b) any amount of Project Funds that you have recovered from a Fund Recipient in accordance with its Project Agreement and still hold as at the end of the Activity Period or the date we provide the notice of termination to you under clause 22 or 23 of this Agreement (whichever applies).
- 23A.4 You must pay us an amount specified in clause 23A.3 within 20 Business Days after the end of the Activity Period or the date that we provide the notice of termination to you under clause 22 or 23 of this Agreement (whichever applies).
- 23A.5 Any additional amount of Project Funds that you recover from a Fund Recipient after the repayment period specified in clause 23A.4 must be paid to us within 20 Business Days of the date you recover the amount from the Fund Recipient.
- 23A.6 In addition to clause 23A.4 and 23A.5, if you do not comply with clause 23A.1 regarding an amount of Project Funds that you have paid to a Fund Recipient, we may recover that amount of Project Funds from you (regardless of whether you have recovered it from the Fund Recipient).
- 23A.7 If you must repay us an amount under this clause 23A:
- (a) you must pay Interest on any part of the amount that is outstanding after the due date for the payment until the date that the outstanding amount is repaid in full;
 - (b) we may recover the amount and any Interest as a debt due to the Commonwealth; and
 - (c) we can recover all or any of the amount and Interest payable under clause 23A.2 by deducting it from any subsequent amount payable to you under this Agreement or any other agreement we have with you.

24 Dispute Resolution

- 24.1 Unless otherwise specified in the Schedule, if a dispute or difference (called collectively a "dispute" in this clause 24, and in clauses 25 and 26) arises between you and us, both parties agree to deal with the dispute in the following way:
- (a) the party who claims that a dispute exists will give the other party a notice setting out the nature of the dispute;
 - (b) the parties will then try to resolve the dispute by negotiation, within 20 Business Days from when the notice is given, and for that purpose may authorise persons to act for them.

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- 24.2 If the dispute is not resolved within 20 Business Days from when the notice is given, a party may submit the dispute to a form of alternative dispute resolution (including mediation).
- 24.3 A party cannot start legal proceedings in relation to the dispute unless:
- (a) the negotiations fail to resolve the dispute within 20 Business Days of when the notice is given; or
 - (b) where a party submits the dispute to alternative dispute resolution under clause 24.2 — the dispute is not resolved within 20 Business Days of that submission (or any extended time the parties have agreed in writing before the expiry of the 20 Business Days).

25 Exceptions to clause 24

- 25.1 A party does not need to follow the dispute resolution procedures set out in clause 24.2 if they are seeking urgent interlocutory³ relief from a court.
- 25.2 We need not follow the procedures set out in clause 24 in relation to actions we take under clauses 6 to 11 (which deal with the Grant), 22 (Our right to terminate, or reduce the scope of, the Agreement), 23 (Our right to terminate for your default or financial circumstances) or 23A (Repayment of the Grant and Project Funds, including at the end of the Activity or on termination).

26 Obligation to perform despite dispute

Whether or not a dispute exists, each party must continue to perform its obligations under this Agreement.

Other Legal Matters

27 Relationship between the parties

- 27.1 This Agreement does not make you our partner, agent or employee.
- 27.2 You must not misrepresent your relationship with us.
- 27.3 Neither party is authorised to legally commit or represent the other party in any way.
- 27.4 Neither party may attempt to bind or represent the other in any way.
- 27.5 You acknowledge and agree, and must ensure that your Fund Recipients acknowledge and agree, that your Fund Recipients have no contractual or other legal relationship with us.

³ Interlocutory relief is an interim order, made by a court, issued provisionally and without finally deciding the rights of the parties

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28 Subcontractors

- 28.1 You agree not to Subcontract any of your obligations under this Agreement, without first notifying us in writing.
- 28.2 If we give our consent, we may impose any conditions we consider appropriate, and you must comply with them.
- 28.3 You are not relieved of your obligation to carry out the Activity as required by this Agreement merely because you Subcontract any part of the Agreement.
- 28.4 You agree to ensure that any Subcontracts entered into by you for the purposes of this Agreement are consistent with the obligations binding on you under this Agreement.
- 28.5 If we terminate or reduce the scope of this Agreement under either clauses 22.1 or 23.1, you must exercise any right of termination or reduction you have against any of your Subcontractors.

