



Australian Government

Department of Health

Deed of Variation in relations to Agreement ID 4-BL3DUXQ

1. Date

The Deed is made on 7 November 2019

2. Parties

This Deed is made between:

1. The Commonwealth, as represented by Department of Health, ABD 83 605 426 759 (the 'Commonwealth'); and
2. The Esther Foundation Incorporated, ABN 54 154 517 827

3. Context

- a) The Parties entered in an agreement on 25 June 2019 under which the Commonwealth gave a Grant to the Grantee for the Community Health and Hospitals Program (the 'Agreement').
- b) The Parties have agreed to amend the Agreement on the Terms and Conditions contained in this Deed.

4. Amendments

With effect from the Date of execution of this Deed, the Agreement is amended:

- The previous Agreement Schedule is deleted and replaced with the updated Agreement Schedule (attached)
- Item D is deleted and replace with updated Item D

5. Entire agreement and interpretation

- a) The parties confirm all the other provisions of the Agreement and, subject only to the amendments contained in this Deed, the Agreement remains in full force and effect.
- b) This Deed and the Agreement, when read together, contain the entire agreement of the parties' rights and obligations under the Agreement.
- c) Unless otherwise specified or the context otherwise requires, terms that are defined in the Agreement have the same meaning in this Deed.

Signatories to this Variation:

Parties Commonwealth of Australia represented by and acting through the **Department of Health** ABN 83 605 426 759 (the **Department**)

The Esther Foundation Incorporated ABN 54 154 517 827 of 75 Kalamunda Road, Kalamunda WA 6076 (**Your Organisation**)

Executed by the Parties as a deed on 11 DECEMBER 2019

(Date on which last party signs the Variation)

Signed, Sealed and Delivered by the relevant delegate for and on behalf of the **Commonwealth of Australia** represented by and acting through the **Department of Health** ABN 83 605 426 759 in the presence of:

s47F

s47F

(Signature of Departmental Representative) 11/12/2019

(Signature of Witness) 11/12/2019

s22

s22

(Name of Departmental Representative)

(Name of Witness in full)

Company

Signed by The Esther Foundation Incorporated ABN 54 154 517 827, in accordance with its Constitution:

s47F

s47F

(Signature of Managing Director)

(Signature of other Committee Member/

Anina Findling

Patricia Lavater

(Name of Managing Director in full)

(Name of Committee Member in full)

Grant Agreement Esther Foundation

Once completed, this document, together with each set of Grant Details and the Commonwealth Standard Grant Conditions (Schedule 1), forms an Agreement between the Commonwealth and the Grantee.

Parties to this Agreement

The Grantee

Full legal name of Grantee	The Esther Foundation Incorporated
Legal entity type (e.g. individual, incorporated association, company, partnership etc)	Other Incorporated Entity
Trading or business name	Esther Foundation
Any relevant licence, registration or provider number	
Australian Company Number (ACN) or other entity identifiers	628 986 532
Australian Business Number (ABN)	54 154 517 827
Registered for Goods and Services Tax (GST)?	GST Exemption
Date from which GST registration was effective?	22 December 2005
Registered office (physical/postal)	PO Box 421, Kalamunda, WA, 6926
Relevant business place (if different)	75 Kalamunda Road, Kalamunda, WA, 6076
Telephone	s47F
Fax	
Email	s47F

The Commonwealth

The Commonwealth of Australia represented by *The Department of Health P.O. Box 9484 Canberra 2601.*
ABN 83 605 426 759

Background

The Commonwealth has agreed to enter this Agreement under which the Commonwealth will provide the Grantee with one or more Grants for the purpose of assisting the Grantee to undertake the associated Activity.

The Grantee agrees to use each Grant and undertake each Activity in accordance with this Agreement and the relevant Grant Details.

Scope of this Agreement

This Agreement comprises:

- (a) this document;
- (b) the Supplementary Terms from the Clause Bank (if any);
- (c) the Standard Grant Conditions (Schedule 1);
- (d) the Grant Details;
- (e) any other document referenced or incorporated in the Grant Details.

Each set of Grant Details, including Supplementary Terms (if any), only applies to the particular Grant and Activity covered by that set of Grant Details and a reference to the 'Agreement' in the Grant Details or the Supplementary Terms is a reference to the Agreement in relation to that particular Grant and Activity. If there is any ambiguity or inconsistency between the documents comprising this Agreement in relation to a Grant, the document appearing higher in the list will have precedence to the extent of the ambiguity or inconsistency.

