

## Policy Directive



### Administration of NSW Health Grant Funding for Non-Government Organisations

**Summary** The purpose of this Policy Directive is to provide NSW Health agencies with guidance on the requirements for effective and consistent grant administration when dealing with non-government organisation (NGO) partners.

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Secretary, NSW Health

This Policy Directive may be varied, withdrawn or replaced at any time. Compliance with this directive is mandatory for NSW Health and is a condition of subsidy for public health organisations.

## ADMINISTRATION OF NSW HEALTH GRANT FUNDING FOR NON-GOVERNMENT ORGANISATIONS

### PURPOSE

The purpose of this Policy Directive is to provide guidance on Grants Administration.

Grants Administration includes all processes that NSW Health undertakes to achieve Government policy outcomes through grants. It includes the establishment of grants, ongoing management of grantees and grant activities and the review and evaluation of grants. This policy guides staff through each of these stages.

Because grants administration involves the provision of public resources to non-Agency organisations, poor grants administration by an Agency can result in those resources being misused by individuals internal or external to that Agency. This policy gives Agencies a framework for grants administration that minimises the risk of public resources being misused.

This policy covers grants that aim to meet the core costs of the specified health service or project. This includes necessary recurrent costs (direct and indirect) but would normally exclude capital funding other than as a limited component e.g. equipment, motor vehicle. Funding is generally not available for major capital items such as building projects.

This policy does NOT apply to:

- sponsorships (which are addressed in PD2005\_415)
- research grants and
- contracts for goods or services procured under the procurement framework.

This policy is intended to provide an overview, and does not address every issue that must be considered. This is particularly so for complex or high-value grants where further legal or financial advice or guidance from the relevant branch should be sought.

### MANDATORY REQUIREMENTS

Agencies must comply with this policy when distributing grants under the NGO Grants Program and Ad Hoc Grants.

This policy is not mandatory, but reflects best practice, when distributing Program Grants.

Failure to comply with this policy exposes NSW Health to the risk of misuse or misappropriation of public funds.

### IMPLEMENTATION

This policy applies to all government agencies within NSW Health, including but not limited to:

- the Ministry of Health

- Local Health Districts
- Specialty Health Networks
- Statutory Health Corporations and
- business units within the Health Administration Corporation

The Chief Executive (or equivalent) of each Agency is required to ensure that this Policy Directive is communicated to, and implemented by, all officers, employees, consultants, independent contractors and volunteers of their Agency throughout the grants administration process.

## REVISION HISTORY

Version	Approved by	Amendment notes
March 2019 (PD2019_013)	Deputy Secretary, Strategy and Resources	Replaced:  PD2005_507 - Ad Hoc Requests for Funding - Organisations External to NSW Health  PD2011_049 Non-Government Organisation Grant Program - Operation Guidelines
July 2011 (PD2011_049)	Deputy Director-General Strategic Development	Replaces PD2005_583 as an interim revision updating section 6.2 and organisation name change to Local Health District.
July 2000 (PD2005_583)	Director-General	Re-release of the Non-Government Organisation Grant Program - operational guidelines as approved August 2000.

## ATTACHMENTS

1. Administration of NSW Health Grant Funding for Non-Government Organisations: Procedures
2. Info Sheet – Planning and Design
3. Info Sheet – Collaboration
4. Info Sheet – Outcomes Focus
5. Info Sheet – Value for Money
6. Info Sheet – Proportionality
7. Info Sheet – Governance and Accountability
8. Info Sheet – Probity and Transparency
9. Appendix A – Grant Agreement Template (Long-Form Template)  
– Standard Conditions
10. Appendix B - Short-Form Grant Agreement Template (Short-Form Template)

**Administration of NSW Health Grant Funding for  
Non-Government Organisations**



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## CONTENTS

<b>1</b>	<b>BACKGROUND</b> .....	<b>1</b>
1.1	About this Policy Directive .....	1
1.2	Who does this policy apply to? .....	1
1.3	Legislative and policy framework .....	1
<b>2</b>	<b>GENERAL INFORMATION</b> .....	<b>2</b>
2.1	What is a grant?.....	2
2.2	Distinguishing between a granting activity and a procurement .....	2
2.3	Capacity to receive a grant.....	2
2.4	Types of grants .....	2
2.4.1	NGO Grants Program .....	3
2.4.2	Ad Hoc Grants .....	3
2.4.3	Programs Grants.....	4
2.5	What is grants administration? .....	4
<b>3</b>	<b>KEY PRINCIPLES OF GRANT ADMINISTRATION</b> .....	<b>4</b>
<b>4</b>	<b>STAGES OF GRANT ADMINISTRATION</b> .....	<b>6</b>
<b>5</b>	<b>ESTABLISHING THE GRANT</b> .....	<b>6</b>
5.1	Allocating resources for effective grants administration .....	6
5.2	Determine the grant type .....	6
5.3	Design the grant.....	6
5.4	Selecting the grantee.....	7
5.5	Grant Agreement .....	8
5.5.1	The Grant Agreement Template (Long-Form Template) .....	8
5.5.2	The Short-Form Grant Agreement Template (Short-Form Template) ...	8
5.5.3	The Grant Details or Schedule .....	9
5.5.3.1	Describing the activity and how it is carried out .....	9
5.5.3.2	Reporting.....	9
5.5.3.3	Payments .....	12
5.5.3.4	Indexation.....	13
5.5.3.5	Budget.....	13
5.5.3.6	Insurance .....	14
5.5.3.7	Intellectual property .....	14
5.5.3.8	Supplementary conditions .....	14
5.5.4	Standard Grant Conditions .....	15
5.5.4.1	Privacy .....	15
5.5.4.2	Confidentiality .....	15
5.5.4.3	Subcontracting .....	15
5.5.4.4	Assignments .....	15
5.5.4.5	Notification requirements .....	15
5.5.4.6	Purchase of assets .....	16
5.6	Accreditation and clinical governance .....	16
5.7	Authorising the grant and executing the agreement .....	17
<b>6</b>	<b>MANAGING THE GRANTEE AND GRANT ACTIVITY</b> .....	<b>18</b>

## Administration of NSW Health Grant Funding for Non-Government Organisations




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6.1	Monitoring .....	18
6.2	Incident management .....	18
6.3	Acting on unsatisfactory performance .....	19
6.3.1	Withholding payments .....	19
6.3.2	Recovery of payments .....	19
6.4	Unspent grant and residual grant .....	20
6.5	Variation of a grant agreement .....	20
<b>7</b>	<b>REVIEWING AND EVALUATING OUTCOMES.....</b>	<b>21</b>
7.1	Terminating the agreement .....	21
<b>8</b>	<b>DEFINITIONS AND INTERPRETATION .....</b>	<b>22</b>
<b>9</b>	<b>IF YOU HAVE FURTHER QUESTIONS .....</b>	<b>22</b>
<b>10</b>	<b>ATTACHMENTS.....</b>	<b>24</b>

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## 1 BACKGROUND

### 1.1 About this Policy Directive

This Policy Directive provides guidance on grants administration. Because grants administration involves the provision of public resources to non-Agency organisations, poor grants administration can result in the grant not meeting its stated policy objectives, or resources being misused. This policy gives Agencies a framework for grants administration that minimises the risk of public resources being misused.

This policy covers grants that aim to meet the core costs of the specified health service or project. This includes necessary recurrent costs (direct and indirect) but would normally exclude capital funding other than as a limited component e.g. equipment, motor vehicle. Funding is generally not available for major capital items such as building projects.

This policy does not apply to sponsorships (which are addressed in PD2005\_415), contracts for goods or services procured under the procurement framework (see Section 2.2) or research grants.

Grants administration is complex, and this policy may not address every issue. If you are working on a complex, high-value or innovative grant you should consider seeking legal or financial advice or guidance from the relevant branch.

This document should be used in conjunction with the Grant Agreement templates (long and short-forms Appendix A and B) and the standard terms and conditions (Appendix C).

### 1.2 Who does this policy apply to?

This Policy Directive applies to all Agency officers, employees, consultants, independent contractors and volunteers.

### 1.3 Legislative and policy framework

The *Public Finance and Audit Act 1983* regulates expenditure of public money. Where powers under this Act (including the power to expend public money) are delegated, delegations must be strictly observed.

The NSW Public Service Commission's Code of Ethics for NSW government sector employees requires government sector employees to use public resources in an efficient, effective and prudent way. This Code binds staff of the public sector and NSW Health Sector.

The NSW Health Code of Conduct requires staff to use work resources efficiently (see Section 4.4.1 PD2015\_049). It also requires staff to report any misconduct by others, such as corruption, fraud, maladministration and serious or substantial waste (see Section 4.3.21 PD2015\_049).

## 2 GENERAL INFORMATION

### 2.1 What is a grant?

A grant is an arrangement under which:

- an Agency provides money to a grantee outside NSW Health;
- the money is used by the grantee to achieve its goals;
- the way the money is used addresses one or more of NSW Health's policy objectives; and
- the grantee is required to act in accordance with specified terms and conditions.

### 2.2 Distinguishing between a granting activity and a procurement

This policy does not apply to contracts to procure goods or services under the procurement framework. Therefore, the first question you will need to ask yourself is whether the proposed spending is a granting activity or a procurement.

A grant is essentially money given subject to certain conditions, including that it be used to achieve the mutual objectives of the Agency and the grantee.

By contrast, a procurement occurs when an Agency has identified a need for particular goods or services, and purchases these goods or services from another party to meet the operational needs and functions of the Agency.

It can sometimes be difficult to determine whether proposed spending is a granting activity or a procurement. In such cases it is helpful to consider the purpose for which the money is provided. If the purpose is to acquire goods or services (either for the Agency, or another person on behalf of the Agency) then it will generally be a procurement. However, if the purpose is to enable the grantee to undertake an activity that also promotes the Agency's policy objectives, it may be treated as a grant.

### 2.3 Capacity to receive a grant

As a general rule, the grantee must be an individual or an organisation incorporated in Australia, under the *Associations Incorporation Act 2009* (NSW), the *Corporations Act 2001* (Cth), the *Co-operatives (Adoption of National Law) Act 2012* (NSW), the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth) or any other law.

Capacity is not the same as eligibility. Criteria for eligibility will be different for each grant.

### 2.4 Types of grants

NSW Health grants can be divided into three categories:

- Ministerially approved grants under the Non-Government Organisations (NGO) Grants Program
- Ad Hoc Grants
- Program Grants

It is important that Agencies understand which category each grant falls into, as this affects the amount of funding available, who can receive the grant, and the appropriate approval process.



## Administration of NSW Health Grant Funding for Non-Government Organisations



### 2.4.1 NGO Grants Program

Each financial year, Agencies are allocated a certain amount of money for distribution to NGOs under the NGO Grants Program. Because the Minister for Health's approval is required to give, renew or vary grants under this program, these grants are sometimes called ministerially approved grants (MAGs).

MAGs are only available to NGOs. MAGs can be administered by:

- the Local Health District in which the grant activity will take place or the NGO operates from; and
- the Ministry, usually if the grant is to a peak NGO or an NGO that provides input to inform state-wide policy or delivers a grant activity of special interest to the Ministry.

Some Local Health Districts may also be responsible for administering MAGs for statewide activities.

As the funding allocated to Agencies is subject to maintenance of funding to NSW Health as part of the State Budget appropriation, at any point Agencies can only guarantee one year of funding to grantees.

However, it is possible to establish triennial funding arrangements. This means that the base grant awarded to the grantee for the first financial year can be provided for two further financial years (subject to funds being available) without the requirement for a new application. After three years the grantee will need to apply to renew the grant.

Triennial funding will not always be appropriate. For example, where the grantee has requested a one-off payment or the grant is for a particular project (the completion time of which is unknown or known to be less than three years).

The selection of grantees under the NGO Grants Program generally commences in the second quarter of the financial year, when all MAGs are reviewed. This is the beginning of the NGO Grants Program cycle (the Cycle). MAGs are issued at the beginning of the following financial year for use over that financial year. Given NGO Grants Program funding will usually be fully allocated for each financial year, while NGOs can apply for a MAG at any point during the financial year, their application will generally only be considered at the beginning of the Cycle. Applications should be retained for three years, and considered at the beginning of each Cycle. Additionally, if funding becomes available, applications may be considered mid-Cycle.

While MAGs may be given in response to an application from a NGO, MAGs may also be Agency-initiated. If funding becomes available, and an Agency wishes to run a particular project or achieve certain outcomes, the Agency may wish to establish a new grant. The Agency can then seek applications from specific NGOs or run an open, competitive application process.

### 2.4.2 Ad Hoc Grants

Ad Hoc Grants are one-off grants. Ad Hoc Grants may only be issued if the Agency is satisfied that:

- the grant is in accordance with the mission of the NSW health system;

## Administration of NSW Health Grant Funding for Non-Government Organisations



- the person, organisation or group is reputable, accountable and able to provide the service being funded;
- there is no conflict of interest; and
- the funds required are available.

They are different from MAGs in that they:

- are not paid from the pool of funding for the NGO Grants Program;
- are not limited to NGOs, but can be given to any person/organisation external to the NSW public sector health system; and
- do not require ministerial approval (but will be approved in accordance with normal expenditure delegations).

Ad Hoc Grants of \$10,000 or more require prior advice to the Minister.

Like MAGs, Ad Hoc Grants may be given in response to a request for funding. Alternatively, they may be given at the initiation of the Agency, in which case, they could be given to targeted organisations or following an open, competitive application process.

### 2.4.3 Programs Grants

Program Grants are generally for state-wide, whole-of-Health programs. Like Ad Hoc Grants, they are different from MAGs in that they:

- are not paid from the pool of funding for the NGO Grants Program;
- are not limited to NGOs and can be given to other government departments and organisations;
- do not require ministerial approval (but will be approved in accordance with normal expenditure delegations); and
- can be subject to a contested procurement process.

Like MAGs and Ad Hoc Grants, Program Grants may be given following a request for funding. Alternatively, they may be given at the initiation of the Agency, in which case, they could be given to targeted organisations or following an open, competitive application process.

## 2.5 What is grants administration?

Grants administration includes each step taken or process involved in issuing a grant. It includes designing the grant, selecting a grantee, drafting a grant agreement, monitoring performance, review and evaluation.

## 3 KEY PRINCIPLES OF GRANT ADMINISTRATION

Throughout each stage of grants administration, a grant administrator must:

- carefully design and plan the grant opportunity and activity;
- work collaboratively with the grantee;
- focus on outcomes;

## Administration of NSW Health Grant Funding for Non-Government Organisations



- seek value for money;
- take measures that are proportionate to risk;
- establish a governance framework and be accountable; and
- act fairly and transparently.

These responsibilities reflect the key principles of grants administration which are elaborated on below. When administering grants, Agencies must always act in a way that is consistent with these principles. Fact sheets with additional detail are included in Appendix D.

### Planning and Design

Planning and design underpins effective grants administration. Agencies must carefully plan grant opportunities and specify outputs and outcomes that will contribute to the Agency's policy objectives. This should be done in consultation with potential grantees and other stakeholders, who can offer valuable insights on how existing health services can be improved. Agencies must also anticipate and mitigate risk by establishing effective risk management processes.

### Collaboration

Agencies must consult and collaborate with relevant stakeholders (such as beneficiaries, potential grantees, grantees and co-contributors) to identify the best way to achieve policy objectives through grants, ensure that grantees are supported, manage the grant activity and review and evaluate outcomes.

### Outcomes Focus

Agencies should aim to maximise the benefit to the community of the grant activity.

### Value for Money

Agencies should ensure grant arrangements are economical and the resources the Agency contributes (including the time of Agency staff) are commensurate to the benefit to the community. When reviewing a grant, Agencies must consider the inputs, outputs and outcomes of the grant activity to determine whether value for money was achieved.

### Proportionality

Agencies should design a grant opportunity in such a way that the grantee's responsibilities (in relation to reporting, risk management and insurance, amongst other things) are proportionate to the scale, complexity and risks of the grant activity.

### Governance and Accountability

Agencies should develop policies, procedures, guidelines and any other documentation necessary for effective grants administration, which:

- include guidance material on the administration of grant activities;
- include guidelines for persons/organisation applying for grants;
- clarify the roles and responsibilities of all persons involved in the grant activity (including the Minister, the Agency, the grantee and any other stakeholder), including who are the decision-makers at each stage of grants administration;

- set out criteria for the selection of the grantee;
- detail accountability arrangements;
- set out record-keeping requirements;
- set out financial and performance frameworks; and
- comply with any relevant legislation.

