

DSOA Grant Agreement - Supplementary Terms and Conditions

Organisation ID:	[Program Schedule Organisation ID]
Agreement ID:	[Agreement ID]
Schedule ID:	[Program Schedule ID]

1. Other contributions

Not Applicable

2. Activity budget

Not Applicable

3. Intellectual property in Activity Material

Not Applicable

3A. Intellectual property – research

Not Applicable

3B. Creative Commons licence

Not Applicable

4. Access/Monitoring/Inspection

CB4.1 The Grantee agrees to give the Commonwealth, or any persons authorised in writing by the Commonwealth:

- a) access to premises where the Activity is being performed and/or where Material relating to the Activity is kept within the time period specified in a Commonwealth notice; and
- b) permission to inspect and take copies of any Material relevant to the Activity.

CB4.2 The Auditor-General and any Information Officer under the Australian Information Commissioner Act 2010 (Cth) (including their delegates) are persons authorised for the purposes of clause CB4.1.

CB4.3 This clause CB4 does not detract from the statutory powers of the Auditor-General or an Information Officer (including their delegates).

5. Equipment and assets

Not Applicable

6. Specified personnel

Not Applicable

7. Relevant qualifications, licences, permits, approvals or skills

CB7.1 The Grantee agrees to ensure that personnel performing work in relation to the Activity:

- a) are appropriately qualified to perform the tasks indicated;
- b) have obtained the required qualifications, licences, permits, approvals or skills before performing any part of the Activity; and
- c) continue to maintain all relevant qualifications, licences, permits, approvals or skills for the duration of their involvement with the Activity.

8. Vulnerable Persons

Criminal or Court Record means any record of any Other Offence.

Other Offence means, in relation to a person, a conviction, finding of guilt, on-the-spot fine for, or court

- a) an apprehended violence or protection order made against the person.
- b) the consumption, dealing in, possession or handling of alcohol, a prohibited drug, narcotic or other prohibited substance.
- c) violence against another person or the injury, but excluding the death, of another person; or
- d) an attempt to commit a crime or offence, or to engage in any conduct or activity, described in paragraphs (a) to (c).

CB8.1 In this Agreement:

Police Check means a formal inquiry made to the relevant police authority in each State or Territory and designed to obtain details of an individual's criminal conviction or a finding of guilt in all places (within and outside Australia) that the Grantee know the person has resided in.

Serious Offence means:

- a) a crime or offence involving the death of a person.
- b) 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.
- c) 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; or
- d) an attempt to commit a crime or offence described in (a) to (c).

Serious Record means a conviction or any finding of guilt regarding a Serious Offence; and

Vulnerable Person means 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 for any reason, including age, physical or mental illness, trauma or disability, pregnancy, the influence, or past or existing use, of alcohol, drugs or substances or any other reason.

CB8.2 Before any person commences performing work on any part of the Activity that involves working or contact with a Vulnerable Person, the Grantee must:

- a) obtain a Police Check for that person.
- b) confirm that the person is not prohibited by any law from being engaged in a capacity where they may have contact with a Vulnerable Person.
- c) comply with all State, Territory or Commonwealth laws relating the employment or engagement of persons in any capacity where they may have contact with a Vulnerable Person; and
- d) ensure that the person holds all licences or permits for the capacity in which they are to be engaged, including any specified in the Grant Details, and the Grantee must ensure that Police Checks and any licences or permits obtained in accordance with this clause CB8.2 remain current for the duration of their involvement in the Activity.

CB8.3 The Grantee must ensure that a person does not perform work on any part of the Activity that involves working or contact with a Vulnerable Person if a Police Check indicates that the person at any time has:

- a) a Serious Record; or
- b) a Criminal or Court Record.

and the Grantee has not conducted a risk assessment and determined that any risk is acceptable.

CB8.4 In undertaking a risk assessment under clause CB8.3, the Grantee must have regard to:

- a) the nature and circumstances of the offence(s) on the person's Criminal or Court Record and whether the charge or conviction involved Vulnerable Persons.
- b) whether the person's Criminal or Court Record is directly relevant to, or reasonably likely to impair the person's ability to perform, the role that the person will, or is likely to, perform in relation to the Activity.
- c) the length of time that has passed since the person's charge or conviction and his or her record since that time.
- d) the circumstances in which the person will, or is likely to, have contact with a Vulnerable Person as part of the Activity.
- e) any other relevant matter,

and must ensure it fully documents the conduct and outcome of the risk assessment.

CB8.5 The Grantee agrees to notify the Commonwealth of any risk assessment it conducts under this clause and agrees to provide the Commonwealth with copies of any relevant documentation on request.