This Agreement represents the Parties' entire agreement in relation to each Grant provided under it and the relevant Activity and supersedes all prior representations, communications, agreements, statements and understandings, whether oral or in writing.

Certain information contained in or provided under this Agreement may be used for public reporting purposes.

Grant Details *Esther Foundation*.

A. Purpose of the Grant

The purpose of the Grant is to enable the Esther Foundation to work towards increasing its capacity by 20 places. The Foundation provides intensive support for young women to overcome issues in a safe, structured and supportive environment. The program facilitates specific groups and individual counselling to help manage socially prevalent issues and concerns faced by young women, including substance abuse, sexual and emotional abuse, domestic violence, mental health, pregnancy, self-harm, family breakdown, bullying, depression and eating disorders.

This Grant is being provided under, and these Grant Details form part of, the Agreement between the Commonwealth and The Esther Foundation Incorporated dated June 2019.

The Grant is being provided as part of the *Community Health and Hospitals Program*.

B. Activity

This activity is to support Esther Foundation's current ongoing delivery costs, to allow it to work towards increasing its capacity by an extra 20 beds (places) and also to support the ongoing delivery of the program in Western Australia.

The program objectives are to assist young women to overcome their debilitating issues in a safe environment. The program facilitates specific groups and individual counselling to help manage socially prevalent issues and concerns faced by women, including substance abuse, sexual and emotional abuse, domestic violence, mental health, pregnancy, self-harm, family breakdown, bullying, depression and eating disorders.

The funding provided will contribute to the following:

1. Supporting the ongoing delivery costs of the program in Western Australia.
2. Providing funding for the strengthening of the organisational structure of the Foundation.
3. Enabling the Foundation to work towards increasing its capacity by 20 places.

C. Duration of the Grant

The Activity starts on execution of the Agreement.

The Activity (other than the provision of any final reports) ends on 30 June 2025 which is the **Activity Completion Date**.

The Agreement ends on *30 October 2025* which is the **Agreement End Date**.

Activity Schedule	
Milestone	Due Date
Activity Work Plan and Budget.	15/08/2019
Detailed Activity Work Plan and Budget	15/11/2019
Progress Report.	15/02/2020
Progress Report and an audited Financial Expenditure Statement.	30/08/2020
Progress Report.	15/02/2021
Progress Report and an audited Financial Expenditure Statement.	30/08/2021
Progress Report.	15/02/2022
Progress Report and an audited Financial Expenditure Statement.	30/08/2022
Progress Report.	15/02/2023
Progress Report and an audited Financial Expenditure Statement.	30/08/2023
Progress Report.	15/02/2024
Progress Report and an audited Financial Expenditure Statement	30/08/2024
Progress Report.	15/02/2025
Final Progress Report for the period from the commencement of the grant until 30 June 2025 and an audited Financial Statement for the entire period.	30/09/2025

D. Payment of the Grant

The total amount of the Grant is \$4,000,000 (GST excl.).

GST is not payable on the Grant.

Interest can be earned on the Grant and must be reported as grant income in financial reports.

The Grant will be paid in instalments by the Commonwealth upon completion of the agreed Milestones and compliance by the Grantee with its obligations under this Agreement.

The Grantee's nominated bank account into which the Grant is to be paid is:

s47G(1)(b)