### **Probity and Transparency**

Grants administration should be conducted fairly and transparently. Agencies are required to behave ethically, in line with the government sector core values. Grant agreements should incorporate safeguards against fraud and other inappropriate behaviour by Agency staff and grantees. The selection of grantees should be impartial, well documented and publicly defensible.

## **4 STAGES OF GRANT ADMINISTRATION**

Grants administration can be divided into three stages:

- Establishing the grant (see Section 5)
- Managing the grantee and grant activity (see Section 6)
- Reviewing and evaluating outcomes (see Section 7)

## **5 ESTABLISHING THE GRANT**

### **5.1 Allocating resources for effective grants administration**

For each grant, an Agency must assign an appropriate person (or persons) to the role of grant administrator. This person(s) should have experience in grants management, stakeholder liaison and financial management. They must also be given adequate time to properly administer the grant, which can be time-consuming.

Failure to apply sufficient, adequately skilled resources to the management of a grant increases the risk that the grant will not achieve its objectives in an efficient, effective and timely manner.

### **5.2 Determine the grant type**

Agencies must know what type of grant they are seeking to establish (i.e. a MAG, Ad Hoc Grant or Program Grant). This will influence the amount of funding available, who can receive the grant, and the approval process.

### **5.3 Design the grant**

When an Agency wishes to use grants to fund a new activity, grant administrators need to consider the following factors:

- the grant amount, that is, the dollar value;
- the purpose of the grant, that is, the policy objective to which the grant will be directed;

- the activities that could contribute to the policy objective, and which of these activities the Agency would and would not fund;
- the scope, objectives and desired outcomes of the activities that the Agency will fund;
- eligibility criteria (a relevant consideration is the type of grant. MAGs can only be given to NGOs, whereas Ad Hoc and Program Grants are available to other organisations such as government departments and quasi government departments);
- the most appropriate way to seek applications (that is, whether to run an open or closed application process);
- criteria on which granting decisions will be based;
- key terms and conditions to apply to the grant, including reporting and other accountability requirements; and
- governance arrangements that will apply to the administration of the grant.

#### **5.4 Selecting the grantee**

In an open application process, all organisations (or all organisations in a certain class) can apply for the grant. In a closed application process, applications are sought from one or more specific organisations.

When deciding whether to run an open or closed process, Agencies should bear in mind the key principles of grants administration, particularly the principles of value for money and probity and transparency (Section 3).

##### *Value for money*

Usually, the best way to achieve value for money is by running an open, competitive, merits-based application process. However, in circumstances where only a small number of organisations are capable of undertaking a grant activity, value for money may be better achieved by running a closed application process, where applications are sought from those organisations.

##### *Probity and Transparency*

Whether the Agency runs an open or closed application process, it must comply with probity principles. These require the Agency to comply with any grant guidelines that have been distributed to prospective grantees, assess applicants against predetermined selection criteria and select successful applicants on merit.

Agencies should:

- check that the applicant is a legal entity; and
- verify claims made by the applicant or seek referee reports.

Agencies should document the application process for the sake of transparency and accountability. It is important to create a register of all applications received, and note the date and time of receipt. Allowing applicants to submit applications through the NSW Government eTendering online portal will facilitate this.

## Administration of NSW Health Grant Funding for Non-Government Organisations



Agencies will also need to document the information that was considered and the decisions made in relation to:

- applicants' eligibility; and
- if eligible, applicants' performance against the selection criteria.

If running a closed application process, an Agency should clearly document its reasons for restricting the opportunity to particular organisations.

### 5.5 Grant Agreement

A grant agreement setting out the conditions applying to the grant must be prepared. There are two standard NSW Health grant agreement templates relating to the complexity of the grant.

The templates may not be appropriate for a small number of grants of very high value or that are highly complex, contain innovative elements or require additional measures to manage non-standard or clinical risk. For these grants a bespoke agreement may be necessary and advice should be sought from Legal Branch.

Grants for which the templates are typically not suitable include:

- grants relating to research;
- grants relating to major capital works.

#### 5.5.1 The Grant Agreement Template (Long-Form Template)

For complex grants, or grants of significant funds (> \$200,000) the Long-Form Template should be used (Appendix A).

The Long-Form Template is comprised of the following parts:

- Grant Details – this is an introductory document that identifies the parties and sets out the background and scope of the agreement. The Agency will need to fill in this document.
- Grant Schedule – this document should describe the grant activity in detail and set out the parties' obligations. It may include supplementary conditions not addressed in the Standard Grant Conditions. The Agency will need to fill in this document.
- Standard Grant Conditions – this document outlines the standardised core terms that always apply. This document cannot be modified.

Agencies also have the option to attach documents to the Template, to form part of the Agreement.

#### 5.5.2 The Short-Form Grant Agreement Template (Short-Form Template)

The Short-Form Template is an abridged version of the Long-Form Template that is suitable for low-risk or low-value (< \$200,000) grants (Appendix B).

The Short-Form Template is comprised of the following parts:

- Grant Details – this document identifies the parties, outlines the background and scope of the agreement, describes the grant activity and sets out the parties'

obligations. It may include supplementary conditions. Agencies are responsible for filling in this document.

- Standard Grant Conditions – this document outlines the standardised core terms that always apply. These terms should not be modified.

### **5.5.3 The Grant Details or Schedule**

A number of the key provisions of a grant agreement need to be addressed in the Grant Schedule (Long-Form Template) or the Grant Details (Short-Form Template). These provisions will be different for each grant and must be drafted by the grant administrator. Grant administrators must carefully consider the content of these provisions.

#### **5.5.3.1 Describing the activity and how it is carried out**

In the Grant Schedule (Long-Form Template) or Grant Details (Short-Form Template), the Agency will need to describe the activity and how it will be carried out. This is possibly the most important part of the agreement drafting process. The success of the agreement relies on accurately setting out what the Agency requires the grantee to do. Otherwise, the grantee may misunderstand the Agency's expectations, and the Agency may not be able to terminate the agreement or recover funds if the grantee does not meet its expectations.

- The activity description should include:
  - A brief description of the activity
  - Any important background information relating to the activity
  - The activity start and end date
  - The location of the activity
  - The people who are expected to benefit from the activity
  - Anticipated outcomes and outputs
  - Milestones
  - Performance measures

For complex grant activities, it may not be practicable to comprehensively describe the activity in the Grant Details/Schedule. In this case, Agencies should include a brief description of the activity in the Details/Schedule and annex a more detailed activity plan to the agreement.

With multi-year activities it may also be hard to anticipate how the activity will look in the future. Where this is the case, an Agency can make it a milestone of the agreement that the grantee prepare activity plans for subsequent years that must be approved by the Agency. In these circumstances, Agencies must carefully review the plan before granting approval to ensure it aligns with the Agency's expectations.

#### **5.5.3.2 Reporting**

Grantees will be required to report on outputs, outcomes and expenditure. Reporting requirements will need to be outlined in the Grant Schedule/Details. Types of reports that

## Administration of NSW Health Grant Funding for Non-Government Organisations



may be required include performance reports, financial reports, annual reports and ad hoc reports (in response to a request from the Agency).

An Agency must carefully consider how much information it needs from the grantee and how frequently it needs this information. An Agency should avoid requesting information it does not need. To do so would be a waste of the Agency and grantee's resources. Reporting requirements should be proportionate to the scale, complexity and risk of the grant.

In the Details/Schedule, and any ad hoc requests for reports, an Agency must clearly outline:

- What information needs to be included in each report;
- How information should be presented;
- The date reports must be submitted;
- Who the reports must be submitted to;
- Details of any particular certification or sign off required; and
- Any documentation that must be annexed to the report.

### **Performance reports**

Progress reports are provided at regular intervals throughout the grant period (e.g. quarterly or six-monthly). They should include a summary of progress on the activity in the reporting period, and state whether the activity is on budget (and if not, why).

The final report should be provided within a set period after the grant activity has ended or the agreement has been terminated. It should include a detailed summary of the grant activity. It should outline how deliverables were met and, if applicable, describe why deliverables were not met. It should evaluate the activity's success in relation to anticipated outcomes.

### **Financial reports**

Grantees should be required, at a minimum, to submit an income and expenditure statement which sets out how the grant has been used, and compares income and expenditure to any agreed budget. This must be certified by two members of the grantee's board (or equivalent).

A grantee may also be required to submit a copy of its audited financial statement, if the grantee is required by law to prepare such a statement. These statements must be accompanied by an audit certificate signed by an auditor who is a member of a professional accounting or auditing body that meets Australian Auditing Standards. The auditor must be independent of the grantee and not have any financial interest in the grantee.

An audited financial statement provides information on the grantee as a whole. The purpose of collecting audited financial statements is to assess the grantee's financial position and ongoing viability. Therefore, it may not be appropriate to require these



## Administration of NSW Health Grant Funding for Non-Government Organisations



statements for one-off grants where the Agency is not concerned with the ongoing viability of the grantee beyond the completion of the grant activity.

A grantee should be required, at a minimum, to provide income and expenditure statements and audited financial statements (if applicable) to the Agency on or before 31 October, following:

- the end of each financial year in the grant period; and
- the end of the grant period (when it may be provided with the acquittal statement).

The above information sets out the baseline for financial reporting. An Agency may require other types of financial reports or more frequent financial reports. However, the Agency should bear in mind the principle of proportionality and ensure that the requirements relating to financial reporting are proportionate to the risk associated with the grant activity.

All financial reports must comply with Australian "Accounting Standards" issued by the "Accounting Bodies" as defined in AUS104. Further, auditing of a financial report must comply with Australian "Auditing Standards and Auditing Guidance Statements" as defined in AUS102.

### **Acquittal**

Once a grant activity is completed, the grantee will be required to provide an acquittal statement that:

- states the funds, and any assets, were used in accordance with the agreement;
- states how the funds or assets were used;
- demonstrates how expected outputs and outcomes were achieved and if not, why;
- sets out the extent to which government policy objectives were achieved; and
- includes feedback on the grants administration process.

This requirement needs to be set out in the Grant Schedule/Details.

If the Agency wants the grantee to provide acquittal statements at other times during the grant period, this should also be set out in the Grant Schedule/Details.

Finally, if the Agency wants the acquittal statement(s) to be independently audited this should be stipulated in the Grant Schedule/Details. When considering this option, the Agency should bear in mind the principle that requirements imposed on the grantee should be proportionate to the risk associated with the grant activity. Obtaining an independently audited acquittal statement can be costly and will not be appropriate if the grant is low-risk.

### **Annual Report**

## Administration of NSW Health Grant Funding for Non-Government Organisations



An Agency may also require a grantee to provide a copy of its own annual report, if it is presented at the grantee's annual general meeting or to its board.

### **Ad Hoc Reports**

Finally, under the Conditions in the Long-Form Template, grantees must provide any information, records or reports in relation to the grant activity, the expenditure of the grant or the obligations under the agreement requested by the Agency. When using the Short-Form Template, Agencies can consider inserting a similar clause into the Grant Details, so they have the power to request ad hoc reports from the grantee.

### **5.5.3.3 Payments**

An important aspect of administering a grant is deciding how the grant will be paid. A payment timetable will need to be prepared for each grant, and included in the Schedule/Details.

The timing of payments should reflect:

- the funds needed by the grantee to progress the activity (e.g. the grantee may require a large percentage of the funds up front to commence the activity, followed by smaller, periodic payments);
- the risk of non-compliance (bearing in mind that the Agency's capacity to influence the activity may diminish once the grant has been largely paid); and
- the money (that is, the interest earned on the funds) the government would lose if it paid the grant earlier than necessary.

There are a number of ways to approach the payment of grants. The options described below are not exhaustive, but are the most common approaches to paying grants.

#### ***Option 1***

An Agency may opt to pay instalments on predetermined dates. If this approach is taken, it will still be possible, under the Conditions, to withhold or recover payments for failure to meet milestones.

As with option 2, if this option 1 is taken, Agencies should avoid paying the entire grant before the grant activity is completed. It is best practice to retain a portion of the grant until the grantee has completed and fully acquitted the project.

*Template payment timetable where payments made at specified dates:*

Description	Time for payment
Per annum payment on a quarterly basis	Payment in advance, within 30 days of Start Date and remaining quarterly instalments by the following dates: 31 July, 31 October, 31 January and 30 April
One-off payment	Payment within 30 days of the Start Date

## Administration of NSW Health Grant Funding for Non-Government Organisations



### Option 2

Although it may not always be possible, it is NSW Health's preference that grants be paid in instalments that are contingent on milestones being met. If this approach is adopted, the Agency must verify that milestones have been achieved before making associated payments.

Agencies should avoid making an initial, advance payment on execution of a grant agreement (before any milestones have been met). This should only be done if there is a net benefit in doing so (e.g. paying funds in advance will reduce the cost of the activity or allow the grantee to begin the activity sooner).

Agencies should also avoid paying the entire grant before the grant activity is completed. It is better practice to retain a portion of the grant until the grantee has completed and fully acquitted the project.

*Template payment timetable where payments contingent on milestones:*

Milestone	Anticipated date	Evidence of Milestone achievement	Instalment amount (excl GST and any indexation)
100 customers served	30 June	Progress report	\$1000

#### 5.5.3.4 Indexation

With long-term or recurrent grants, an Agency may agree to increase payments each year to reflect indexation.

Any such arrangement must be outlined in the Schedule/Details, so that the indexation does not constitute a variation requiring the written agreement of the parties.

#### 5.5.3.5 Budget

It is not always necessary to include a budget in a grant agreement, particularly low-risk or low-value agreements. However, including a budget can improve financial accountability as the Agency and grantee can see exactly how funds are to be spent. Further, if a budget is included in the agreement, the grantee will be required to comply with the budget and the Agency can require the grantee to report against the budget. This may make it easier for the Agency to assess whether the grant was spent in accordance with the agreement.

A budget can be inserted into the Schedule/Details. Alternatively, an Agency could make it a milestone that the grantee give the Agency a budget for approval by a certain date. Further, if an agreement is long-term, and it is difficult to predict how the grant will be

used, the Agency may require the grantee to provide a new budget for approval at regular intervals.

#### **5.5.3.6 Insurance**

The requirements for insurance will vary depending on the nature of the grant activity. Grantees must take out and maintain adequate insurance. However, for low-risk grants, an Agency may not dictate the levels of insurance or sight certificates of cover, and therefore, insurance requirements will not be set out in the Grant Schedule/Details. For high-risk grants, an Agency will take a more active role in ensuring the grantee is adequately insured and will set out insurance requirements in the Grant Schedule/Details.

#### **5.5.3.7 Intellectual property**

The default position under the conditions of the Long-Form and Short-Form Templates, is that:

- if, prior to the grant agreement, a party owns the intellectual property rights in material, they will retain these rights after the agreement commences; and
- the grantee will own the intellectual property in any material brought into existence by the grantee (or on the grantee's behalf) in the course of carrying out the grant activity (New Material).

However, if the Agency wants to own the intellectual property rights in any New Material, this can be arranged by:

- setting out the New Material the Agency will own in the Grant Schedule/Details; or
- the Agency notifying the grantee in writing, prior to the delivery of all or part of the grant activity, that the Agency will own all or part of the New Material (Long-Form Template).

Although there is no contractual obligation to act reasonably when exercising the final option listed above, an Agency should act in good faith, by notifying the grantee in a timely manner and limiting material it claims ownership of material it needs. An Agency should also bear in mind that, although it may not own the New Material, under both templates the grantee has given it a permanent, irrevocable, royalty-free, worldwide, transferable, non-exclusive licence (including a right of sublicense) to use all New Material. An Agency should consider whether it needs to own the material when it already has this licence. Further Agencies should also be wary when exercising this option to not act in a way that may damage the Agency's reputation.

#### **5.5.3.8 Supplementary conditions**

Agencies may apply supplementary conditions to a grant by inserting these conditions in the Grant Schedule/Details. Care should be taken when inserting supplementary conditions as they will override the Conditions. Generally, legal advice should be sought before inserting supplementary conditions.

## **5.5.4 Standard Grant Conditions**

Both the Long-Form and Short-Form Templates include Standard Grant Conditions (Conditions). The Conditions set out the standardised core terms that apply to all grants and cannot be changed (except by inserting a supplementary condition in the Grant Schedule or Grant Details). Core terms set out in the Conditions include:

### **5.5.4.1 Privacy**

Under the Conditions of the Long-Form and Short-Form Templates, grantees must comply with all relevant privacy legislation, including the Privacy and Personal Information Protection Act 1998 (NSW), the Health Records and Information Privacy Act 2002 (NSW) and the Privacy Act 1998 (Cth).