CB8.6 If during the term a person involved in performing work on any part of the Activity that involves working or contact with a Vulnerable Person is:

- a) charged with a Serious Offence or Other Offence, the Grantee must immediately notify the Commonwealth; or
- b) convicted of a Serious Offence, the Grantee must immediately notify the Commonwealth and ensure that that person does not, from the date of the conviction, perform any work or role relating to the Activity.

9. Child safety

CB9 is in this instance now referred to as G8A

G8A.1 If the Activity or any part of the Activity involves the Grantee employing or engaging a person (whether as an officer, employee, contractor or volunteer) that is required by State or Territory law to have a working with children check to undertake the Activity or any part of the Activity, the Grantee agrees:

- a) to comply with all State, Territory and Commonwealth law relating to the employment or engagement of people who work or volunteer with children in relation to the Activity, including mandatory reporting and working with children checks however described.
- b) if requested, provide the Commonwealth, at the Grantee's cost, with an annual statement of compliance with clauses G8A in such form as may be specified by the Commonwealth; and
- c) to ensure that any subcontract entered into by the Grantee for the purposes of this Agreement imposes the same obligations in clauses G8A.1(a) and (b) on the subcontractor and also requires the subcontractor to include those obligations in any secondary subcontracts.

10. Commonwealth Material, facilities and assistance

Not Applicable

11. Jurisdiction

CB11.1 This Agreement is governed by the law of the relevant state or territory and the Parties submit to the jurisdiction of the courts of the relevant state or territory.

12. Grantee trustee of trust (three alternatives based on organisation requirements)

Not Applicable

(Or)

CB12.1 In this Agreement, Trust means the trust specified in the Parties to the Agreement section of this Agreement.

CB12.2 The Grantee warrants that:

- a) it is the sole trustee of the Trust; and
- b) it has full and valid power and authority to enter into this Agreement and perform the obligations under it on behalf of the Trust; and
- c) it has entered into this Agreement for the proper administration of the Trust; and
- d) all necessary resolutions, consents, approvals and procedures have been obtained or duly satisfied to enter into this Agreement and perform the obligations under it; and
- e) it has the right to be indemnified out of the assets of the Trust for all liabilities incurred by it under this Agreement.

(Or)

CB12.1 In this Agreement, **Trust** means the trust specified in the Parties to the Agreement section of this Agreement.

CB12.2 The Grantee warrants that:

- a) they are the only trustees of the Trust; and
- b) they have full and valid power and authority to enter into this Agreement and perform the obligations under it on behalf of the Trust; and
- c) they have entered into this Agreement for the proper administration of the Trust; and
- d) all necessary resolutions, consents, approvals and procedures have been obtained or duly satisfied to enter into this Agreement and perform the obligations under it; and
- e) they have the right to be indemnified out of the assets of the Trust for all liabilities incurred by it under this Agreement.

CB12.3 Each trustee of the Trust is jointly and severally liable for the performance of this Agreement and a reference to the Grantee includes a reference to any one or more of the trustees.

13. Fraud

CB13.1 In this Agreement, Fraud means dishonestly obtaining a benefit, or causing a loss, by deception or other means, and includes alleged, attempted, suspected or detected fraud.

CB13.2 The Grantee must ensure its personnel and subcontractors do not engage in any Fraud in relation to the Activity.

CB13.3 If the Grantee becomes aware of:

- a) any Fraud in relation to the performance of the Activity; or
- b) any other Fraud that has had or may have an effect on the performance of the Activity;

then it must within 5 business days report the matter to the Commonwealth and all appropriate law enforcement and regulatory agencies.

CB13.4 The Grantee must, at its own cost, investigate any Fraud referred to in clause CB13.3 in accordance with the Australian Government Investigations Standards available at www.ag.gov.au.

CB13.5 The Commonwealth may, at its discretion, investigate any Fraud in relation to the Activity. The Grantee agrees to co-operate and provide all reasonable assistance at its own cost with any such investigation.

CB13.6 This clause survives the termination or expiry of the Agreement.

14. Prohibited dealings

Not Applicable

15. Anti-corruption

CB15.1 In this Agreement:

Illegal or Corrupt Practice means directly or indirectly:

- a) making or causing to be made, any offer, gift, payment, consideration or benefit of any kind to any party, or
- b) receiving or seeking to receive, any offer, gift, payment, consideration or benefit of any kind from any party, as an inducement or reward in relation to the performance of the Activity, which would or could be construed as an illegal or corrupt practice.