Account Name	The Esther Foundation Inc.
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Milestone	Anticipated date	Amount (excl. GST)	GST	Total
Execution Payment	27 June 2019	\$1,000,000	GST Excl.	\$1,000,000
Second Payment	1 July 2020	\$ 125,000	GST Excl.	\$ 125,000
Third Payment	1 October 2020	\$ 125,000	GST Excl.	\$ 125,000
Fourth Payment	1 January 2021	\$ 125,000	GST Excl.	\$ 125,000
Fifth Payment	1 April 2021	\$ 125,000	GST Excl.	\$ 125,000
Sixth Payment	1 July 2021	\$ 125,000	GST Excl.	\$ 125,000
Seventh Payment	1 October 2021	\$ 125,000	GST Excl.	\$ 125,000
Eight Payment	1 January 2022	\$ 125,000	GST Excl.	\$ 125,000
Ninth Payment	1 April 2022	\$ 125,000	GST Excl.	\$ 125,000
Tenth Payment	1 July 2022	\$ 125,000	GST Excl.	\$ 125,000
Eleventh Payment	1 October 2022	\$ 125,000	GST Excl.	\$ 125,000
Twelfth Payment	1 January 2023	\$ 125,000	GST Excl.	\$ 125,000
Thirteen Payment	1 April 2023	\$ 125,000	GST Excl.	\$ 125,000
Fourteenth Payment	1 July 2023	\$ 187,500	GST Excl.	\$ 187,500
Fifteenth Payment	1 October 2023	\$ 187,500	GST Excl.	\$ 187,500
Sixteenth Payment	1 January 2024	\$ 187,500	GST Excl.	\$ 187,500
Seventeenth Payment	1 April 2024	\$ 187,500	GST Excl.	\$ 187,500
Eighteenth Payment	1 July 2024	\$ 250,000	GST Excl.	\$ 250,000
Nineteenth Payment	1 October 2024	\$ 250,000	GST Excl.	\$ 250,000
Twentieth Payment	1 January 2025	\$ 250,000	GST Excl.	\$ 250,000
Final Report, including Financial Expenditure Report.	30 September 2025			

Invoicing

The Grantee agrees to allow the Commonwealth to issue it with a Recipient Created Tax Invoice (RCTI) for any taxable supplies it makes in relation to the Activity.

E. Reporting

The Grantee agrees to create the following reports in the form specified and to provide the reports to the Commonwealth representative in accordance with the following:

Milestone	Information to be included	Due Date
Activity Work Plan	Submit for approval an Interim Activity Work Plan and Budget identifying planned activities, timeframes and governance.	15 August 2019
Activity Work Plan	Submit for approval a Detailed Activity Work Plan and Budget identifying planned activities, (client numbers, structure to support increased demand of the program, therapy sessions, referrals and locations; national partners for national implementation and evaluations), timeframes, detailed governance and a plan for sustainability beyond contract end date and budget.	15 November 2019
Activity Work Plan Report	Progress Report.	15 February 2020
Financial Acquittal Report	Progress Report and an audited Financial Expenditure Statement.	30 August 2020
Activity Work Plan Report	Progress Report.	15 February 2021
Financial Acquittal Report	Progress Report and an audited Financial Expenditure Statement.	30 August 2021
Activity Work Plan Report	Progress Report.	15 February 2022
Financial Acquittal Report	Progress Report and an audited Financial Expenditure Statement	30 August 2022
Activity Work Plan Report	Progress Report.	15 February 2023
Financial Acquittal Report	Progress Report and an audited Financial Expenditure Statement	30 August 2023
Activity Work Plan Report	Progress Report	15 February 2024
Financial Acquittal Report	Progress Report and an audited Financial Expenditure Statement	30 August 2024
Activity Work Plan Report	Progress Report	15 February 2025
Financial Acquittal Report	Final Progress Report for the period from the commencement of the grant until 30 June 2025 and an audited Financial Statement for the entire period	30 September 2025

F. Party representatives and address for notices

Grantee's representative and address

Name	Esther Foundation Inc.
[Name]	Anina Findling
[Position]	CEO
Postal/physical address(es)	PO Box 421 / 75 Kalamunda Road Kalamunda WA 6076
Business hours telephone	s47F
Mobile	s47F
Fax	Not Applicable
E-mail	s47F
[Alternative contact]	s47F

Commonwealth representative and address

[Name]	s22
[Position]	Funding Agreement Management
Postal/physical address(es)	s22
Business hours telephone	s22
Mobile	
Fax	
E-mail	s22
[Alternative contact]	

The Parties' representatives will be responsible for liaison and the day-to-day management of the Grant, as well as accepting and issuing any written notices in relation to the Grant.

G. Activity Material

Activity Materials	None Specified
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Supplementary Terms from Clause Bank

1. Other Contributions

2. Activity Budget

3. Intellectual property in Activity Material

- CB3.1 The Grantee agrees, on request from the Commonwealth, to provide the Commonwealth with a copy of any Activity Material in the format reasonably requested by the Commonwealth.
- CB3.2 The Grantee provides the Commonwealth a permanent, non-exclusive, irrevocable, royalty-free licence (including a right to sub licence) to use, modify, communicate, reproduce, publish, and adapt the Activity Material as specified in the Grant Details for Commonwealth Purposes.
- CB3.3 The Grantee warrants that the provision of Activity Material in accordance with the Agreement (and the use of specified Activity Material in accordance with clause CB3.2) will not infringe any third party's Intellectual Property Rights.
- CB3.4 The Grantee will obtain written moral rights consents (other than in relation to acts of false attribution) from all authors of Reporting Material, and any Activity Material specified in the Grant Details to the use of that Material by the Commonwealth in accordance with this Agreement, prior to that Material being provided to the Commonwealth.