### **5.5.4.2 Confidentiality**

With limited exceptions, under the Conditions of both templates, grantees cannot disclose information relating to the grant activity or the grant agreement to a third party unless it is necessary to carry out the grant activity or the Agency has consented to the disclosure.

### **5.5.4.3 Subcontracting**

Under the Conditions of both templates, grantees may not subcontract any of their obligations without the prior written approval of the Agency. This means they cannot pay someone else to perform the activity unless the Agency agrees. Further, if an Agency gives approval, the grantee will remain responsible for the completion of the activity, and must ensure the subcontractor complies with any terms of the grant agreement. The Agency may also impose terms or conditions on its approval. For example, an Agency may require that under the subcontracting arrangement the Agency's auditors have access to the subcontractor's accounts and records.

### **5.5.4.4 Assignments**

Under the Conditions of both templates, a grantee cannot assign its rights or responsibilities to another party without the Agency's consent.

### **5.5.4.5 Notification requirements**

Under the Conditions of the Short-Form and Long-Form Templates, grantees are obliged to notify the Agency of certain events, including, but not limited to:

- a conflict of interest
- anything that might affect the undertaking of the grant activity or any other obligations under the agreement and
- a change in GST registration status.

The Long-Form Template imposes further notification requirements (which are not imposed by the Short-Form Template), including the requirement to notify the Agency of:

## Administration of NSW Health Grant Funding for Non-Government Organisations



- alleged misconduct, serious incidents and serious complaints about the grant activity
- action or proposed action regarding an insolvency event or external administration
- financial assistance from another governmental authority for the grant activity and
- a breach of privacy legislation.

The above list is not exhaustive and Agencies will need to carefully read the Conditions of the agreement to understand their and the grantee's obligations. Further, if the Agency wants to include any additional notification obligations, they can do so by adding these to the Grant Details in the Short-Form Template or item 7 Grant Schedule in the Long-Form Template.

### 5.5.4.6 Purchase of assets

Under the Long-Form Template, a grantee must not use the grant to purchase or lease any assets unless:

- it is stated in the Schedule that funds can be used for that purpose; or
- the Agency has given prior written approval to use the grant for that purpose.

Even when the grantee can purchase or lease assets with the grant, there are restrictions or how the assets can be used, and requirements relating to the upkeep of those assets. For example, the assets can only be used for the grant activity or another purpose approved by the Agency. Also, at the end of the activity (or any other period designated by the Agency) assets purchased using a grant must be dealt with as directed by the Agency.

The Short-Form template does not stipulate whether assets can be purchased or leased using the grant, however, if desired, the Long-Form Template's clause relating to assets could be inserted in the Grant Details as a supplementary condition.

## 5.6 Accreditation and clinical governance

A range of corporate and clinical accreditation standards are relevant and adaptable to grants in healthcare settings. Accreditation standards assist organisations to establish and maintain quality improvement processes and address minimum standards of operations. This may include governance, accountability, risk management, financial management, human resources, workplace safety, client engagement and service delivery. The nature of the grant-funded activities and the extent of the funding will determine the standards and accreditation levels expected.

Clinical services are defined as those whereby direct diagnosis, treatment or care is provided to a patient or client. Where an Organisation is delivering clinical services, they must be able to achieve the standards or accreditation stipulated by the Agency responsible for the specific health area of their grant. This is a requirement of receiving grant funding and Agencies must ensure expectations are detailed in the grant agreement.

## Administration of NSW Health Grant Funding for Non-Government Organisations



In addition, the Organisation must have sufficient capacity to maintain appropriate clinical governance arrangements, including clinical incident management capability, as determined by the Agency responsible for the specific health area of their grant. Agencies and Organisations should consult as necessary to decide and document expectations for clinical governance, and Agencies must ensure all Organisations affected are aware of these.

Organisations not delivering clinical services may still be expected to meet particular standards or accreditation levels as stipulated by the Agency responsible for the specific health area of their grant.

When an Organisation has difficulty complying with standards, accreditation or clinical governance requirements, the relevant Agency must work with it to agree on and record (in writing) a suitable mitigation strategy. This strategy needs to ensure that all grant-funded activities delivered are safe and high quality, and supported by satisfactory administrative and governance structures and processes.

Organisations must also ensure staff are suitably qualified for their roles. This includes verifying staff qualifications and, where relevant, their continued registration. They must be able to provide staff information to the NSW Health Agency when requested.

### 5.7 Authorising the grant and executing the agreement

After a grant agreement has been drafted, the grant must be approved by an officer of the Agency who has delegation to:

- approve the expenditure; and
- execute the agreement on behalf of the Agency.

The type of grant will determine who can approve the expenditure, as outlined below:

- MAGs must be approved by the Minister for Health
- for Ad Hoc Grants, see the [NSW Health Combined Delegations Manual](#)
- Agencies must refer to their own delegations manuals to determine who can approve Program Grants. For Ministry-administered Program Grants, see the [NSW Health Combined Delegations Manual](#).

The type of grant will also determine who can execute the agreement on behalf of the Agency:

- Agencies must refer to their own delegations manual to determine who is authorised to execute MAG agreements. For Ministry-administered MAG agreements, see the [NSW Health Combined Delegations Manual](#).
- Agencies will also need to consult their own delegations manual to determine who can execute Ad Hoc and Program Grant agreements. For Ministry-administered Ad Hoc and Program Grants, see the [NSW Health Combined Delegations Manual](#).

If the person executing the agreement is not the same person who approved the expenditure, the Agency must ensure the agreement is consistent with the terms of the approval. The agreement is only the means by which the Agency gives effect to the approval, and cannot include anything that has not been approved.

## **6 MANAGING THE GRANTEE AND GRANT ACTIVITY**

### **6.1 Monitoring**

Ongoing monitoring of grantees is integral to the success of a grant activity. An Agency needs to collect information from grantees to:

- establish that funds are being spent correctly;
- measure the grantee's performance against performance measures; and
- assess progress towards anticipated outcomes.

Monitoring the grantee and grant activity reduces the risk of fraud, ineffective project implementation, ineffective use of public resources and non-completion.

A grant agreement will normally include arrangements that allow the Agency to monitor the grantee's performance. Such arrangements may include requiring the grantee to:

- report on performance and expenditure;
- provide financial statements;
- attend regular meetings or teleconferences; and
- organise regular site visits.

The administrative costs of such arrangements can be substantial. Agencies should ensure that any such arrangements are proportionate to the risks associated with the grant and the grantee's capacity to comply.

It is not enough that Agencies receive and read reports and statements or attend meetings or site visits. Agencies must use the information collected through these channels to comprehensively assess the grant activity against performance measures (which should have been clearly defined in the grant agreement). This involves asking:

- What has been done?
- How well was it done and could it have been done better?
- Is anyone better off or has anything improved?
- Are funds properly accounted for?

In addition to monitoring the performance of grantees, throughout the term of the agreement, Agencies must keep track of their own obligations under the agreement. For example, Agencies must be mindful of payment due dates (if the agreement stipulates the funds be paid in instalments), and ensure that funds are available on these dates.

### **6.2 Incident management**

When clinical or corporate incidents occur in an Organisation, the Agency that administers the grant must work closely with and support the Organisation to respond to the incident with an appropriate level of investigation, including informing the Ministry if necessary, in accordance with the NSW Health [Incident Management Policy](#). Criminal activity must be immediately reported by the Organisation.

Organisations are responsible for:



- ensuring staff are trained in incident management and able to investigate incidents and action recommendations;
- timely notification of incidents to the NSW Health Agency administering the grant, via the grant administrator;
- ensuring an effective incident management system is in place for investigating and actioning recommendations for all incidents;
- ensuring appropriate resources are available for effective incident management and patient safety initiatives;
- implementing policies and local practices that support staff and encouraging an environment where incident notification and active management of incidents is fostered; and
- contributing to statewide improvements as required.

### **6.3 Acting on unsatisfactory performance**

If monitoring reveals that performance measures are not being met or funds are not properly accounted for, Agencies should consider remedial action. The terms of the agreement will dictate how an Agency can respond to unsatisfactory performance. In some circumstances, Agencies may be able to (and may feel it is appropriate to) withhold funding or terminate the agreement.

Agencies need to act on unsatisfactory performance. By failing to exercise its rights in response to unsatisfactory performance an Agency may:

- implicitly vary the agreement;
- waive the grantee's performance obligations under the agreement; or
- prevent the Agency from exercising its rights in the future, by giving the grantee reason to believe that it was satisfactorily performing its obligations and action would not be taken by the Agency if it continued to perform to the same standard.

#### **6.3.1 Withholding payments**

An Agency may, after giving written notice to the grantee, withhold (either temporarily or permanently) payments if the Agency has good reason to believe the grantee has not complied with the agreement or is unable to carry out the grant activity. The written notice given to the grantee should address the reasons payments have been withheld and how the grantee can address those reasons. If the reasons are addressed to the Agency's satisfaction, payments should be restored.

#### **6.3.2 Recovery of payments**

Where a grantee has not used a grant for the agreed purpose, has failed to perform any obligations under the agreement or (for Long-Form Template agreements) has been accidentally overpaid, the Agency can give the grantee notice to repay the funds. Alternatively the Agency may recover these funds by setting-off the amount against any future payments.

## 6.4 Unspent grant and residual grant

Organisations must spend the grant they receive on the activity as set out in any budget. They must also agree not to:

- transfer or reallocate the grant between expenditure items in any Budget, or
- carry-over any unspent grant from one financial year to the next during the activity period, except to the extent set out in the grant schedule and in accordance with the provisions of the agreement, or with the prior written approval of the Agency.

Agencies may consider requests from an Organisation to retain unspent funds. Agencies must have regard for whether and how specific approval should be given about the reallocation of budgeted expenditure or the carrying over of any unspent grant to the following financial year within the activity period. Determinations should be made by Agencies on a case by case basis. An example of an arrangement for use of unspent funds is included in the long-form agreement template.

Any residual grant remaining at the expiration or termination of the Agreement must be returned by the Organisation to the Agency within 20 business days of the activity end date or on earlier termination, unless it has prior written approval of the Agency.

## 6.5 Variation of a grant agreement

During the grant period, the parties may wish to change their responsibilities under the agreement. For example, the parties might want to extend the term of the agreement, change the amounts or dates of payments or change the scope of the activity.

A grant agreement may only be varied in the manner required by the agreement. Under the Conditions of the Short-Form Template, the grant agreement may be varied by written agreement.

Under the Conditions of the Long-Form Template, the grant agreement may only be varied if:

- both parties agree in writing; or
- the Agency notifies the grantee in writing of a minor variation to the agreement and the grantee does not object to the variation within 10 business days of receiving the notice.

Parties can agree to a variation in writing by signing a letter of variation. Legal Branch has prepared a sample letter of contract variation which may assist in preparing such a letter. It can be accessed on the [MoH Legal Intranet](#).

Grant administrators must ensure the person who approves a variation or executes a letter of variation is authorised to do so. Usually, the persons authorised to approve a variation and execute a letter of variation are the same persons who were authorised to approve or execute the grant agreement. That said, this may not be the same for all Agencies, and grant administrators should consult their Agency's delegations manual.

## **7 REVIEWING AND EVALUATING OUTCOMES**

The final stage of grants administration is reviewing the grant activity and evaluating whether expected outcomes were achieved. Agencies must avoid the common trap of simply assuming that the outcomes the grantee promised or predicted in their grant application were actually achieved.

Outcomes are the broad effect of the grant activity on policy objectives. By contrast, outputs are the quantifiable results of the grant activity (such as, customers served, programs run or workshops delivered). Essentially, the outcome of a grant activity is the difference made to beneficiaries as a result of the outputs. An example of an output is attendance at an event, and the relevant outcome is increased awareness of the issue addressed at the event.

As outlined at Section 6 “Managing the grantee”, an Agency should monitor the grantee’s performance throughout the term of the grant agreement, and take action in response to unsatisfactory performance. However, although outputs may be apparent during this stage of grants administration, it may be difficult to measure outcomes.

Towards the end of the grant period, this responsibility to monitor the grantee’s performance culminates in the final review and evaluation of the activity. At this stage, an Agency will be better placed to assess whether the grant activity has or, if continued, could achieve expected outcomes.

Data provided by the grantee (by way of reports) can be used to evaluate the activity. This data should be scrutinised. Agencies should consider how data was collected and the extent to which it can be relied upon. Agencies should consider collecting information from other sources (e.g. the Agency’s own observations, feedback from stakeholders and independent research on the efficacy of the activity) as information provided by the grantee may not include insights on the wider impact of the activity.

Finally, Agencies must act on the findings of their evaluation. If the grantee has applied for continued funding, but the Agency’s evaluation reveals the grant activity has not or will not achieve desired outcomes, the Agency should consider rejecting the grantee’s application, reducing funding or imposing new conditions on the grantee.

Agencies must review, evaluate and act in a timely manner. NSW Health grants may be a significant proportion of a grantee’s overall budget and, in the case of long-term or recurrent agreements, grantees may have relied on this funding for many years. Grantees should generally be given time to prepare for a reduction in funding and the opportunity to seek a review of such a reduction. Additionally, where an Agency is reallocating funding to a different organisation to perform the same activity, acting in a timely way is essential to avoid a break in services to the community.

### **7.1 Terminating the agreement**

Under a Short-Form or Long-Form Template agreement an Agency can:

- terminate the agreement with immediate effect for particular reasons (e.g. breach of the agreement, bankruptcy, etc). This is known as termination for cause; and
- terminate the grant agreement for any reason (even if the grantee has done nothing wrong) by giving the grantee notice in writing (the length of notice required

will depend on the template used). This is known as termination for convenience or termination without fault.

If the Long-Form Template is used, the grantee may also terminate for cause or convenience. However, if the Short-Form Template is used, the grantee will not have this right to initiate termination.

Before terminating an agreement, an Agency should carefully consider the consequences of termination. For example, it will need to consider whether anyone else can carry out the grant activity, and if not, the effect of cancelling services on the community. If terminating for convenience, the Agency must also consult the grant agreement to determine whether it is obliged to pay expenses the grantee incurs due to early termination.

## **8 DEFINITIONS AND INTERPRETATION**

In this Policy Directive, the below terms are defined as follows:

**Agency** means a government agency within NSW Health and includes, but is not limited to, the Ministry of Health, Local Health Districts, specialty health networks, statutory health corporations and business units within the Health Administration Corporation. Any reference to an Agency in this Policy Directive includes the officers, employees, consultants, independent contractors and volunteers working for the Agency.

**Beneficiaries** include the individuals/organisations which directly or indirectly benefit from the grant activity.

**Grant Activity** means the projects, services or tasks the grantee is required to undertake using the grant money.

**Grant Administrator** means a person within an Agency who is responsible for any aspect of grant administration for one or more grants.

**Grant Period** means the period during which the grantee is required to undertake the grant activity.

**Grantee** means the individual/organisation which has been selected to receive a grant.

**Must** denotes that it is mandatory to act in a particular way.

**NGO** stands for Non-Government Organisation, which is a not-for-profit organisation that operates independently of government.

**Should** denotes that it is good practice to act in a particular way.

## **9 IF YOU HAVE FURTHER QUESTIONS**

Grants administration is complex, and this policy may not address every issue. If you are working on a novel, complex or high-value grant you should consider seeking legal or financial advice.

**Administration of NSW Health Grant Funding for  
Non-Government Organisations**



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Further policy information is available online at  
<https://www.health.nsw.gov.au/business/partners/pages/default.aspx>

**Administration of NSW Health Grant Funding for  
Non-Government Organisations**



## 10 ATTACHMENTS

### Attachment 1: Implementation checklist

<b>District/Facility:</b>			
<b>Assessed by:</b>		<b>Date of Assessment:</b>	
<b>IMPLEMENTATION REQUIREMENTS</b>	<b>Not commenced</b>	<b>Partial compliance</b>	<b>Full compliance</b>
1.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<u>Notes:</u>		
2.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<u>Notes:</u>		
3.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<u>Notes:</u>		
4.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<u>Notes:</u>		
5.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<u>Notes:</u>		
6.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<u>Notes:</u>		

## **INFO SHEET: PLANNING AND DESIGN**

For grants to deliver against government priorities and policies they need to be carefully planned and designed. This involves the design of health priorities, targets, activities and systems so that these are underpinned by evidence and evaluation and are responsive to the changing health needs of the community.