CB15.2 The Grantee warrants that the Grantee, its officers, employees, contractors, agents and any other individual or entity involved in carrying out the Activity have not, engaged in an Illegal or Corrupt Practice.

CB15.3 The Grantee agrees not to, and to take all reasonable steps to ensure that its officers, employees, contractors, agents and any other individual or entity involved in carrying out the Activity do not:

- a) engage in an Illegal or Corrupt Practice; or
- b) engage in any practice that could constitute the offence of bribing a foreign public official contained in section 70.2 of the **Criminal Code Act 1995** (Cth).

CB15.4 The Grantee agrees to inform the Commonwealth within five business days if the Grantee becomes aware of any activity as described in 15.3 in relation to the performance of the Activity.

16. Step-in rights

Not Applicable

17. Grant Administrator

CB17.1 If the Commonwealth issues a notice under clause 2.2 the Commonwealth may appoint an administrator to oversee the performance of the Activity and the management of the Grant (**Grant Administrator**).

CB17.2 The Commonwealth can appoint a Grant Administrator for any period and on any terms and conditions that the Commonwealth considers appropriate.

CB17.3 The Commonwealth will give the Grantee notice of the appointment of a Grant Administrator that specifies:

- a) the proposed period of the appointment;
- b) the roles and responsibilities of the Grant Administrator; and
- c) a summary of reasons why the Commonwealth has made the appointment, if the Commonwealth considers that providing such a summary is practicable and appropriate.

CB17.4 The Commonwealth may appoint more than one Grant Administrator at the same time.

CB17.5 The Grantee agrees to:

- a) consider, in a timely manner and in good faith, all advice given to the Grantee by a Grant Administrator.
- b) co-operate actively, fully and in good faith with, and provide all assistance, material and facilities reasonably required by a Grant Administrator; and

- c) comply with all directions given by a Grant Administrator relating to the administration of the Grant.

CB17.6 A Grant Administrator that provides a report to the Commonwealth:

- a) does so independently of the Grantee; and
- b) does not reduce the Grantee's obligations to provide reports under this Agreement.

CB17.7 A Grant Administrator is not an employee, officer, director, agent or contractor of the Grantee, nor an agent of the Commonwealth, and is not appointed to act, and does not act, in any such capacity. A Grant Administrator cannot enter into agreements for or on behalf of the Grantee or otherwise incur debts or other obligations on the Grantee's behalf.

18. Management Adviser

CB18.1 If the Commonwealth issues a notice under clause 2.2, the Commonwealth may, at its discretion and at its own cost, appoint an adviser to perform functions as determined by the Commonwealth (Management Adviser), which may include:

- a) advising the Grantee on:
 - i. the Grantee's operations and corporate governance arrangements;
 - ii. the management of the Activity;
 - iii. the management of the Grantee's personnel;
- b) with the Grantee's consent, assisting the Grantee with any of the matters specified in the Grant Details;
- c) cooperating with any Grant Administrator appointed in respect of the Grantee under this Agreement; and
- d) providing any other advice to the Grantee that the Commonwealth requires.

CB18.2 The Commonwealth will give the Grantee notice of its intention to appoint a Management Adviser that specifies:

- a) the proposed period of the appointment;
- b) the proposed roles and responsibilities of the Management Adviser; and
- c) if the Commonwealth considers it practicable and appropriate, a summary of reasons why the Commonwealth intends to make the appointment.

CB18.3 Without limiting the Commonwealth's discretion to appoint a Management Adviser and where practicable, the Grantee shall have 14 days after the Grantee receives the Commonwealth's notice of intention given pursuant to CB18.2 to provide the Commonwealth with reasons why a Management Adviser should not be appointed.

CB18.4 Upon appointment of a Management Adviser, the Commonwealth shall inform the Grantee of the scope of the appointment and its duration and of any extensions to the period of appointment.

CB18.5 The Grantee agrees to cooperate with a Management Adviser and comply with any directions and recommendations given by the Management Adviser in relation to the performance of this Agreement.

CB18.6 A Management Adviser who provides a report to the Commonwealth in relation to the Grantee:

- a) does so independently of the Grantee; and
- b) does not reduce the Grantee's obligations to provide Reports to the Commonwealth under this Agreement.

CB18.7 A Management Adviser is not an employee, officer, director, agent or contractor of the Grantee, nor an agent of the Commonwealth, and is not appointed to act, and does not act, in any such capacity. A Management Adviser is not appointed to act, and does not act, as a member or shadow member of the Grantee's governing board. A Management Adviser cannot enter into agreements for or on behalf of the Grantee or otherwise incur debts or other obligations on the Grantee's behalf.