29 Use of Specified Personnel

- 29.1 If we give you written notice, you must remove any personnel, including Specified Personnel, specified in that notice, and replace such person with other Specified Personnel satisfactory to us.
- 29.2 If any Specified Personnel is unavailable or unable to undertake the services, you must notify us in writing and you must replace that person with another Specified Personnel agreed by us.

30 Entire Agreement

This Agreement comprises the entire agreement between the parties about the subject matter of this Agreement. It supersedes all prior communications, negotiations and agreements, whether oral or written, about the subject matter of this Agreement.

31 Governing law

This Agreement is governed by the law of the Australian Capital Territory.

32 Variation of this Agreement

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

33 Enforcement of part does not prevent enforcement of another part

We are not prevented from enforcing any part of this Agreement merely because:

- (a) we did not enforce that part on an earlier occasion; or
- (b) we do not enforce another part.

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34 You must not assign your rights

- 34.1 You must not assign your rights under this Agreement without first getting our written consent.
- 34.2 In this clause 34, "assign" includes novate or transfer, in whole or in part.

34A Transition out

- 34A.1 If this Agreement is terminated under clause 22 or 23, you must promptly:
- (a) novate the Project Agreements to our nominee; and
 - (b) provide:
 - (i) any Activity Subcontracts, the Agreement Material, Commonwealth Material and Assets in your or a Subcontractors' possession or control; and
 - (ii) any Grant funds as directed by us,
- to our nominee.
- 34A.2 On termination of this Agreement, you must, in good faith, cooperate and reasonably assist us and/or our nominee achieve an efficient transition of the Activity to our nominee.

35 Effect of invalidity of part

If part of this Agreement is found to be invalid, the rest of the Agreement continues in effect as if the invalid part were excluded.

36 Certain clauses continue after this Agreement ends

The termination or expiry of this Agreement, for any reason, does not affect:

- (a) the continued operation of the following clauses:
 - (i) clause 3.2(h) (Your obligation to provide information and documents);
 - (ii) clause 4 (Your obligation to acknowledge our support);
 - (iii) clause 5 (Your obligation to keep records and provide reports);
 - (iv) clause 9 (Spending the Grant);
 - (v) clause 10 (Accounting for the Grant);
 - (vi) clause 11 (Repaying the Grant);
 - (vii) clause 12 (Taxes, duties and government charges);
 - (viii) clause 13 (Assets);
 - (ix) clause 14 (Intellectual Property Rights);
 - (x) clause 15 (Safekeeping and return of Commonwealth Material);
 - (xi) clause 16 (Privacy issues);
 - (xii) clause 17 (Disclosure of Information);
 - (xiii) clause 19 (Vulnerable Persons, Police Checks and Criminal Offences);

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- (xiv) clause 20 (Indemnity);
 - (xv) clause 21 (Insurance);
 - (xvi) clause 22 (Our right to terminate, or reduce the scope of, the Agreement);
 - (xvii) clause 23 (Our right to terminate for your default or financial circumstances);
 - (xviii) clause 23A (Repayment of the Grant and Project Funds, including at the end of the Activity or on termination and
 - (xix) clause 34A (Transition out); or
- (b) the continued operation of any other clauses that by their nature, survive termination or expiry.

37 Priority of documents

If there is any conflict or inconsistency, the provisions in documents forming part of this Agreement take priority in the following order:

- (a) the Supplementary Conditions (if any);
- (b) the Terms and Conditions;
- (c) the Schedule; and
- (d) the Activity Work Plans.

38 Notices

38.1 A notice under this Agreement is ineffective unless it is in writing.

38.2 Also, a notice under this Agreement is ineffective unless it meets the following requirements:

- (a) where you give it to us—you address it, and forward it, to the address specified in Item L of the Schedule, or as we otherwise direct;
- (b) where we give it to you—we address it, and forward it, as specified in Item L of the Schedule, or as you otherwise direct; and
- (c) in either case, it is signed by, or on behalf of, the person giving it.