Planning and design are ongoing, open and participative processes, and grant activities are expected to support the achievement of outcomes and outputs determined through this work.

To foster the importance of planning and design within grant administration, the following should take place:

- Agencies should have regard for any NSW Health strategic priorities document which outlines how the organisation will work to achieve its core objectives;
- Ministry branches with responsibility for oversight of specific health areas, should engage grant administrators and representatives from Organisations in the development of targets and outcomes, strategic planning processes, and policy directions;
- Grant agreements should reflect a clear link to health priorities, targets, and policies agreed to in specific health areas, and contain performance measures that will guide activities so that the desired outcomes and outputs are achieved.

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## **INFO SHEET: COLLABORATION**

A grant agreement will help establish the basis for an effective working relationship between the Agency and the grantee that is based on collaboration and respect, and a shared understanding of objectives and expectations.

Agencies should work collaboratively with grantees, co-contributors and other interested Agencies to achieve:

- improved design and delivery of grant-funded activities;
- improved responsiveness, flexibility, quality, safety and relevance of funded activities;
- reduced administration and compliance costs for grantees and NSW Health;
- effective development of appropriate performance measures, accountability requirements, governance structures;
- a strong understanding by grantees of their legal rights and obligations.

Grant administrators should also consider what interaction the grant they oversee may have with activities funded by other agencies or grantees particularly where there are similar policy outcomes. It is important to:

- know if the grant is part of a larger funding contribution from another agency;
- understand what NSW Health's funds are specifically achieving and whether it is still appropriate to allocate the funds;
- develop effective liaison with other funding organisations, particularly where policy responsibility or grants administration is shared between different entities or levels of government;
- work towards reducing fragmentation and unnecessary overlaps, improving outcomes for grantees, beneficiaries and NSW Health.



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## **INFO SHEET: OUTCOMES FOCUS**

Grant administration should be designed and implemented so that grantees focus on outcomes and outputs for patients and clients, while seeking the most efficient and effective use of inputs. Agencies and grant administrators should focus on achieving government policy outcomes.

To achieve this Agencies should ensure that:

- the objectives of a grant are clear and specific;
- outcomes and outputs to be achieved through grant activities will clearly support the achievement of NSW Government priorities, targets, and policies agreed to in specific health areas;
- outcomes and outputs are shared with grantees, and beneficiaries (where appropriate);
- outcomes and outputs are reviewed regularly, and changed as appropriate.

In adopting an outcomes focus, Agencies should avoid common mistakes, which include:

- assuming that a grant automatically secures the desired outcome;
- assuming that the consumption of inputs results in the delivery of desired outputs and outcomes;
- framing performance indicators that are reliant upon data provided by the grantee, without validating the grantee's capacity to produce accurate, reliable and complete data.

Performance measures are used to evaluate whether outcomes and outputs have been achieved, if particular grant activity delivered value for money, and if a grant should continue. Agencies should ensure that performance measures and related reporting:

- are flexible enough to take into account the risk profile of the funded organisation and the grant activities being funded;
- effectively balances the amount of information required to perform due diligence against the level of effort and cost to be borne by grantees;
- shows the extent to which grant activities contribute to government outcomes, as well as producing outputs;
- is targeted so that grantees and Agencies are able to draw well-informed conclusions and provide information on which to base future decisions for designing, continuing or concluding funded activities.

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## **INFO SHEET: VALUE FOR MONEY**

Achieving value for money requires the careful comparison of the costs and benefits of feasible options in all phases of grants administration. It is also a means by which Agencies can assure their accountable authority that resources are deployed in a proper manner, while not imposing burdensome requirements on grantees.

Agencies should work to achieve value for money through:

- considering and promoting economical and ethical use and management of public resources and avoiding the duplication of services;
- working with other Agencies and organisations to improve the efficiency of the design and delivery of grant-funded services;
- using processes, procedures and requirements that are proportional to the risks and nature of grant services;
- adopting an active risk identification and engagement approach focused on minimising potential adverse impacts and maximising benefits, through identifying and treating risks;
- implementing fair, transparent and competitive processes to select organisations;
- monitoring and managing throughout the grant lifecycle. This should assure Agencies that funded services are proceeding as planned, relevant money is being appropriately managed, and the organisation's governance is sound.

Grantees should contribute to achieving value for money by:

- considering how best to deliver the grant activities to target groups or individuals. This may involve using existing processes and technologies or professional standards, or it may involve innovation and performance improvement;
- having effective risk-management approaches to minimise potential waste of money and duplication of services;
- ongoing monitoring and managing of the grant activities, as appropriate. This may involve organisational processes, procedures and systems to produce the required reporting information;
- contributing to government policy outcomes through a partnership approach to delivery of grant activities;
- participating in evaluation processes.

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## **INFO SHEET: PROPORTIONALITY**

Proportionality focuses on ensuring that the design of and administrative processes for a grant are commensurate with the scale, nature, complexity and risks involved in the grant activity.

Agencies should streamline procedures to the minimum needed to ensure both accountability and value for money. Agencies should therefore consider the organisational capacity, financial and clinical governance, and funding level to determine the:

- approach to the application and selection process;
- grant agreement template to be used;
- number and type of performance measures;
- expectations for governance capabilities and arrangements;
- stringency of monitoring, reporting and acquittal procedures based on consideration of the risks involved with the grant;
- necessity for requesting copies of management letters by external auditors.

To further manage risks, assessments should be carried out by Agencies at strategic points in the agreement cycle i.e. when entering into and/or renewing grants.

## **INFO SHEET: GOVERNANCE AND ACCOUNTABILITY**

The Audit Office of NSW refers to good governance as:

'high-level processes and behaviours that ensure an agency performs by achieving its intended purpose and conforms by complying with all relevant laws, codes and directions and meets community expectations of probity, accountability and transparency. Governance should be enduring, not just something done from time to time'.<sup>1</sup>

To effectively and transparently administer grants, Agencies should clearly document:

- the roles and responsibilities of all relevant parties;
- the policies, procedures and guidelines necessary for defensible recipient selection;
- administrative processes that comply with all relevant legal and regulatory requirements;
- the approach for decision-making, grant administration and performance reporting in support of public accountability.

Accountability involves ensuring individuals and organisations are answerable for their plans, decisions, actions and results. To achieve this, Agencies must ensure:

- roles and responsibilities of all parties involved are clearly defined and communicated for each grant;
- grant administrators have the necessary grants management, stakeholder liaison and financial management skills;
- those involved in assessing applications are appropriately skilled and have access to procedural instructions and/or training before processing grant applications;
- record keeping processes are maintained, and there is strong awareness of these so that it can be demonstrated that due process has been followed in actions and decisions;
- grant agreements are well drafted and are fit-for-purpose, and both parties clearly understand the standard conditions of the grant agreement;
- grant agreements are supported by ongoing communication, active grants management and performance monitoring that is proportional to the risks involved.

<sup>1</sup> Governance Lighthouse – a strategic early warning signal, Audit Office of NSW, 2015

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## **INFO SHEET: PROBITY AND TRANSPARENCY**

Probity relates to ethical behaviour. Establishing and maintaining probity involves applying and complying with NSW public sector values and duties such as integrity, impartiality, responsibility and accountability.

Transparency refers to the preparedness of those involved in grants administration to be open to scrutiny, which may involve providing reasons for decisions and two-way information to government, grantees, beneficiaries and the community.

To achieve probity and transparency in grants administration, Agencies must ensure:

- decisions relating to grant funding are impartial, appropriately documented and reported, publicly defensible, and lawful;
- compliance with reporting requirements;
- staff possess a strong awareness of and are able to apply appropriate safeguards against fraud, unlawful activities and other inappropriate conduct;
- anti-fraud procedures and practices comply with the fraud risk-management, legislative and regulatory requirements, required accreditation standards, financial delegations and financial reporting;
- appropriate internal control mechanisms are established for grants administration in accordance with relevant NSW Health delegations and financial approvals;
- reported information is assessed not only against objectives but also against appropriate benchmarks to indicate appropriate use of funding;
- Organisations have processes in place for internal reporting or whistleblowing that aligns to better practice such as under the Australian Standard and/or guidance issued by the NSW Ombudsman.

Actual or perceived conflicts of interest must be managed. A conflict of interest may arise where:

- decision-makers or those involved in grants administration have a direct or indirect interest, which may influence the selection or extension of a particular grant activity;
- individuals have a direct or indirect interest in informing a decision about expenditure or providing advice on grant agreements;
- a potential grantee has a direct or indirect interest, which may influence the selection or extension of a grant activity. Conflicts may also arise when undertaking the grant activity.

NSW Health employees are not prohibited from occupying positions on governing bodies of external groups. It is recognised that in some circumstances it is beneficial for experienced

## Administration of NSW Health Grant Funding for Non-Government Organisations



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health personnel to make a contribution to the activities of external groups within their area of expertise.

NSW Health employees are to immediately refer their potential conflict of interest matter to the appropriate manager in their Agency in writing and not seek to determine if an actual conflict of interest exists themselves. For information and the appropriate form, refer to the NSW Health policy [Conflicts of Interest and Gifts and Benefits](#) (PD2015\_045).

Where appropriate the matter may be elevated to the District Chief Executive Officer or Deputy Secretary for determination.

Further resources include:

- [The Code of Ethics and Conduct for NSW government sector employees](#), NSW Public Service Commission, 2015
- [Identifying and managing conflicts of interest in the public sector](#), Independent Commission Against Corruption, 2012
- [Ombudsman New South Wales](#).

## NSW Health Grant Agreement

**Guidance** delete this guidance before issuing

**Purpose:** this Agreement is a sample grant agreement for use by NSW Health agencies when paying a grant to a not-for-profit, non-government organisation and where a short-form agreement is not appropriate. You need to take care when using the agreement as there is no standard agreement that covers all arrangements and it is necessary to ensure that it appropriately addresses your needs, particularly for higher risk and more complex grants.

The agreement is not intended to cover all grant arrangements and, in particular, it is not intended for research-related agreements, capital works grant agreements, sponsorships, subsidies or the contracting of services under the procurement framework (where it may be more appropriate to use the NSW Government Human Services Agreement).

**Grants administration:** a grant is administered in accordance with the NSW Health Policy Directive *Administration of NSW Health Grant Funding for Non-Government Organisations PD2019 XX* and agency policies and procedures (including agency grant delegations). Agencies are required to have arrangements in place to ensure that this grant agreement is properly administered and that the parties meet their respective obligations. Grant administrators should develop a good understanding of the grant agreement and ensure that the milestones and any conditions can be properly monitored and problems identified early.

**Structure:** the Agreement is comprised of the following parts:

### Grant Agreement

- **Part 1 - Grant Details:** the introductory details about the agreement, including the parties
- **Part 2 - Grant Schedule:** a detailed description of the Activity and other requirements, including any Additional Conditions
- **Part 3 - Standard Conditions:** the conditions of the Grant and the obligations of the parties
- **Other parts - attachments:** if applicable, any other documents that are to be attached

**Guidance:** guidance for agencies on completing the attached documentation is in white text and blue highlight and information that needs to be completed or optional examples that may be included are in standard text, square brackets and yellow highlight. The guidance notes and highlights need to be deleted, removed or changed and the document needs to be completed before a copy is provided to a recipient organisation. When issuing any draft document to an Organisation it is useful to advise that it is a draft document which is subject to internal approval and that it will not be binding until both parties sign a copy.

### Grant Details

This is an agreement for [insert name of Grant Agreement].

#### Parties:

<b>Agency</b>	Name:	[Insert in <b>bold</b> the full legal name of the NSW Health Agency. For non-corporate agencies [eg, Ministry of Health, Ambulance Service of NSW], this may be expressed as "Health Administration Corporation as represented by [insert]"
	ABN	[insert details]
	Address	[insert details]

**NSW Health Grant Agreement**

<b>Your Organisation</b>	Name	[Insert in <b>bold</b> the full legal name of the recipient organisation]
	Trustee of a Trust	Your Organisation [is] [is not] entering into this Agreement as a trustee of a Trust. [If the organisation is entering into this Agreement as a trustee of a Trust, with some exceptions, the organisation name should be "[name of trustee] as trustee of [insert name] of Trust
	Business or trading name	[Insert any business or trading name, write "Not used" OR delete row]
	Incorporation details	Incorporated under [delete as appropriate: Corporations Act 2001 (Cth)/ Associations Incorporation Act 2009 (NSW)/ Cooperatives Act 1992 (NSW)/ Aboriginal Councils & Associations Act 1976 (Cth)/ other [insert]]:
	Australian Company Number (ACN) or other incorporation number	[Insert the incorporation number of Your Organisation]
	Australian Business Number (ABN)	[Insert ABN]

**Background**

The Agency agrees to provide Your Organisation, and Your Organisation agrees to accept, the Grant for the purpose of Your Organisation carrying out the Activity in accordance with the terms and conditions of this Agreement.

**Scope of this Agreement**

This Agreement is on the terms and conditions of the following documents:

- the **Standard Conditions** [version **June 2018**] (attached at Schedule 1);
- this document, the **Grant Details**;
- the attached **Grant Schedule**; and
- any other document incorporated in the Grant Schedule.

If there is ambiguity or inconsistency between documents comprising the Agreement, the document appearing higher in the list will have precedence.

The Agreement may be signed and dated by the parties on separate, but identical, copies. All signed copies constitute one (1) Agreement.



## NSW Health Grant Agreement

### Grant Schedule

The Grant Schedule needs to contain all the information that relates to the provision of the Activity. The amount of information to include will vary according to each arrangement. You need to give a clear, unambiguous and comprehensive description of the Agency's needs and requirements, including all the details regarding the Activity that the recipient organisation is to carry out or perform (what and how?), the milestones (how and when?) and all related reports and payments. It is preferable that payment is linked to satisfactory completion of Milestones and submission of reports.

This Grant Schedule forms part of the Agreement between the Agency and Your Organisation.

## Activity

### Item 1 Activity description

The Activity description is the basis of the Agreement. A significant part of the success of the Agreement relies on you setting out an accurate statement of the Agency's requirements. Insert any details of the Activity that are not included elsewhere in the Grant Details, such as a background, anticipated outcomes and any additional defined terms or terminology.

**Activity name:** [insert Activity / program / project name where applicable]

**Activity aims and objectives:** Insert a description or summary of the overall aims and objectives and/or purposes of the Grant which are to be linked to the Activity description described further below. This should include reference to any program under which the Activity is funded Your Organisation agrees to carry out the Activity in such a way that promotes the following aims and objectives: [insert a list]

**Activity background:** [Optional. Delete if not used].

**Target Group [and / or geographic area or location] for the Activity:** [insert details or delete if not applicable].

**Activity description:** the Activity to be provided is:

- (a) [insert a detailed description of all the Activity that Your Organisation is to carry out];
- (b) [insert any key Activity deliverables that Your Organisation is to produce in carrying out the Activity]

The Activity description may be provided here, set out in the milestones or performance measures below or in an activity and payments schedule as an attachment. [Example only. The Activity is further described in [complete]].

### Item 2 Carrying out the Activity

**Activity Period:** the Activity must be carried out from the Activity Commencement Date to the Activity End Date.

**Activity Commencement Date:** [insert commencement date for Activity. If no date is to be specified insert the position set out in the Standard Conditions: "Date of Agreement"]

**Activity End Date:** [insert the End Date for Activity].

**Milestones:** [example only: Your Organisation must carry out the Activity so as to meet the Milestones and other timeframes set out in the below table.]

Milestone	Milestone Activity	Milestone due date	Performance measures <small>Optional: see guide note below</small>
MS	What will be done? A significant event signifying commencement and/or completion of a major deliverable.	Timeframe	How will you determine if anyone is better off? State how the results (outcomes/outputs) will be measured
[Eg 1]	[insert description of deliverable for this milestone stage eg submission]	[insert date]	[insert details]

**NSW Health Grant Agreement**

	of an Action Plan and/or Budget for approval and named reports]		
2		[insert date]	[insert details]
3			[insert details]
4			[insert details]
5			[insert details]
Activity Completion			[insert details]

**Performance measures:** [Optional: insert any performance measures or delete if not applicable.]

The deliverables or Milestone Activity may be accompanied by objective performance measures as far as possible. Performance measures are statements that define how the success of the Activity is to be measured and the criteria or benchmarks to be used in judging success. They will vary significantly for lower risk and higher risk agreements. Performance measures can provide an important record of your agency's progress towards meeting government policy objectives and outcomes and inform how well public money is being spent and indicate areas for performance improvement.