19. Indemnities

CB19.1 The Grantee indemnifies the Commonwealth, its officers, employees and contractors against any claim, loss or damage arising in connection with the Activity.

CB19.2 The Grantee's obligation to indemnify the Commonwealth will reduce proportionally to the extent any act or omission involving fault on the part of the Commonwealth contributed to the claim, loss or damage.

20. Compliance with Legislation and policies

CB20.1 In this Agreement:

Legislation means a provision of a statute or subordinate legislation of the Commonwealth, or of a State, Territory or local authority.

CB20.2 The Grantee agrees to comply with all Legislation applicable to its performance of this Agreement.

CB20.3 The Grantee agrees, in carrying out its obligations under this Agreement, to comply with any of the Commonwealth's policies as notified, referred or made available by the Commonwealth to the Grantee (including by reference to an internet site).

CB20.4 In carrying out the Activity, the Grantee must comply with the following applicable policies/laws:

National Disability Insurance Scheme Commission's NDIS Quality and Safeguarding Framework (December 2016)

21. Work health and safety

CB21.1 The Grantee agrees to ensure that it complies at all times with all applicable work health and safety legislative and regulatory requirements and any additional work health and safety requirements set out in the Grant Details.

CB21.2 If requested by the Commonwealth, the Grantee agrees to provide copies of its work health and safety management plans and processes and such other details of the arrangements it has in place to meet the requirements referred to in clause CB21.1.

CB21.3 When using the Commonwealth's premises or facilities, the Grantee agrees to comply with all reasonable directions and procedures relating to work health and safety and security in effect at those premises or facilities, as notified by the Commonwealth or as might reasonably be inferred from the use to which the premises or facilities are being put.

22. Transition

CB22.1 If the Agreement is reduced in its scope or terminated under clause 19, the Grantee must at its own expense cooperate and give assistance as directed by the Commonwealth to enable the transition of some or all of the Activity to the Commonwealth or a third party nominated by the Commonwealth (**Successor**).

CB22.2 The assistance to be provided under clause CB22.1 may include, among other things:

- a) making available to the Commonwealth or any Successor information relevant to the performance of the Activity;
- b) allowing representatives of the Commonwealth or any Successor to observe the performance of the Activity;
- c) providing a briefing to the Commonwealth or any Successor personnel on the Activity;
- d) transferring to the Commonwealth or any Successor:
 - i. Activity Material specified in the Grant Details;
 - ii. Assets purchased with the Grant; and
 - iii. Records maintained under clause 12.1
- e) facilitating the novation or transfer to the Commonwealth or any Successor subcontracts and facilitating discussions with any subcontractors associated with the Activity;
- f) assigning or licensing Intellectual Property Rights in Reporting Material, and any Activity Material specified in the Grant Details, to the Commonwealth or any Successor on terms acceptable to the Commonwealth;
- g) preparing and executing any agreement or other documentation reasonably necessary or appropriate to facilitate any of the matters referred to above; and
- h) any other matter specified in the Grant Details.

CB22.3 This clause does not apply where the Agreement is cancelled or reduced in scope for convenience under clause 20.

23. Corporate governance

CB23.1 In this Agreement:

Constitution means (depending on the context):

- a) a company's, body corporates or incorporated association's constitution, or equivalent documents, which (where relevant) includes rules and any amendments that are part of the constitution.
- b) in relation to any other kind of body:
 - i. the body's charter or memorandum; or
 - ii. any instrument or law constituting or defining the constitution of the body or governing the activities of the body or its members.

CB23.2 The Grantee warrants that nothing in its Constitution conflicts with its obligations under this Agreement.

CB23.3 The Grantee agrees to provide a copy of its Constitution to the Commonwealth upon request and inform the Commonwealth whenever there is a change in the Grantee's Constitution, structure or management.

CB23.4 The Grantee agrees not to employ, and to remove from office, any person with a role in the Grantee's management or financial administration if:

- a) the person is an undischarged bankrupt.
- b) there is in operation a composition, deed of arrangement or deed of assignment with the person's creditors under the law relating to bankruptcy.
- c) the person has suffered final judgment for a debt, and the judgment has not been satisfied.
- d) subject to Part VIIC of the Crimes Act 1914 (Cth), the person has been convicted of an offence within the meaning of paragraph 85ZM (1) of that Act unless:

- i. that conviction is regarded as spent under paragraph 85ZM (2) (taking into consideration the application of Division 4 of Part VIIC);
 - ii. the person was granted a free and absolute pardon because the person was wrongly convicted of the offence; or
 - iii. the person's conviction for the offence has been quashed.
- e) that person is or was a director or occupied an influential position in the management or financial administration of an organisation that had failed to comply with the requirements or obligations owed to the Commonwealth in relation to any other grant; or
 - f) the person is otherwise prohibited from being a member or director or employee or responsible officer of the Grantee's organisation under the relevant legislation.