38.3 A notice may be given:

- (a) by hand delivery; or
- (b) by prepaid post; or
- (c) by electronic transmission, including by email or by facsimile.

38.4 A notice is treated as having been given if:

- (a) delivered by hand—on delivery to the relevant address;
- (b) sent by post—on delivery to the relevant address, or 5 Business Days after it was posted, whichever is earlier;
- (c) transmitted electronically—when received by the addressee.

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39 Interpretation: General

39.1 In this Agreement:

- (a) headings are for convenience only and have no effect on interpretation; and
- (b) footnotes are for information only and are not part of the Agreement; and
- (c) a provision is not to be interpreted against a party merely because that party proposed it.

39.2 Also in this Agreement, unless the contrary appears:

- (a) where a word or phrase has a defined meaning, any grammatical form of that word has a corresponding meaning; and
- (b) a reference to legislation or a legislative provision includes a reference to any amendment, substitution or re-enactment of that legislation or provision; and
- (c) 'includes' in any of its forms is not a word of limitation; and
- (d) a reference to \$ or dollars is a reference to Australian currency; and
- (e) the singular includes the plural and vice versa.

40 Defined terms

40.1 In this Agreement, unless the contrary appears:

- (a) **we** or **us** (and grammatical variations such as ours) means the Commonwealth of Australia represented by the Department(s) or Entity(ies) specified in the Agreement and includes our officers, delegates, employees, other contractors and agents;
- (b) **you** (and grammatical variations such as your) means the legal entity set out in the Schedule, and includes your officers, employees, agents, volunteers, Subcontractors, and successors.

40.2 Also in this Agreement, unless the contrary appears:

Activity means any tasks, activities, services or other purposes for which this Grant is provided. The Activity is described in Item B of the Schedule.

Activity Period means the period specified in Item B of the Schedule during which the Activity must be completed.

Administration Funding means the fund to cover your administrative and management costs which must be spent in accordance with Item C of the Schedule.

Agreement comprises these Terms and Conditions, including the Supplementary Conditions, the Schedule (which is a separate document signed by you and us), and any documents incorporated by reference into these Terms and Conditions or the Schedule, including each Activity Work Plan approved by us.

Agreement Material means all Your Material and Project Material.

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Asset means any item of personal, real or intangible⁴ property, with a price or value of \$10,000 or more, inclusive of GST, and which has been created, acquired or leased wholly or in part with the Grant, except Intellectual Property Rights and licences provided for in clause 14.

Budget means the Budget as described in Item D of the Schedule.

Business Day means any day other than a Saturday, Sunday, public or bank holiday in the place where the relevant act is to be done.

Commencement Date means the date on which the Agreement was signed by the last party to do so or such later date as is specified in the first occurring Activity Commencement Date in any Schedule to the Agreement.

Commonwealth Auditor-General means the holder of the position including members of staff of the Auditor General's office.

Commonwealth Material means any Material that we give you for the purposes of this Agreement or that is copied or derived from that Material, but does not include Agreement Material.

Completion Date means the Schedule Completion Date specified in the Schedule to the Agreement, or the day after you have done, to our satisfaction, all that you are required to do under this Agreement, whichever is the later.

Existing Material means Your Existing Material and Existing Project Material.

Existing Project Material means, in respect of a Project, all Material in existence before the execution of the relevant Project Agreement that is:

- (a) incorporated in the Project Material for that Project; or
- (b) supplied to you with, or as part of, the Project Material for that Project; or
- (c) required to be supplied to you with, or as part of, the Project Material for that Project.

Grant means the money, or any part of it, paid to you as set out in Item C of the Schedule. The Grant is separated into two separate allocations; Administration Funding and the Sector Readiness Fund. These allocations must be spent separately for different purposes in accordance with Item C of the Schedule.

Intellectual Property Rights means all copyright, rights in relation to inventions (including patent rights), registered and unregistered trademarks (including service marks), registered designs, and other rights resulting from intellectual activity in industrial, scientific, literary or artistic fields, but does not include Moral Rights.