Delete this section if not used or if performance measures are included in the table above. Alternatively, delete the column in the table above and insert any detailed performance measures below.

[Option 1 example where a detailed Action Plan has been prepared at date of execution. Your Organisation agrees to carry out the Activity in accordance with the attached Action Plan at Schedule [insert number] and so as to meet Milestones, the expenditure set out in the Budget, any Supplementary Conditions, and any reasonable directions given by the Agency from time to time.]

[Option 2 example only where a detailed Action Plan and/or Budget is to be submitted after execution of the Agreement. Your Organisation must provide a detailed Action Plan [and detailed Budget] to the Agency on or before [insert date and repeat date in the Milestone Activity Schedule] for approval by the Agency after execution of this Agreement. The Action Plan will specify:

- (a) the Milestones for the Activity;
- (b) project Activity that Your Organisation will carry out during the Activity Period and the timeframes for the carrying out of those Activity;
- (c) how Your Organisation will satisfy the project Activity requirements, objectives and Milestones and any performance criteria for the Activity; and
- (d) the aims, strategies and measures against which Your Organisation must report.

The Budget will show the proposed Budget for each financial year during the Activity Period]

**Anticipated outcomes/results:** [Optional alternative to performance measures and delete if not applicable.]

The anticipated outcomes and results of the Activity are: [insert].

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### Item 3 Compliance with specific Laws, standards and policies

Under the Standard Conditions, the recipient organisation is required to comply with all Laws in carrying out the Activity. You should set out here only those Laws, standards and policies (including guidelines) which have specific and applicable relevance to the Activity.

In carrying out the Activity, Your Organisation acknowledges the following (if any) specific Laws which have particular relevance to the Activity and agrees to comply with the following standards, policies and guidelines: [insert specific legislative requirements, standards (eg national or international industry standards) and any applicable NSW Health policies and guidelines (eg program guidelines) OR write "not used". Where a particular policy or guideline has operational significance and is referenced, consider clearly referencing the document and including it as an attachment.]

[Insert here any relevant licences, registration or accreditation that Your Organisation is required to maintain].

## NSW Health Grant Agreement

### Item 4 Approved subcontracting and auspicing arrangements

Your Organisation agrees that it may not subcontract any of its obligations under the Agreement without the Agency's prior written approval, except to the extent that is set out in Grant Schedule.

[Write "Not used" or "Your Organisation may only engage a subcontractor to carry out any of its obligations under the Agreement if:

[Example only:

- (a) the subcontractor is identified below in relation to that obligation;
- (b) the subcontract is not a substantial or material part of the Activity [OR the aggregate value of the subcontract, and all other subcontracts that Your Organisation has entered into with the subcontractor in relation to the Activity, is not greater than [\$25,000 including GST]]; and
- (c) otherwise with the prior written approval of the Agency.]

Subcontractor details: [insert the details of any subcontractor and Activity]

Subcontractor	Activities to be carried out or performed	ACN/ABN
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End Recipient: [Where Your Organisations is an Auspice Body, insert the name and details of End Recipient and its role OR write "Not applicable".]

### Item 5 Review meetings

Review meetings are a useful tool to manage and review the Activity effectiveness and any improvements in the provision of the Activity.

Scheduled review meetings [are / are not] required. [Example only if applicable. The Agency and Your Organisation will convene a review meeting no less than one (1) calendar month prior to [insert frequency, eg "1 July of each year" or "quarterly", "six monthly"] (review meeting). During the review meeting, the parties must meet to review:

- (a) the performance of Your Organisation under this Agreement and against any benchmarks relevant to the Agreement;
- (b) [Option if applicable: the draft Action Plan and Budget to be submitted for approval for the immediately following year]; and
- (c) whether any of the following need to be adjusted by agreement in writing:
  - (i) any changes to the Activity, Milestones, timeframes or any Budget;
  - (ii) any changes to the reporting requirements under this Agreement; and
  - (iii) such other matters as agreed between the Agency and Your Organisation.]

## Records and Reporting

### Item 6 Records

Your Organisation is required to:

- (a) maintain minimum organisational records (including accounting and financial records) in accordance with the form of Your Organisation's incorporation legislation in external scrutiny of Your Organisation's yearly activities;
- (b) maintain financial statements in accordance with Australian Accounting Standards and maintain accounts and records so that they can be audited in accordance with Australian Auditing Standards;

## NSW Health Grant Agreement

- (c) maintain proper operational records so that the carrying out or performance of the Activity is able to be verified; [and]
- (d) provide to the Agency a copy of Your Organisation's Conflict of Interest policy for its executive and Personnel, on request [.;and]
- (e) [insert other.]

### Item 7 Reports

It is important that you ensure that reports are required only where they are necessary for the Agreement and that they are matched and adapted to the needs of the Agreement. The different types of reports that may be required include progress reports, financial reports, data collection reports and other reports relating to general reporting obligations.

You need to consider the frequency of reports, their form and content and whether they should be linked to the payment of the Grant. The following are examples only of the type of reports and their content and form. Typically, it will include progress reports, final report and an Annual Acquittal Statement.

Your Organisation is to prepare and submit to the Agency the reports:

- (a) for the period, and if the Grant is for part of the period, for that part of the period during which Your Organisation is required to provide the Activity;
- (b) containing the content and in the form and manner set out below, which may be in a sample form advised by the Agency from time to time; and
- (c) otherwise as reasonably requested by the Agency from time to time.

All reports are to be submitted to: [insert position], [insert name], [insert contact details].

Your Organisation agrees that the reports are Confidential Information and agrees to treat the information as confidential in accordance with the Standard Conditions.

#### 1. Performance reports

##### (a) Progress report(s)

Your Organisation will provide a report on the progress of the Activity for the following reporting periods:

[Example only]

- (i) for each 1 July to 31 December period: the first occurrence of 15 February after the reporting period; and
- (ii) for each 1 January to 30 June period: the first occurrence of 15 August after the reporting period, (each a "Progress Report").

The Progress Report will include, but need not be limited to, the following information for that reporting period:

- (i) **(Summary of Activity)** a clear summary of the Activity carried out in the period;
- (ii) **(Details of Activity)** if relevant, details of progress against any agreed Activity or Action Plan, including monitoring, evaluation and reporting activities set out in the agreed Activity or Action Plan;
- (iii) **(Milestones)** discussion and statement as to whether the Milestones are being met and an explanation of any delays that have occurred, including reasons for those delays and any action Your Organisation proposes to take to address the delay and expected effects (if any) the delay will have on the Activity (including performance requirements); and
- (iv) **(Budget)** a statement as to whether the Activity is proceeding within Budget, and if it is not, an explanation of why the Budget is not being met and the action Your Organisation proposes to take to address this.

The Progress Report is to be signed by Your Organisation's Representative certifying that:

- (i) the information contained in the report is true and correct;

## NSW Health Grant Agreement

- (ii) the Grant and any Assets have been spent and used solely for the purpose for which they were provided and in accordance with the Agreement;
- (iii) all the terms and conditions of the Agreement have been complied with; and
- (iv) there is no other matter or circumstance that the Representative is aware, that would constitute a breach by Your Organisation of any term or condition of the Agreement between the Agency and Your Organisation dated [insert date] that has not been notified to the Agency.

### (b) Final Report

Your Organisation will provide a final report documenting completion of the Activity within **[three (3) months]** of the earlier of the Activity End Date or the termination of the Agreement, (the “**Final Report**”).

The Final Report will include, but need not be limited to, the following:

- (i) **(comprehensive report against Activities)** a comprehensive report against the Activity, including whether the performance requirements were achieved and, if not, reasons why they were not achieved;
- (ii) **(evaluation)** an evaluation of the project Activity and how successful the project Activity was in achieving the Activity purpose and objectives;
- (iii) **(Residual Grant)** details about any Residual Grant which, unless authorisation has been or is being sought, must be returned to the Agency; and
- (iv) **(details about any Assets)** details about any Assets which have not been fully depreciated in accordance with Australian Accounting Standards.

The Final Report is to be accompanied by the following reports:

- (i) **(Annual Acquittal Statement)** the completed Annual Acquittal Statement (as set out below); and
- (ii) **(Additional documents)** any additional documents required in accordance with the Agreement.

The Final Report is to be certified by Your Organisation’s Representative in the same format as the Progress Reports as set out above.

## 2. Financial information

### (a) Annual Acquittal Statement

Your Organisation will submit an acquittal statement on or before 31 October of the relevant Financial Year (each an “**Annual Acquittal Statement**”).

The Annual Acquittal Statement is to:

- (i) to be in the form of a Special Purpose Financial Report a sample of which is made available by the Agency to Your Organisation from time to time;
- (ii) be prepared in accordance with Australian Accounting Standards; and
- (iii) include a statement of income and expenditure.

The Annual Acquittal Statement is to be certified by two directors or authorised representatives of Your Organisation.

### (b) Audited financial statements and Significant Audit Management Correspondence

Audited financial statements are not required for government statutory bodies, universities or local councils.

**[Option 1: write “Not used”]**

**[Option 2: write “Your Organisation agrees to provide the Agency with copies of the following:**

- (i) **(Audited financial statements)** Your Organisation’s annual independently audited financial statements on or before 31 October of the relevant Financial Year.

If Your Organisation provides this information to a regulator such as ASIC, Australian Charities and Not—for-profits Commission or NSW Fair Trading, or if Your Organisation publishes the details on its website, Your Organisation may provide us with details of the regulator or the website only; and

## NSW Health Grant Agreement

(ii) **(Significant Audit Management Correspondence)** as soon as practicable, written communication to Your Organisation's management that sets out matters of fraud or corruption:

(A) relating to an audit; or

(B) identified as a result of an audit,

as required by Australian Auditing Standards (the "**Significant Audit Management Correspondence**"); and

(C) Your Organisation's response to any Significant Audit Management Correspondence.

### (c) Audited Statement

Audited Statements verified by an Approved Auditor can be expensive and administratively burdensome to produce. You must determine whether the Audited Statement is required based on the level of risk involved in the particular activity. Generally, an Audited Statement will be required if payment is greater than \$500,000 per annum.

**[Option 1: write "Not used"]**

**[Option 2: write "Your Organisation agrees to provide the Agency an audited statement acquitting Your Organisation's use of the Grant for each Financial Year on or before 31 October of the relevant Financial Year (the "Audited Statement")."**

The Audited Statement is to be prepared by an Approved Auditor in accordance with Australian Auditing Standards and is to verify that:

(i) Your Organisation's Annual Acquittal Statement has been prepared in accordance with Australian Accounting Standards; and

(ii) the Grant has been expended for the Activity in accordance with the Agreement, including any approved variations to it.]

### 3. Additional reports

#### (a) Notifications in accordance with the Standard Conditions

Your Organisation acknowledges and agrees to notify the Agency of:

(i) Alleged Misconduct or Serious Incidents, to be notified immediately:

(ii) changes to the name, address and contact details, material changes to Your Organisation's constitution and articles of association (however described) or any Change in Control, to be notified as soon as practicable;

(iii) action or proposed action regarding an Insolvency Event or external administration, to be notified immediately; and

(iv) financial assistance from another governmental authority in relation to the Activity (that is not a Co-contribution), to be notified within 10 Business Days.

#### (b) Other reports

**[Option 1: write "Not used"] [Option 2: write [Your Organisation agrees to provide the Agency with the following additional reports:" [insert details of other reports such as data sets].]**

## Financial

### Item 8 Payment of the Grant

#### (a) Total amount

The maximum amount of the Grant payable for the Activity Period is: [insert].

**[Option 1 – where no indexation] \$[inset amount] [inclusive/exclusive] of GST]**

Indexation: [where indexation is applied "the Grant payable for each year of the Activity Period will be adjusted by the rate of indexation as advised by the Agency from time to time" OR write "the Grant is not subject to indexation"].

**NSW Health Grant Agreement**

[2019/20] – [insert amount] [inclusive/exclusive of GST];

[2020/21] – the amount of the Grant provided in [2018/19][, plus any approved indexation];

[2021/22] – the amount of the Grant provided in [2019/20][, plus any approved indexation.]

**(b) Bank account**

Your Organisation is required to ensure that the Grant is held in an Australian bank account: Your Organisation's nominated bank account into which the Grant is to be paid and kept is [insert bank account details].

**(c) Instalments**

Subject to the terms of the Agreement, including the receipt of reports to the Agency's reasonable satisfaction, the Agency will pay the Grant to Your Organisation for the Activity in the instalments set out in the table below and within 30 days after:

- (i) Your Organisation satisfies the preconditions (if any) specified in the table for that payment; and
- (ii) the Agency provides Your Organisation with a recipient created tax invoice, or where this Agreement requires Your Organisation providing the Agency with a tax invoice (or where a tax invoice is not required, an invoice), for that payment.

**[Option 1: where payment is to be made on specified date and amend as required]**

Description	Time for Payment
Per annum payment on a quarterly basis	Payment in advance, within 30 days of Start Date and remaining quarterly instalments by the following dates: 31 July, 31 October, 31 January and 30 April
One-off payment	Payment within 30 days of the Start Date

**[Option 2: where progress payments are to be made on satisfactory completion of Milestone or reports and amend as required depending on reporting]**

Milestone	Anticipated date	Evidence of Milestone achievement	Instalment amount (excl GST and any indexation)
n/a	dd/mm/yyyy	Signature of Agreement	[\$[insert amount]]
1		Acceptance of Progress Report 1, including evidence to support achievement of this Milestone	[\$[insert]]
2		Acceptance of Progress Report 2, including evidence to support achievement of this Milestone, and previous year's Financial information as outlined in Item 7.2 above	[\$[insert]]
3		Acceptance of Progress Report 3, including evidence to support achievement of this Milestone	[\$[insert]]
4		Acceptance of Progress Report 4, including evidence to support achievement of this Milestone, and previous year's Financial information as outlined in Item 7.2 above	[\$[insert]]
5		Acceptance of Progress Report 5, including evidence to support achievement of this Milestone	[\$[insert]]
Activity Completion		Acceptance of Final Report and previous year's Financial information as outlined in Item 7.2 above	[\$[insert]]

## NSW Health Grant Agreement

### Item 9 Budget

The Budget provides additional information in relation to management and public accountability. It assists both the Agency and an Organisation to understand the expenditure and financial management and can form the basis upon which the Annual Acquittal Statement is provided, particularly if the Budget relates to each Financial Year of the Agreement. Budgets are not always necessary, particularly for low-risk or low-value agreements.

[Option 1: write "Not used"]

[Option 2: Your Organisation agrees to use the Grant and any Co-contributions to carry out the Activity in accordance with the Budget for each Financial Year (increased for each Financial Year in accordance with any approved indexation) as set out below.]

Item	Description	\$ (excl GST) Year 1 for FY [2019-XX]
<b>A. Activity Income</b>	Agency Grant (Operating)	
	Agency Grant (Capital)	
	Other funding, including any Co-contributions (list)	
	Approved Agency funding rolled over (prior year funding)	
<b>Sub-total</b>		
<b>B. Activity Expenditure – Direct Costs</b>	Salaries and wages and associated costs (eg Annual Leave Expense, Fringe Benefits Tax, Superannuation)	
	Consultants	
	Maintenance	
	Travel & Accommodation	
	Equipment and other Assets	
	Other, please specify	
<b>Sub-total</b>		
<b>C. Activity Expenditure - Administration</b>	Accommodation (eg Rent)	
	Administration costs (eg Telephone & internet charges, Printing and Stationery)	
	Other service costs (eg Accounting Fees, Legal Fees)	
<b>Sub-total</b>		
<b>D. One-off/Other Costs</b>	(eg set-up costs)	
<b>E. Total Cost</b>		

[Option 3: where the Budget is to be developed and approved as part of the milestones write "Your Organisation must use the Grant for the Activity in accordance with an agreed Budget to be approved by the Agency in accordance with the Agreement."]

### Item 10 Co-contributions

Payment of the Grant by the agency may be dependent on the Co-contributions from Your Organisation and/or third parties. The Co-contributions should be included in any Budget.