3A. Intellectual property – research

3B. Creative Commons licence

3A. Intellectual property – research

3B. Creative Commons licence

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

- CB5.1 In this Agreement:

Asset means any item of property purchased, leased, created or otherwise brought into existence wholly, or in part, with the use of the Grant [, excluding Activity Material [and/,] Intellectual Property Rights [and real property]].

- CB5.2 The Grantee agrees to obtain the Commonwealth's prior written approval to use the Grant to purchase any item of equipment or Asset for \$10,000 (including GST) or more, apart from those listed in the Activity Budget and/or detailed below:

[None Specified]

- CB5.3 Unless otherwise agreed in writing by the Commonwealth, the Grantee must ensure that it owns any equipment or Asset acquired with the Grant.
- CB5.4 Unless to the extent the Commonwealth agrees otherwise in writing, the Grantee agrees to use the Asset for the purpose of the Activity. The Commonwealth may give its agreement subject to conditions and the Grantee must comply with any such conditions.
- CB5.5 The Grantee agrees to maintain a register of all Assets with a value of \$10,000 (including GST) or more at the time of the Asset's purchase, lease, creation or bringing into existence in the form specified below and to provide the register to the Commonwealth upon request.

Item Number	Description	Date of acquisition	Grant Contributions	Other Contributions - Grantee	Other Contributions - Third Parties	Total Cost	Item Number
[insert reference]	[insert description of the equipment or asset]		[insert amount of Grant contributed to this item]	[insert amount of Grantees own funds contributed to this item]	[insert amount of other sources of funding contributed to this item]	[insert total amount cost of the item]	[insert reference]

- CB5.6 On expiration or termination of the Agreement, the Grantee agrees to transfer any Asset to the Commonwealth or a third party nominated by the Commonwealth or otherwise deal with the Asset as directed by the Commonwealth.

6. Specified Personnel

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

8. Vulnerable Persons

- CB8.1 In this Agreement:

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 order relating to:

- (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);

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 role relating to the Activity.

9. Child safety

Definitions

CB9.1 In this Agreement:

Child means an individual(s) under the age of 18 years and **Children** has a similar meaning;

Child-Related Personnel means officers, employees, contractors (including subcontractors), agents and volunteers of the Grantee involved with the Activity who as part of that involvement may interact with Children;

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

National Principles for Child Safe Organisations means the National Principles for Child Safe Organisations, which have been endorsed in draft form by the Commonwealth Government (available at: <https://www.humanrights.gov.au/national-principles-child-safe-organisations>) and subsequently, from the time of their endorsement by the Council of Australian Governments, the final National Principles for Child Safe Organisations as published by the Australian Government;

Relevant Legislation means Legislation in force in any jurisdiction where any part of the Activity may be carried out;

Working With Children Check or WWCC means the process in place pursuant to Relevant Legislation to screen an individual for fitness to work with Children.

Relevant checks and authority

CB9.2 The Grantee must:

- (a) comply with all Relevant Legislation relating to the employment or engagement of Child-Related Personnel in relation to the Activity, including all necessary Working With Children Checks however described; and
- (b) ensure that Working With Children Checks obtained in accordance with this clause CB9.2 remain current and that all Child-Related Personnel continue to comply with all Relevant Legislation for the duration of their involvement in the Activity.

National Principles for Child Safe Organisations and other action for the safety of Children

CB9.3 The Grantee agrees in relation to the Activity to:

- (a) implement the National Principles for Child Safe Organisations;
- (b) ensure that all Child-Related Personnel implement the National Principles for Child Safe Organisations;
- (c) complete and update, at least annually, a risk assessment to identify the level of responsibility for Children and the level of risk of harm or abuse to Children;
- (d) put into place and update, at least annually, an appropriate risk management strategy to manage risks identified through the risk assessment required by this clause CB9.3;
- (e) provide training and establish a compliance regime to ensure that all Child-Related Personnel are aware of, and comply with:
 - (i) the National Principles for Child Safe Organisations;
 - (ii) the Grantee's risk management strategy required by this clause CB9.3;
 - (iii) Relevant Legislation relating to requirements for working with Children, including Working With Children Checks;
 - (iv) Relevant Legislation relating to mandatory reporting of suspected child abuse or neglect, however described; and
- (f) provide the Commonwealth with an annual statement of compliance with clauses CB9.2 and CB9.3, in such form as may be specified by the Commonwealth.