⁴ Intangible assets are those assets that lack a physical presence, but are constituted by a right enforceable in a court of law or equity. Intellectual property is an example of intangible property

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Interest means interest calculated at an interest rate equal to the general interest charge rate as specified in section 8AAD of the *Taxation Administration Act 1953*, on a daily compounding basis.

External Capability Building Services means an independent professional service provider which provides professional services that assists a Fund Recipient to bring an investable product to market. This may include, but is not limited to:

- (a) business planning;
- (b) financial modelling;
- (c) financial structuring;
- (d) capital raising and advisory services;
- (e) contract negotiation and tendering support;
- (f) legal support; and
- (g) other specialist advice including measurement and evaluation support and governance advice.

Fund Recipient means an entity that is funded to perform a Project as part of the Activity.

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.

Moral Rights includes the following rights of an author of copyright Material:

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

Open Access Licence means a licence to the public on broad open access terms that allows any member of the public to perform a wide range of acts in respect of the relevant Material subject to certain restrictions. An Open Access Licence includes any Commonwealth open access licence and any creative commons attribution licence (see <http://creativecommons.org.au/learn/licences>).

Personal Information has the same meaning as in the *Privacy Act 1988*.

Project means a project for a Fund Recipient to purchase External Capability Building Services that is funded by you as part of the Activity.

Project Agreement means the legally binding grant agreement between you and a Fund Recipient regarding its performance of, and expenditure of Project Funds for, its Project.

Project Funds means the amount of money you provide to a Fund Recipient from the Sector Readiness Fund, for the satisfactory completion of its Project in accordance with its Project Agreement.

Project Material means:

- (a) all the Material that a Fund Recipient creates for the purpose of its Project which it provides, or is required to provide, to you

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under its Project Agreement, and includes the Project Reports;
and

- (b) any Material that is derived from the Material in paragraph (a) (other than any Your Material that you are required to provide to us under this Agreement).

Project Report means the report that a Fund Recipient is required by its Project Agreement to provide to you regarding its performance of, and expenditure of Project Funds for, its Project.

Schedule means a schedule to this Agreement. It may include annexures and incorporate other documents by reference.

Secret and Sacred Material means all information and knowledge of special religious, spiritual or customary significance considered to be secret, exclusive or restricted by an Aboriginal person or according to Aboriginal Tradition as defined in the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth).

Sector Readiness Fund means that part of the Grant, which is for distribution by you in accordance with the Agreement, to successful Fund Recipients for the purchase of External Capability Building Services.

Specified Acts means any of the following acts or omissions by or on behalf of the Commonwealth:

- (a) using, reproducing, adapting or exploiting all or any part of the Agreement Material, with or without attribution or authorship;
- (b) supplementing Agreement Material with any other Material;
- (c) using the Agreement Material in a different context to that originally envisaged,

but does not include false attribution of authorship.

Specified Personnel means the personnel, if any, (whether your officers, employees, Subcontractors or volunteers of you) required to undertake the Activity or any part of the Activity as set out the Schedule, or such personnel replaced in accordance with clause 29.

Subcontractor means any contractor, person or organisation who is engaged by you to undertake any part of the Activity and includes the Fund Recipients (and any of that contractor's, person's or organisation's employees, agents and subcontractors). 'Subcontracts' has a corresponding meaning.

Supplementary Conditions means terms & conditions in annexures to the Schedule.

Terms and Conditions means all clauses of this document.

Your Existing Material means, in respect of Your Material, all Material in existence before the execution of this Agreement that is:

- (a) incorporated in Your Material; or
- (b) supplied to us with, or as part of, Your Material; or
- (c) required to be supplied to us with, or as part of, Your Material,

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and excludes Existing Project Material.

Your Material means:

- (a) all the Material that you create for the purpose of this Agreement which you provide, or are required to provide, to us under this Agreement, including Your Reports; and
 - (b) any Material that is derived from the Material in paragraph (a),
- but excludes Project Material.

Your Reports means the reports that you are required under this Agreement to provide to us regarding Your performance of, and expenditure of the Grant for, the Activity and excludes the Project Reports.