## NSW Health Grant Agreement

[Your Organisation agrees to make or procure the following Co-contributions and to use the Co-contributions to provide the Activity: [example only: name of contributor: [insert] / nature of contribution [insert details] amount of contribution [insert (incl/excl GST)]. Timing of Co-contribution: [insert details] OR write "Not used"]

### Item 11 Unspent Grant and Residual Grant

Your Organisation agrees to spend the Grant on the Activity as set out in any Budget. Your Organisation also agrees not to (a) transfer or reallocate the Grant between expenditure items in any Budget or (b) carry-over any Unspent Grant from one Financial Year to the next during the Activity Period, except to the extent set out in this Grant Schedule and in accordance with the provisions of the Agreement or with the prior written approval of the Agency.

- (a) **Unspent Grant within the Activity Period:** [write "Not Used" or consider whether and how specific approval should be given about the reallocation of budgeted expenditure or the carrying over of any Unspent Grant to the following Financial Year within the Activity Period].

[Example only. Your Organisation may:

- (i) transfer or reallocate the Grant between expenditure items in any Budget during a Financial Year; and

(ii) provided that:

- (iii) the Grant does not exceed [20%] of the Grant available to Your Organisation for that Activity in that Financial Year;

(iv) there is no material change to the Activity;

(v) the change would not cause Your Organisation to be in breach of its obligations under the Agreement; and

(vi) Your Organisation advises the Agency as part of its next Reports the reasons for the reallocation or transfer of the Grant or why the Grant was not spent and how the Grant will be utilised.]

- (b) **Residual Grant at the end of Agreement:** Your Organisation acknowledges that it is required to repay any Residual Grant remaining at the expiration or termination of the Agreement within 20 Business Days of the Activity End Date or on earlier termination, unless it has prior written approval of the Agency.

### Item 12 Invoices

Recipient created tax invoices (RCTIs) belong to a class of tax invoices that may be issued by the Agency as the recipient of the goods or services and sent to an organisation. They replace the need for an organisation to issue invoices to the Agency. They are the default arrangement for the NSW Health NGO Grants Program where an organisation is registered for GST.

[Option 1 where the Agency will issue an RCTI. The Agency will issue to Your Organisation a recipient created tax invoice (RCTI) for any taxable supplies it makes in relation to the Activity.]

[Option 2 where no RCTI will be issued by the Agency. Each payment will be made following Your Organisation's submission to the Agency of a correctly rendered invoice. An invoice is correctly rendered if:

(a) it is fully completed and includes Your Organisation's name and ABN, the name of the project Activity, the amount requested, the GST amount (if any) and the total amount requested; and

(b) it is signed by a person authorised by Your Organisation.]

## General

### Item 13 Assets

Unless otherwise set out in this Grant Schedule or with prior written approval, Your Organisation may not use the Grant to purchase Assets valued over \$10,000 (inclusive of GST) and will own or lease any Assets. Where the Assets are to form a material part of the Agreement, they should be identified in the Grant Schedule or

## NSW Health Grant Agreement

Budget and Your Organisation should be required to maintain an Assets Register and generally protect its interest in the Assets.

Your Organisation [must not/may] use the Grant to purchase Assets with a value over \$10,000.

[Example only where the Grant may be used to purchase Assets:

The Assets to be purchased are listed in the Budget OR the Assets to be purchased are: [insert list]]

The Designated Use Period during which the Assets must be used is [insert period which may be a beyond the Activity Period.]

Your Organisation is required to maintain an Assets Register of any Assets purchased with the assistance of the Grant [Optional: Your Organisation is to maintain an Asset Register in the form set out [to complete] as amended from time to time.]

### Item 14 Intellectual Property

Your Organisation owns all New Material except to the extent that it is set out in Grant Schedule or the Agency gives written notice to Your Organisation prior to the delivery of all or that part of an Activity that all or part of the New Material should be owned by the Agency. Your Organisation grants the Agency a free, non-exclusive licence to use this New Material.

Your Organisation acknowledges that it will give the Agency on request a copy of the New Material in a format reasonably required by the Agency.

[Example only where the Agency will own the New Material as at execution of Agreement. Your Organisation agrees that the New Material will be owned by the Agency. Your Organisation has a licence over the New Material to the extent needed to allow Your Organisation to comply with the Agreement and for any other purpose expressly agreed in writing. New Material refers to: [insert description]. The agreed purpose[s] for which Your Organisation may use the New Material owned by the Agency is [are]: [insert].]

### Item 15 Acknowledgement and Publicity

Your Organisation is to acknowledge the funding support of the Agency:

- (a) in all publications, promotional and advertising Material, public announcements, products and activities in relation to the Activity;
- (b) by inviting representatives of NSW Health to any formal public opening or any formal public functions as appropriate in relation to the Activity; and
- (c) the form of the acknowledgement is to be [Option 1: write "in the form reasonably advised by the Agency from time to time"] [Option 2: in the following form:]

[Example only:]

Where the Grant as % of total operating expenses for Activity	Acknowledgment
Is less than 50%	[Supported by [name of Agency or eg NSW Ministry of Health] [Supported by NSW Health]
Is greater than 50%	[Funded by the [name of Agency or eg NSW Ministry of Health] [Funded by NSW Health]

The NSW Government, NSW Health or the Agency may publicise and report on the awarding of the Grant in media releases, general announcements about the Activity and annual reports.

Your Organisation agrees to undertake or participate in any publicity related to the Activity as reasonably required by the Agency from time to time.

## NSW Health Grant Agreement

### Item 16 Insurance

The requirements for insurance will vary depending on the nature of the Activity and the Grant. The default position is that Your Organisation must take out and maintain all types of insurance necessary to cover Your Organisation's obligations in relation to the Activity. As a minimum, this includes public liability insurance of at least \$10 million and other insurance coverage required by Law. Only include other insurance coverage if appropriate.

Your Organisation is required to have and maintain adequate insurance coverage appropriate to the Activity, including:

1. public liability insurance to the value of [\$10 million] for any single occurrence; and
2. all insurance coverage required by Law.

[Example only. Other insurance that Your Organisation is required to have and maintain:

- (a) [insert other insurance eg professional indemnity insurance to the value of \$[insert amount] in the aggregate to be maintained for the Activity Period and for a period of 7 years thereafter"; and
- (b) if volunteers will be involved in the performance of the Activity, volunteers' personal accident insurance to the value of \$10 million.]

### Item 17 Dispute Resolution Officer

Disputes in relation to Agreements should be resolved at the local level and, if not, referred to a nominated Dispute Resolution Officer. It is intended that the Dispute Resolution Officer is a senior person within the Agency or other person/position who has agreed to this role.

If the parties cannot agree on an issue of a notified dispute within an agreed number of business days (default of 20 Business Days unless otherwise agreed), then the dispute is referred to the Dispute Resolution Officer. The Dispute Resolution Officer is:

Position: [Insert]

Name: [Insert]

Address: [Insert]

### Item 18 Party Representatives

The Party 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. The representatives may or may not be the signatories to the Agreement.

The parties agree to each appoint a Representative responsible for the management and administration of the Grant and for accepting and issuing any written notices in relation to the Grant. The parties may appoint administrative officers for day-to-day administration of the Grant.

#### (a) Agency Representative

Person occupying the position of:	[insert details]
Currently being:	[insert details]
Address:	[insert details]
Telephone number:	[insert details]
Email	[insert details]

#### (b) Organisation Representative

Person occupying the position of:	[insert details]
Currently being:	[insert details]
Address:	[insert details]

**NSW Health Grant Agreement**

Telephone number:	[insert details]
Email	[insert details]

**Item 19 Supplementary Conditions**

Care should be taken before including Supplementary Conditions. They should only be agreed where they are necessary for the Agreement. Ensure that they are consistent with the Standard Conditions and the provisions in this Grant Schedule. It is generally necessary to obtain advice before agreement to the insertion of Supplementary Conditions.

- (a) [Example only if there is to be a related agreement for Capital Works which needs to be incorporated into this Agreement. (**Capital Works**) This Agreement incorporates and is subject to and conditional upon Your Organisation meeting its obligations under Capital Works Agreement [insert details].]
- (b) [Example only if the Grant has any (academic) research component. (**Provision of access to data and publications**) If required by the Agency, Your Organisation agrees to deposit any publication resulting from an Activity that is a research Activity, and its related data, in an appropriate subject and/or open access repository (such as the Australian Consortium for Social and Political Research Inc. archive) in accordance with the timeframe reasonably requested by the Agency having regard to the public nature and public purpose of the Grant.

Any research outputs from an Activity that is a research Activity that have been, or will be, deposited in such a repository by the due date for the next non-financial report must be identified in that next Progress Report.]

- (c) [Example only if Organisation Personnel are required to carry out aspects of work in relation to the Activity due to the specific qualifications or skills needed or specific legislative or industry requirements. (Personnel qualifications or requirements) Your Organisation agrees to ensure that Personnel carrying out work in relation to the Activity are appropriately qualified to perform the tasks indicated and have the following relevant skills or qualifications: [insert details of the activities and relevant qualifications or requirements, eg criminal record check or vaccination]

**NSW Health Grant Agreement**

**Signing page**

**Executed by the parties as a deed of agreement**

**Date of this Agreement:** is the date on which it is signed by the last party.

In signing this page the Agency and Your Organisation acknowledge and agree to be bound by and comply with the Agreement.

**Signatures**

Agency full legal name should match the name set out in the Grant Details.

Signed for and on behalf of the [insert in **bold full legal name of Agency**] [optional where the agency is not a corporate body: as represented by [eg insert in **bold name of business unit of Health Administration Corporation or Ministry of Health**] ABN [insert ABN] by its authorised officer:

.....  
Printed name of signatory

.....  
Signature

.....  
Position of signatory

.....  
Date

in the presence of:

.....  
Witness signature

.....  
print name of witness

.....  
Date

Your Organisation legal name set out below should match the name in the Details. The execution clause may need to be amended to reflect the legal requirements of Your Organisation.

**[Example option for companies]**

Signed for and on behalf of [insert in **bold the full legal name of Organisation**] ABN [insert ABN] in accordance with section 127 of the Corporations Act 2001:

.....  
Printed name of signatory

.....  
Signature

.....  
Position of signatory

.....  
Date

in the presence of:

.....  
Witness signature

.....  
print name of witness

.....  
Date

**NSW Health Grant Agreement**

**[Example option using an authorised representative]**

Signed by [insert in **bold** name of authorised representative] for [insert in **bold** name of Organisation] ABN [insert ABN] in the presence of:

.....  
Signature of witness

.....  
Name of witness

.....  
Date

.....  
By executing this Agreement the signatory warrants that the signatory is duly authorised to execute this Agreement on behalf of [insert in **bold** name of Organisation]

.....  
Date

**[Example option using the Common Seal]**

The common seal of [insert in **bold** name of Organisation] ABN [insert ABN] is duly affixed in accordance with its constitution in the presence of:

.....  
Signature of authorised person

.....  
Name of authorised person

.....  
Date

.....  
Signature of authorised person

.....  
Name of authorised person

.....

**NSW Health Grant Agreement****Schedule 1 – Standard Conditions**

The Standard Conditions forms part of the Agreement between the Agency and Your Organisation. The Standard Conditions [version June 2018] is attached here.



# NSW Health Grant Agreement

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## STANDARD CONDITIONS

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**NSW Health Grant Agreement****Contents**

<b>1.</b>	<b>Introduction.....</b>	<b>4</b>
1.1	Status of these Standard Conditions.....	4
1.2	Definitions and interpretation.....	4
1.3	Term of the Agreement .....	4
<b>2.</b>	<b>Agency general conduct .....</b>	<b>4</b>
<b>3.</b>	<b>Activity.....</b>	<b>4</b>
3.1	Planning the Activity .....	4
3.2	Undertaking the Activity .....	5
3.3	Compliance with Supplementary Conditions .....	5
3.4	Compliance with Laws, standards and policies .....	5
3.5	Your Organisation's responsibility.....	5
3.6	Supporting transition of Activity .....	5
<b>4.</b>	<b>Organisation's general obligations .....</b>	<b>5</b>
4.1	Personnel.....	5
4.2	Probity relating to Personnel .....	6
4.3	Notifiable incidents.....	6
4.4	Notifications relating to Your Organisation .....	6
4.5	Notification of other financial assistance .....	7
4.6	Subcontracting .....	7
4.7	Auspice Body .....	7
4.8	Complaints process .....	7
4.9	Review meetings .....	8
<b>5.</b>	<b>Records and Reports.....</b>	<b>8</b>
5.1	Accounts and records .....	8
5.2	Record keeping .....	8
5.3	Reporting .....	8
<b>6.</b>	<b>Financial arrangements.....</b>	<b>9</b>
6.1	Use of the Grant by Your Organisation .....	9
6.2	What the Grant will not be used for.....	9
6.3	Payment of Grant .....	9
6.4	Indexation .....	9
6.5	Other funding.....	9
6.6	Bank Account.....	10
6.7	Interest and earnings .....	10
6.8	Co-contribution .....	10
6.9	Budgeted and Unspent Grant within the Activity Period.....	10
6.10	Residual Grant at end of Activity Period.....	10
<b>7.</b>	<b>GST .....</b>	<b>11</b>
7.1	Definitions .....	11
7.2	GST payable .....	11
7.3	Tax invoice.....	11
7.4	Adjustment event.....	11
7.5	Pay or reimburse .....	11
7.6	Issuing recipient created tax invoices and adjustment notes .....	11
7.7	Acknowledgments.....	12
<b>8.</b>	<b>Assets and Capital Works.....</b>	<b>12</b>
8.1	Acquiring of Assets.....	12
8.2	Ownership of Assets.....	12
8.3	Use of Assets .....	12

**NSW Health Grant Agreement**

8.4	Obligations in relation to Assets .....	12
8.5	Depreciation of Assets .....	12
8.6	Capital Works .....	13
8.7	Registering of interest .....	13
<b>9.</b>	<b>Reviews and audits.....</b>	<b>13</b>
9.1	Access to premises and records .....	13
9.2	Cooperation and access .....	13
9.3	Application of this clause.....	13
<b>10.</b>	<b>Intellectual Property Rights and information .....</b>	<b>14</b>
10.1	Ownership of Intellectual Property Rights .....	14
10.2	Licences of Intellectual Property .....	14
10.3	Protection of Personal Information.....	14
10.4	Confidential Information .....	15
10.5	Information of a sensitive or cultural nature.....	15
<b>11.</b>	<b>Acknowledgement and publicity .....</b>	<b>15</b>
11.1	Acknowledgment and publicity .....	15
11.2	No restriction on advocacy activities .....	16
<b>12.</b>	<b>Dealing with risk .....</b>	<b>16</b>
12.1	Insurance .....	16
12.2	Indemnity .....	16
12.3	Conflict of Interest.....	16
<b>13.</b>	<b>Suspension and termination.....</b>	<b>16</b>
13.1	Suspension or withholding the Grant .....	16
13.2	Termination without fault .....	17
13.3	Termination for cause .....	17
13.4	Consequences of termination.....	18
<b>14.</b>	<b>Repayment of Grant.....</b>	<b>18</b>
14.1	Notice concerning Grant .....	18
14.2	Organisation's rights and obligations .....	19
14.3	Agency rights.....	19
<b>15.</b>	<b>Relationship between the parties.....</b>	<b>19</b>
15.1	Status of Organisation .....	19
15.2	Trust warranties.....	19
<b>16.</b>	<b>Dispute resolution .....</b>	<b>19</b>
<b>17.</b>	<b>General .....</b>	<b>20</b>
17.1	Variations.....	20
17.2	Notice requirements.....	20
17.3	Assignment .....	20
17.4	Non-Waiver .....	21
17.5	Severability.....	21
17.6	Clauses that continue to apply after the Term .....	21
17.7	Governing law and jurisdiction.....	21
<b>18.</b>	<b>Dictionary and interpretation.....</b>	<b>21</b>
18.1	Dictionary.....	21
18.2	Interpretation .....	25

## **NSW Health Grant Agreement**

### **1. Introduction**

#### **1.1 Status of these Standard Conditions**

These Standard Conditions form part of and are incorporated into the Agreement.

#### **1.2 Definitions and interpretation**

- (a) In the Agreement, key terms or expressions are capitalised and defined in the dictionary in clause 18.1 (Dictionary). Certain words or phrases which are used in one clause only of these Standard Conditions are usually defined in that clause.
- (b) Provisions regarding the interpretation of the Agreement are set out in clause 18.2 (Interpretation).