10. Commonwealth Material facilities and assistance

11. Jurisdiction

12. Grantee trustee of Trust

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.

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.

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

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).

Schedule 1: Commonwealth Standard Grant Conditions

1. Undertaking the Activity

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

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

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

2. Payment of the Grant

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

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

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

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

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

2.5 The Grantee agrees to hold the Grant in an account in the Grantee's name and which the Grantee controls, with an authorised deposit-taking institution authorised by the *Banking Act 1959* (Cth) to carry on banking business in Australia.

3. Acknowledgements

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

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

3.3 The Grantee agrees not to use the Commonwealth Coat of Arms in connection with the Grant or the Activity without the Commonwealth's prior written approval.

4. Notices

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

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

5. Relationship between the Parties

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

Deed of Variation 2 – November 2019

Department of Health

6. Subcontracting

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

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

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

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

7. Conflict of Interest

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

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

(a) notify the Commonwealth promptly and make full disclosure of all relevant information relating to the conflict; and

(b) take any steps the Commonwealth reasonably requires to resolve or otherwise deal with that conflict.

8. Variation, assignment and waiver

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

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

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

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

9. Taxes, duties and government charges

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

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

9.3 If at the commencement of the Agreement the Grantee is not registered for GST and during the term of the Agreement the Grantee becomes, or is required to become, registered for GST, the Grantee agrees to notify the Commonwealth in writing within 7 days of becoming registered for GST.

10. Spending the Grant

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

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

10.3 The reports under clause 10.2 must be audited by:

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

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

11. Repayment

11.1 If any amount of the Grant:

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

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

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

12. Record keeping

12.1 The Grantee agrees to keep financial accounts and other records relating to the expenditure of the Grant and the conduct and management of the Activity and provide copies of the records to the Commonwealth upon request.

12. Record keeping (^Alternative Option^)

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

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

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

13. Reporting

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

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

13. Reporting, liaison and review

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

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

- (a) liaise with and provide assistance and information to the Commonwealth as reasonably required by the Commonwealth; and

- (b) comply with the Commonwealth's reasonable requests, directions and monitoring requirements,
in relation to the Activity and any Commonwealth review or evaluation of it.

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

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

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

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

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

14. Privacy

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

- (a) to comply with the requirements of the *Privacy Act 1988* (Cth); and
- (b) not to do anything which, if done by the Commonwealth, would be a breach of an Australian Privacy Principle.

14. Privacy (^Alternative Option 1^)

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

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

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

15. Confidentiality

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

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

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

16. Insurance

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

17. Intellectual property

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

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

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

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

18. Dispute resolution

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

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

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

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

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

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

19. Reduction, Suspension and Termination

19.1 Reduction in scope of agreement for fault

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

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

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

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

19.2 Suspension

19.2.1 If:

- (a) the Grantee does not comply with an obligation under this Agreement and the Commonwealth believes that the non-compliance is capable of remedy;
- (b) the Commonwealth reasonably believes that the Grantee is unlikely to be able to perform the Activity or

manage the Grant in accordance with this Agreement; or

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

the Commonwealth may by written notice:

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

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

19.2.2 If the Grantee:

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

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

19.3 Termination for fault

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

(a) failed to comply with an obligation under this Agreement and the Commonwealth believes that the non-compliance is incapable of remedy or where clause 19.2.2.3 applies; or

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

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

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

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

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

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

20. Cancellation or reduction for convenience

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

(a) a change in government policy; or

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

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

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

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

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

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

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

(a) pay any part of the Grant due and owing to the Grantee under this Agreement at the date of the notice;

and

(b) reimburse any reasonable and substantiated expenses the Grantee unavoidably incurs that relate directly and entirely to the reduction in scope or cancellation of the Agreement.

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

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

(a) subject to the Grantee's compliance with this Agreement; and

(b) limited to an amount that when added to all other amounts already paid under the Agreement will not exceed the total amount of the Grant.

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

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

21. Survival

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

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

22. Definitions

In this Agreement, unless the contrary appears:

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