CB23.5 If the Grantee is an Aboriginal and Torres Strait Islander corporation incorporated under the Corporations (Aboriginal and Torres Strait Islander) Act 2006 (Cth) (the CATSI Act), in the event that the Grantee's public officer receives a notice from the Registrar of Aboriginal and Torres Strait Islander Corporations under section 487-10 of the CATSI Act calling upon the Grantee to show cause why an administrator should not be appointed, the Grantee agrees to notify the Commonwealth within 5 Business Days of the date of receipt of such a notice.

CB23.6 If the Grantee is registered under the Corporations Act 2001 (Cth), in the event that the Grantee applies to come under, receives a notice requiring the Grantee to show cause why the Grantee should not come under, receives a notice or an application from any other person for the Grantee to come under or has otherwise come under any form of external administration or an order has been made for the purpose of placing the Grantee under external administration, the Grantee agrees to notify the Commonwealth within 5 Business Days of the date of the making or receipt of such a notice or application or the making of such an order.

CB23.7 If one of the events specified in CB23.5 or CB23.6 occurs, and without limiting clause 19.4, the Commonwealth may withhold payment of the Grant in accordance with clause 2.2 or suspend the Agreement in accordance with clause 19.2 as though the event constituted a failure by the Grantee to comply with this Agreement.

23A. Incorporation requirement

Not Applicable

24. Counterparts

CB24.1 This Agreement may be executed in any number of counterparts. All counterparts, taken together, constitute one instrument. A Party may execute this Agreement by signing any counterpart.

25. Employees Subject to SACS Decision

Not Applicable

26. Program interoperability with National Disability Insurance Scheme

Not Applicable

27. Rollover of Surplus and Uncommitted Funds

CB27.1 In this Agreement:

Surplus and Uncommitted Funds means surplus and uncommitted funds provided by the Commonwealth through previous grant agreements relating to activities which are the same as or similar to the Activity and which are confirmed by final financial statements provided under the previous grant agreements.

CB27.2 The Parties acknowledge that the Grantee may hold Surplus and Uncommitted Funds.

CB27.3 The Commonwealth may give the Grantee written approval to retain all or part of any Surplus and Uncommitted Funds and treat those funds as part of the Grant provided under, and subject to, this Agreement. The Commonwealth may give such approval subject to conditions.

CB27.4 The Grantee agrees to acquit in the Reporting Material any Surplus and Uncommitted Funds that are retained and used to deliver the Activity under this Agreement.

CB27.5 This clause does not affect the Commonwealth's right to require the repayment of the balance of Surplus and Uncommitted Funds.

CB27.6 This clause survives the termination or expiry of the Agreement.

28. Secret and Sacred Indigenous Material

CB28.1 In this clause:

Aboriginal Person has the same meaning given in the Aboriginal and Torres Strait Islander Act 2005 (Cth);

Aboriginal Tradition has the meaning given in the Aboriginal and Torres Strait Islander Heritage Protection Act 1984 (Cth);

Indigenous Person means a person who is or identifies and is accepted as an Aboriginal Person or a Torres Strait Islander;

Secret and Sacred Indigenous Material means all information, knowledge or Material of special spiritual, cultural or customary significance which is considered to be sacred or of significance by an Indigenous Person or according to Aboriginal Tradition; and

Torres Strait Islander has the same meaning given in the *Aboriginal and Torres Strait Islander Act 2005 (Cth)*

has the same meaning given in the Aboriginal and Torres Strait Islander Act 2005 (Cth)

CB28.2 The parties agree that, for the purposes of this Agreement:

- a) the definition of Activity Material in clause 22 excludes any Secret and Sacred Indigenous Material.
- b) the definition of Reporting Material in clause 22 excludes any Secret and Sacred Indigenous Material.
- c) the record keeping requirements in clause 12 do not apply to any Secret and Sacred Indigenous Material; and
- d) any Secret and Sacred Indigenous Material is the confidential information of the relevant Indigenous Person or Indigenous community.

CB28.3 The Grantee agrees to inform the Commonwealth of the existence of Secret and Sacred Indigenous Material relevant to the performance of the Activity which is not disclosed to the Commonwealth due it being Secret and Sacred Indigenous Material.

29. Supports and services for people with disability

Not Applicable