#### **1.3 Term of the Agreement**

The Agreement commences on the Date of the Agreement and ends on the earlier of:

- (a) 30 Business Days after the date on which Your Organisation has provided the Agency with all reports, Material and anything else that Your Organisation is required to provide to the Agency under the Agreement; and
- (b) the date on which the Agreement is terminated.

### **2. Agency general conduct**

- (a) The Agency agrees to:
  - (i) provide Your Organisation with current information relevant to the Activity, including standards, policies and guidelines;
  - (ii) work with Your Organisation to monitor, review and evaluate the Activity and improve the Agreement;
  - (iii) work with Your Organisation to reduce red tape, including, where practicable, linking Your Organisation's reporting obligations under the Agreement with Your Organisation's governance framework;
  - (iv) consider and respond to any request by Your Organisation for a review of the Agreement; and
  - (v) process the Grant in a timely, efficient, accountable and responsible manner.
- (b) Nothing in clause 2(a) limits or affects Your Organisation's obligations under the Agreement or the Agency's exercise of its statutory authorities or powers.

### **3. Activity**

#### **3.1 Planning the Activity**

- (a) This clause 3.1 applies where it is stated in the Grant Schedule that Your Organisation is required to develop or complete an Action Plan or a detailed Budget to be included in the Grant Schedule after execution of the Agreement.
- (b) Your Organisation will:
  - (i) ensure that the proposed Action Plan or Budget has been prepared diligently, effectively and to a high professional standard and consistent with any aims and objectives for the Activity set out in the Grant Schedule; and
  - (ii) provide the proposed Action Plan or a Budget to the Agency for approval by the Agency on or before the date stated in the Grant Schedule for that Activity.
- (c) The Agency may, in determining whether to approve the proposed Action Plan or Budget, request changes to, and the resubmission of, the proposed Action Plan or Budget.
- (d) Without limiting any other remedy, the Agency may approve, or not approve, the proposed Action Plan or a Budget in its discretion and on such terms and conditions as the Agency considers appropriate.

## **NSW Health Grant Agreement**

- (e) An Action Plan or a Budget approved under clause 3.1(d) forms part of the Agreement from the date of approval and is not a variation to the Agreement.

### **3.2 Undertaking the Activity**

Your Organisation agrees to undertake the Activity in accordance with the Agreement and:

- (a) consistent with, and in furtherance of, the aims and objectives and so as to assist in meeting the outcomes for that Activity as stated in the Grant Schedule;
- (b) within the Activity Period and so as to meet each Milestone and other timeframes stated in the Grant Schedule for that Activity;
- (c) in accordance with any Action Plan, performance requirements and Budget for that Activity; and
- (d) in a proper, timely and efficient manner and to a high standard.

### **3.3 Compliance with Supplementary Conditions**

Your Organisation agrees, in its undertaking of the Activity, to comply with any Supplementary Conditions for that Activity.

### **3.4 Compliance with Laws, standards and policies**

Your Organisation agrees, in undertaking the Activity, to:

- (a) comply with all applicable Laws, including Laws relating to child protection, work, health and safety, employment screening (including mandatory criminal record and working with children checks), privacy, workplace relations and taxation;
- (b) comply with any standards and codes relevant to the Activity;
- (c) comply with any NSW Health policies or guidelines stated in the Grant Schedule or that the Agency reasonably notifies Your Organisation in writing;
- (d) undertake the Activity on a non-discriminatory basis; and
- (e) obtain and maintain all qualifications, licences, accreditation, registration and consents required to undertake the Activity or reasonably requested by the Agency in writing.

### **3.5 Your Organisation's responsibility**

Your Organisation remains fully responsible for undertaking the Activity and for otherwise complying with its obligations under the Agreement and will not be relieved of that responsibility because of:

- (a) the Agency involvement in the undertaking or undertaking of that Activity;
- (b) any payment of the Grant to Your Organisation for the Activity;
- (c) any subcontracting of any Activity; or
- (d) Your Organisation's obligations, and the performance of those obligations, under clause 3.6 (Supporting transition of Activity).

### **3.6 Supporting transition of Activity**

On expiry or termination of the Agreement, Your Organisation agrees, if requested by the Agency, to provide all reasonable assistance in good faith to transition all or part of the Activity, Assets and New Material under the Agreement to the Agency or a third party. Such reasonable assistance includes:

- (a) providing reasonable cooperation with a third party nominated by Agency; and
- (b) providing the records, data, information and materials that may be required to enable transacting with a new provider as reasonably requested by Agency.

## **4. Organisation's general obligations**

### **4.1 Personnel**

- (a) Your Organisation is solely responsible for all Personnel employed or otherwise engaged in connection with, or supported by, the Grant.

## **NSW Health Grant Agreement**

- (b) Your Organisation is solely responsible for the payment of all wages, entitlements, superannuation, payroll and any other tax and associated costs to its Personnel.

### **4.2 Probity relating to Personnel**

- (a) Your Organisation agrees to comply, and ensure that Your Organisation's Personnel comply, with:
  - (i) any obligations under any Laws relating to working or contact with vulnerable persons or police checks, including under the *Child Protection (Working With Children) Act 2012* (NSW); and
  - (ii) any other requirements stated in the Grant Details regarding working or contact with vulnerable persons or police checks.
- (b) Before Personnel undertake any function or role in relation to the Activity, Your Organisation agrees to:
  - (i) ensure that Personnel are not prohibited or disqualified under any Law from being employed or engaged to undertake such a role or function, or are not otherwise undesirable to work with children or vulnerable persons where the Personnel may have contact with children or vulnerable persons;
  - (ii) have regard to whether any criminal record check or other probity check of the Personnel is relevant to and may impact on the suitability of the Personnel to perform the function or role in relation to the Activity; and
  - (iii) if requested by the Agency, provide the Agency with evidence satisfactory to the Agency that Your Organisation has complied with this clause 4.2.
- (c) The Agency may require the immediate removal of Personnel from undertaking any function or role in relation to the Activity where, in the reasonable opinion of the Agency, the Personnel are considered to represent an unacceptable risk to an individual or individuals receiving that Activity.

### **4.3 Notifiable incidents**

Your Organisation agrees to notify the Agency immediately of any of the following:

- (a) when it becomes aware of Alleged Misconduct or a Serious Incident in relation to the undertaking of the Activity;
- (b) serious complaints received in relation to the undertaking of the Activity;
- (c) the occurrence of any event which may cause adverse publicity in relation to the Activity or relating to a user of the Services;
- (d) another NSW Government body or agency terminates an arrangement with Your Organisation under which it receives funding; or
- (e) any current, pending or threatened Reputational Proceedings.

### **4.4 Notifications relating to Your Organisation**

- (a) Your Organisation agrees to notify the Agency as soon as practicable of any of the following:
  - (i) changes to Your Organisation's name, address and contact details from those stated in the Grant Details;
  - (ii) any material change or proposed material change in Your Organisation's constitution or rules or memorandum and articles of association (however described); or
  - (iii) a Change in Control.
- (b) Your Organisation agrees to notify the Agency immediately of any of the following:
  - (i) any issue that may delay, stop or adversely affect the Activity;
  - (ii) any action or proposed action relating to an Insolvency Event; or
  - (iii) any notice or show cause notice as to why Your Organisation is not or should not come under external administration.

## **NSW Health Grant Agreement**

### **4.5 Notification of other financial assistance**

- (a) Unless stated in the Grant Schedule or the Agency notifies Your Organisation otherwise, Your Organisation agrees to notify the Agency when it receives financial assistance from a Commonwealth, State, Territory or local government body for any activities in connection with the Activity that are not specified as a Co-contribution in accordance with clause 6.8 (Co-contribution).
- (b) The notification under clause 4.5(a) is required to be given within ten (10) Business Days of Your Organisation obtaining the assistance and include details of assistance, including the amount and proposed use of the funds.

### **4.6 Subcontracting**

- (a) Your Organisation agrees not to subcontract any of its obligations under the Agreement without the prior written approval of the Agency, except to the extent that is stated in the Grant Schedule.
- (b) Where the engagement of a subcontractor is approved by the Agency, Your Organisation agrees to ensure:
  - (i) the suitability of any subcontractor and any part of the Activity performed by the subcontractor meet the requirements of the Agreement;
  - (ii) that the subcontract is in writing; and
  - (iii) any subcontract entered into between Your Organisation and the subcontractor in relation to the Activity gives effect to, and is not inconsistent with, the obligations of Your Organisation and the rights of the Agency under the Agreement.
- (c) Your Organisation agrees that:
  - (i) the subcontracting of any part of the Activity, or the Agency's approval for a subcontractor, does not relieve Your Organisation from its responsibility for the undertaking of the Activity; and
  - (ii) it is liable for the acts and omissions of each subcontractor as if they were the acts and omissions of Your Organisation.
- (d) The Agency may approve or not approve the engagement of any subcontractor in its discretion and may impose any terms and conditions on its approval it considers appropriate.
- (e) The Agency may at any time require Your Organisation to cease using any subcontractor on reasonable grounds by notice in writing to Your Organisation.
- (f) For the purposes of this clause 4.6, "subcontract" includes entering into a joint venture, partnership or agency relationship.

### **4.7 Auspice Body**

- (a) If Your Organisation is an Auspice Body, Your Organisation agrees to ensure that the End Recipient complies with the terms of the Agreement and is liable for the acts and omissions of the End Recipient.
- (b) The terms of clause 4.6 (Subcontracting) apply to any auspicing arrangement with the appropriate changes as if reference to "subcontractor" is a reference to End Recipient.

### **4.8 Complaints process**

Where the Activity is provided to members of the public, Your Organisation agrees to:

- (a) have in place a complaints process to deal with any complaints about that Activity and maintain a complaints register;
- (b) ensure the complaints process includes advising a person who makes a complaint that if they are unsatisfied with the outcome of the complaint they may also complain to the Agency; and
- (c) provide the Agency or any person nominated by the Agency with access to Your Organisation's complaints register and any other material relevant to any complaint, where requested to do so.

## **NSW Health Grant Agreement**

### **4.9 Review meetings**

Your Organisation:

- (a) acknowledges that the Agency may require the convening of meetings with Your Organisation to review any aspect of the Activity or Your Organisation's capacity and capability to undertake the Activity, as stated in the Grant Schedule and as otherwise reasonably required by the Agency from time to time; and
- (b) agrees to cooperate and comply with the Agency's reasonable requests, directions and requirements in any such review.

## **5. Records and Reports**

### **5.1 Accounts and records**

Your Organisation agrees to keep full and accurate accounts and records regarding the Activity, including those set out in the Grant Details, so that:

- (a) proper operational records are able to verify Your Organisation's undertaking of its obligations under the Agreement;
- (b) all accounting and financial transactions, including all receipts and payments, relating to the Grant are clearly separate and identified from Your Organisation's other financial and operational accounts and records, except with the Agency's prior written agreement;
- (c) if required by Law or the Agency, financial statements can be prepared in accordance with Australian Accounting Standards;
- (d) if required by Law or the Agency, the accounts and records can be audited in accordance with Australian Auditing Standards; and
- (e) any Asset Register is maintained in accordance with clause 8.4 (Obligations in relation to Assets).

### **5.2 Record keeping**

Your Organisation agrees to keep its accounts and records referred to in clause 5.1 (Accounts and records):

- (a) in accordance with applicable Law and usual record keeping practices;
- (b) for a period of 7 years after the earlier of the Activity End Date or the end of the Term; and
- (c) in such a way to allow the records to be easily accessed, retrieved and used by the Agency or its representative.

### **5.3 Reporting**

- (a) Your Organisation agrees to provide to the Agency the information and reports at the times and in the format stated in the Grant Schedule.
- (b) Your Organisation agrees to prepare its reports in accordance with:
  - (i) if required by the Agency, applicable NSW Health policy or guidelines; and
  - (ii) if required by Law or the Agency, Australian Accounting Standards.
- (c) In addition to any requirements to provide information or reports to the Agency, Your Organisation agrees to provide the Agency with any information, records or reports in relation to the Activity, the expenditure of the Grant or the obligations under the Agreement when requested to do so by the Agency.
- (d) All reports provided by Your Organisation to the Agency will be of a standard and provided in a way reasonably acceptable to the Agency or as otherwise notified by the Agency from time to time.

## **NSW Health Grant Agreement**

### **6. Financial arrangements**

#### **6.1 Use of the Grant by Your Organisation**

- (a) Subject to clause 6.1(b), Your Organisation agrees to use the Grant provided for the Activity:
  - (i) only for the purpose of undertaking that Activity and in accordance with the Agreement;
  - (ii) within the Activity Period and in accordance with any time periods stated in the Grant Schedule for expenditure of the Grant; and
  - (iii) if applicable, by paying the Grant to the End Recipient in accordance with the Agreement.
- (b) Your Organisation may use the Grant:
  - (i) to pay an amount of the Grant to a third party after the Activity End Date provided that the amount was Committed for that Activity before the Activity End Date in accordance with the Budget (if any) and the Agreement;
  - (ii) if there is no Budget for the Activity, for the preparation of the Activity's reports that are due after the Activity End Date; and
  - (iii) in accordance with any approval under clause 6.10 (Residual Grant at end of Activity Period).

#### **6.2 What the Grant will not be used for**

- (a) Without limiting clause 6.1 (Use of Grant by Your Organisation), Your Organisation agrees not to, without the prior written approval of the Agency, use the Grant to:
  - (i) make a loan, advance, donation, commission, gift of similar benefit for any purpose;
  - (ii) make repayments of existing loans, investments or debts;
  - (iii) provide security for any purpose;
  - (iv) pay fees or expenses, including sitting fees, to any board member, non-executive director or non-executive committee members of Your Organisation (other than reasonable travel expenses for the purposes of attending the business of the board);
  - (v) pay legal fees or settle any Claim, order or judgment against Your Organisation, staff or board members; or
  - (vi) make termination of employment or redundancy payments unless the payment is due to termination in accordance with clause 13.2 (Termination without fault).
- (b) The Agency may approve or not approve use of the Grant under clause 6.2(a) in its discretion and on any terms or conditions it considers appropriate and Your Organisation agrees to comply those terms and conditions.

#### **6.3 Payment of Grant**

- (a) The Agency agrees to pay the Grant for the Activity to Your Organisation at the times, and in the amounts, stated in the Grant Schedule.
- (b) Your Organisation agrees that payment of all or part of the Grant is not an admission by the Agency that Your Organisation has met its obligations under the Agreement to the reasonable satisfaction of the Agency.

#### **6.4 Indexation**

- (a) If the Agreement sets out that the Grant are to be increased on a yearly basis, the Agency agrees to increase the Grant payable each year for the Term by the rate of indexation as stated in the Grant Schedule and as otherwise advised by the Agency from time to time.
- (b) An increase in Grant under this clause 6.4 is not a variation to the Agreement.

#### **6.5 Other funding**

The Agency is under no obligation to provide Your Organisation with other funding or other financial assistance in excess of the total amount stated in the Grant Schedule or provide funding beyond the expiration or termination of the Agreement.



## **NSW Health Grant Agreement**

### **6.6 Bank Account**

Your Organisation agrees to hold the Grant in a Bank Account, except to the extent the Grant is used or paid in accordance with the Agreement.

### **6.7 Interest and earnings**

Your Organisation agrees to:

- (a) pay the Grant into an interest earning account and ensure that all interest earned on the Grant, or a reasonable and genuine pre-estimate of the interest earned, will be used in accordance with the Agreement; and
- (b) use and deal with any money earned by Your Organisation from the Activities (such as fees, benefits or charges) as if the money earned was part of the Grant.

### **6.8 Co-contribution**

- (a) Your Organisation agrees to:
  - (i) make or procure any Co-contribution for the Activity as stated in the Grant Schedule and use it to provide that Activity;
  - (ii) provide written confirmation to the Agency that the Co-contribution is available or has been received from any third party for that Activity as reasonably required by the Agency from time to time; and
  - (iii) notify the Agency immediately if it cannot, or may not be able to, comply with this clause 6.8.
- (b) The Agency may terminate the Agreement in accordance with clause 13.3 (Termination for cause) if Your Organisation does not or cannot comply with this clause 6.8.

### **6.9 Budgeted and Unspent Grant within the Activity Period**

- (a) Subject to clause 6.9(b), where there is a Budget for the Activity, Your Organisation must only spend the Grant specified in that Budget on that Activity and in accordance with that Budget.
- (b) Where there is a Budget for the Activity, Your Organisation agrees not to:
  - (i) transfer or reallocate the Grant for the Activity between expenditure items of any Activity's Budget; or
  - (ii) carry-over any Unspent Grant in one Financial Year to the next Financial Year during the Activity Period for the Activity,

except to the extent that it is stated in the Grant Schedule and in accordance with the Agreement or the Agency has given its prior written approval.
- (c) Where Your Organisation uses the Grant in accordance with clause 6.9(b), Your Organisation agrees to advise the Agency as part of its next reports as to the reasons for the transfer or reallocation of the Grant or why the Grant was not spent in accordance with the Agreement and how the Grant will be utilised.
- (d) Any transfer, reallocation or carry-over of the Grant within the Activity Period other than in accordance with this clause 6.9, including the transfer, reallocation or carry-over of Budgets of or between two or more Activities, requires the Agency's prior written approval.
- (e) The Agency may, in determining whether to approve the transfer, reallocation or carry-over of the Grant:
  - (i) approve or not approve a request in its discretion;
  - (ii) request Your Organisation to submit a revised Budget for approval; and
  - (iii) impose terms and conditions as it considers appropriate.

### **6.10 Residual Grant at end of Activity Period**

- (a) Your Organisation agrees to repay to the Agency any Residual Grant remaining at the Activity End Date or on earlier termination of the Agreement within 20 Business Days of the Activity End

## **NSW Health Grant Agreement**

Date or on the earlier termination, unless the Agency has given prior written approval for Your Organisation to retain the Residual Grant.

- (b) Where the Agency approves the retention of Residual Grant, Your Organisation will use those Residual Grant in accordance with the approval, including any terms and conditions specified by the Agency.

## **7. GST**

### **7.1 Definitions**

In this clause 7:

- (a) **GST Act** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);
- (b) **GST Law** has the same meaning as given in the GST Act;
- (c) **Ruling** means a published GST ruling, GST determination or similar document issued by the Commissioner of Taxation; and
- (d) all other words and expressions which are not defined in the Agreement but which have a defined meaning in GST Law or Ruling have the same meaning as in the GST Law or Ruling.

### **7.2 GST payable**

- (a) If a party ("supplier") makes a supply under or in connection with the Agreement in respect of which GST is payable, the recipient of the supply ("recipient") will pay to the supplier an amount equal to the GST payable on the supply.
- (b) If any amount on account of GST has been included in the consideration for a supply under the Agreement, the GST amount is as stated as GST in the Grant Schedule.

### **7.3 Tax invoice**

Except where clause 7.6 applies:

- (a) the supplier must deliver a tax invoice or an adjustment note to the recipient before the supplier is entitled to payment of an amount under clause 7.2(a); and
- (b) the recipient can withhold payment of the amount payable under clause 7.2(a) until the supplier provides a tax invoice or an adjustment note as appropriate.

### **7.4 Adjustment event**

If an adjustment event arises in respect of a taxable supply made by a supplier under the Agreement, the amount payable by the recipient under clause 7.2(a) will be recalculated to reflect the adjustment event and a payment will be made by the recipient to the supplier or by the supplier to the recipient as the case requires.

### **7.5 Pay or reimburse**

Where a party is required under the Agreement to pay or reimburse an expense or outgoing of another party, the amount to be paid or reimbursed by the first party will be the sum of:

- (a) the amount of the expense or outgoing less any input tax credits in respect of the expense or outgoing to which the other party is entitled; and
- (b) if the payment or reimbursement is subject to GST, an amount equal to that GST.

### **7.6 Issuing recipient created tax invoices and adjustment notes**

Where Your Organisation makes a taxable supply under or in connection with the Agreement, the parties agree that:

- (a) the Agency, where permitted by the GST Law and Rulings, may issue a recipient created tax invoice for the supply by Your Organisation in accordance with the GST Law and Rulings, and the Agency will retain the original or the copy;
- (b) Your Organisation will not issue tax invoices in relation to the supply; and

## **NSW Health Grant Agreement**

- (c) the Agency, and not Your Organisation, will issue an adjustment note to the Agency for any adjustment event that arises in relation to the supply, and the Agency will retain the original or the copy.

### **7.7 Acknowledgments**

The parties acknowledge and agree that each party is registered for GST at the date of entry into the Agreement and that it will notify the other party if it ceases to be so registered, or if it otherwise ceases to be entitled to enter into a recipient created tax invoice arrangement.

## **8. Assets and Capital Works**

### **8.1 Acquiring of Assets**

Your Organisation agrees not to use the Grant to purchase, lease or otherwise acquire any Assets for the Activity unless:

- (a) it is stated in the Grant Schedule and it is in accordance with any allocation of the Grant set out in the Grant Schedule or in any Budget for that purpose; or
- (b) the Agency has given its prior written approval and Your Organisation complies with any conditions placed on that approval.

### **8.2 Ownership of Assets**

Unless it is otherwise stated in the Grant Schedule or with the Agency has given its prior written approval, Your Organisation agrees that it must own or lease any Assets.

### **8.3 Use of Assets**

Your Organisation agrees not use Assets for any purpose other than the undertaking and performance of the Activity and any Designated Use unless it has obtained the prior written approval of the Agency, which will not be unreasonably withheld.

### **8.4 Obligations in relation to Assets**

- (a) Your Organisation agrees to:
  - (i) ensure that it obtains value for money in the procurement or otherwise of Assets and related Activity;
  - (ii) during the Activity Period and any Designated Use Period, use the Assets only for the purpose of the Activity for which the Asset has been acquired;
  - (iii) maintain the Assets in good working order;
  - (iv) be fully responsible for, and bear all risk in relation to, the use and disposal of the Assets;
  - (v) maintain all appropriate insurances in respect of the Assets;
  - (vi) if it is stated in the Grant Schedule, maintain an Assets Register of the Assets;
  - (vii) if it is stated in the Grant Schedule, maintain registration and licencing of the Assets; and
  - (viii) not dispose of, deal with or encumber the Assets other than in accordance with this clause 8, without the prior written approval of the Agency.
- (b) Clause 12.3 (Conflict of Interest) applies to Your Organisation in connection with the purchase, lease or other acquisition of the Assets.
- (c) Your Organisation will comply with any additional provisions relating to the Assets as stated in the Grant Schedule.

### **8.5 Depreciation of Assets**

- (a) If the Asset has not been fully depreciated in accordance with the Australian Accounting Standards:
  - (i) at the end of the Activity Period for which the Asset has been acquired;
  - (ii) at the end of any Designated Use Period; or

## **NSW Health Grant Agreement**

(iii) on early termination of the Agreement,

Your Organisation agrees to do any of the following required by the Agency:

- (iv) use the Assets for a purpose and in accordance with any conditions approved in writing by the Agency; or
  - (v) deal with the Assets in any way which the Agency notifies Your Organisation in writing.
- (b) Your Organisation agrees to comply with any request under clause 8.5(a) within 20 Business Days of the request being made.
- (c) If Your Organisation fails to comply with its obligations under clause 8.5(a), some or all of the Grant used for the purchase of the Assets will be recoverable as a debt due by Your Organisation to the Agency from the date it was due.

### **8.6 Capital Works**

- (a) Your Organisation will not use the Grant for Capital Works or General Infrastructure, without the prior written approval of the Agency.
- (b) Any approval under clause 8.6(a) may be subject to additional conditions or requirements under the Agreement or to a separate written agreement.

### **8.7 Registering of interest**

Your Organisation agrees to comply with any reasonable request of the Agency to register the Agency's interest in any Assets, Capital Works or transaction relating to the Agreement, including the execution of any documents.

## **9. Reviews and audits**

### **9.1 Access to premises and records**

- (a) Your Organisation acknowledges and agrees that the Agency, any persons nominated by the Agency and any Public Accountability Body may on notice to Your Organisation require access to:
  - (i) Your Organisation's premises or the premises where the Activity is being provided;
  - (ii) the premises at which any work associated with the Activity is undertaken;
  - (iii) the premises at which any Assets are located;
  - (iv) copies of records held or created by Your Organisation in relation to that Activity,
 for purposes associated with the Agreement, including any review or audit of Your Organisation's performance of its obligations under the Agreement or ability to provide all or part of the Activity.
- (b) Where possible, the Agency will give reasonable notice to Your Organisation and seek to involve Your Organisation in any performance review or audit. However, the notice under clause 9.1(a) does not need to be in any particular form.

### **9.2 Cooperation and access**

- (a) Unless it is prohibited by Law from disclosing such information or material, Your Organisation will cooperate with and provide all assistance reasonably requested by permitted persons under clause 9.1(a).
- (b) The cooperation and assistance under clause 9.2(a) includes full and free access to:
  - (i) the Personnel, accounts, records and other information; and
  - (ii) the Activity or places of business to conduct the performance review or audit,
 for purposes associated with the Agreement or any review of the undertaking of the Activity by Your Organisation.

### **9.3 Application of this clause**

- (a) Your Organisation must ensure that any subcontract or auspicing arrangement entered into for the purpose of the Agreement allows those permitted persons under clause 9.1(a) (Access to premises and records) to have access as specified in this clause 9.

**NSW Health Grant Agreement**

- (b) Nothing in this clause 9 limits or restricts in any way the authority or rights of a Public Accountability Body.

**10. Intellectual Property Rights and information****10.1 Ownership of Intellectual Property Rights**

- (a) The Existing Material of each party remains the property of the party that owns the Intellectual Property Rights at the Commencement Date.
- (b) Your Organisation owns all New Material except to the extent that it is stated in the Grant Schedule or clause 10.1(c) applies.
- (c) The Agency will give written notice to Your Organisation prior to the delivery of all or part of the Activity if the Agency considers that all or part of the New Material arising from the Agreement should be owned by the Agency.
- (d) If the Agency gives written notice to Your Organisation under clause 10.1(c), the New Material set out in the notice is owned by the Agency.

**10.2 Licences of Intellectual Property**

- (a) The Agency grants, and Your Organisation accepts, a licence (including a licence to copy or supply it to others) over:
  - (i) the Agency's Existing Material; and
  - (ii) New Material owned by the Agency,
 to the extent needed to allow Your Organisation to provide the Activity and comply with the Agreement or for any other purpose that the Agency agrees in writing with Your Organisation.
- (b) Your Organisation grants, and the Agency accepts, a permanent, irrevocable, royalty-free, worldwide, transferable, non-exclusive licence (including a right of sublicense to copy or supply it to others) to use, reproduce, communicate, adapt and exploit:
  - (i) the New Material not owned by the Agency; and
  - (ii) Your Organisation's Existing Material, but only in conjunction with the New Material.
- (c) Each party warrants to the other party that it has the right, or will be entitled at the required time, to deal with the Intellectual Property in the manner provided under this clause 10.2, including obtaining any Moral Rights.
- (d) At the request of the Agency, Your Organisation will provide the Agency with copies of all materials in a manner that allows the Agency to give effect to this clause 10.2.
- (e) Your Organisation agrees to properly manage the New Material to allow the Agency to enjoy the full benefit of the Activity and the Agreement.
- (f) Your Organisation will not accept any funding (including Co-contributions) from a third party that would jeopardise or limit any right in this clause 10.2 without the prior written approval of the Agency.

**10.3 Protection of Personal Information**

- (a) Your Organisation acknowledges and agrees it is bound by Privacy Law in undertaking or providing the Activity and complying with the Agreement.
- (b) If Your Organisation collects or has access to Personal Information for the purposes of undertaking the Activity, Your Organisation will:
  - (i) ensure that it will not use or disclose the Personal Information for a purpose other than the purpose for which it was collected, unless required or authorised by law;
  - (ii) ensure that it will establish and maintain security procedures and safeguards to prevent unauthorised loss, unauthorised access, use, modification or disclosure and against all other misuse;

## **NSW Health Grant Agreement**

- (iii) ensure that Your Organisation's subcontractors and any Auspice Body that have access to Personal Information comply with obligations that are the same as are imposed on Your Organisation under this clause;
- (iv) otherwise not do anything that would be a breach of the Privacy Law if it was done by the Agency;
- (v) take reasonable steps to notify relevant persons that information Your Organisation obtains may be provided to the Agency for the purposes of auditing or assessing Your Organisation's compliance with the Agreement;
- (vi) immediately notify the Agency if it has reasonable grounds to believe that there has been a breach of Privacy Law or its obligations under this clause;
- (vii) comply with any direction of the Agency to the extent that it is consistent with Privacy Law and any other measures the Agency may reasonably require to maintain the protection of Personal Information.

### **10.4 Confidential Information**

- (a) Subject to clause 10.4(b) a party will not disclose Confidential Information without the prior written approval of the other party.
- (b) The obligation not to disclose Confidential Information does not apply to the extent that the Confidential Information is:
  - (i) reasonably required by any persons performing their obligations under the Agreement or to a party's legal and professional advisors, provided that the Confidential Information is used solely for the purpose of the Agreement;
  - (ii) authorised or required by Law to be disclosed;
  - (iii) publicised and reported by the Agency or the NSW Government on the awarding of the Grant;
  - (iv) shared by the Agency with another government agency, body or Minister for its legitimate interests; or
  - (v) to give a public explanation of any action that the Agency takes in connection with the Agreement.

### **10.5 Information of a sensitive or cultural nature**

Your Organisation will not publish any information that the Agency reasonably considers to be, and identifies to Your Organisation as being, of a sensitive or cultural nature, unless:

- (a) Your Organisation consults the Agency;
- (b) Your Organisation publishes the information for a purpose stated in the Grant Schedule; or
- (c) it is in accordance with clause 10.4 (Confidential Information).

## **11. Acknowledgement and publicity**

### **11.1 Acknowledgment and publicity**

- (a) Your Organisation will acknowledge the funding support from the Agency in any publications, advertising and promotional materials in a form and manner stated in the Grant Schedule or as reasonably requested by the Agency from time to time.
- (b) Your Organisation will notify the Agency prior to making any press or other announcement or releases relating to the Agreement, unless it is for the purpose of the promotion of the Activity or required to be made by Law.
- (c) Your Organisation acknowledges that the NSW Government may publicise the awarding of the Grant at any time after it is awarded, including Your Organisation's name, the amount of the Grant and the title and brief description of the Activity and any results or outcomes arising out of the Grant.

## **NSW Health Grant Agreement**

### **11.2 No restriction on advocacy activities**

The Agency agrees that nothing in the Agreement restricts the ability of Your Organisation or its Personnel from entering into public debate or advocacy activities, subject to Your Organisation complying with its obligations in relation to Privacy (clause 10.3), Confidentiality (clause 10.4) and Conflict of Interest (clause 12.3).

## **12. Dealing with risk**

### **12.1 Insurance**

- (a) Your Organisation warrants that it has taken out or will take out, and will maintain, adequate insurance coverage appropriate for the Activity, including the following insurances:
  - (i) public liability insurance for an amount stated in the Grant Schedule for any claim arising out of or in connection with the Activity; and
  - (ii) any other insurance stated in the Grant Schedule,
 for the Term and, if the insurance is for professional indemnity insurance, for the period that is seven (7) years from the Activity End Date.
- (b) Your Organisation will provide the Agency with proof of insurance cover on request.
- (c) Your Organisation will immediately notify the Agency of any event which affects or may affect Your Organisation's compliance with this clause 12.1.

### **12.2 Indemnity**

- (a) In this clause 12.2, "Agency" includes its officers, employees and agents.
- (b) Your Organisation indemnifies, and keeps indemnified, the Agency from and against any Claim that may be made or brought by any person against the Agency arising from or in connection with:
  - (i) any negligent or unlawful act or omission by Your Organisation or Personnel;
  - (ii) any breach by Your Organisation of the Agreement or Laws; or
  - (iii) use or disposal of any Asset,
 relating to the Activity or the Agreement.
- (c) Your Organisation's liability under clause 12.2(b) will be reduced proportionally to the extent that any negligent or unlawful act or omission of the Agency caused or contributed to the Claim.

### **12.3 Conflict of Interest**

- (a) Your Organisation warrants that, to the best of its knowledge after making diligent inquiry, at the Date of the Agreement, no Conflict of Interest exists or is likely to arise in relation to the Agreement.
- (b) Your Organisation undertakes to notify the Agency immediately upon becoming aware of a Conflict of Interest and agrees to comply with any reasonable written directions of the Agency to manage the Conflict of Interest.
- (c) Your Organisation agrees to keep and implement a policy about Conflicts of Interest for its executive officers and other Personnel. The policy must include guiding principles and procedures for identifying, declaring and dealing with Conflicts of Interest.
- (d) The Agency may terminate the Agreement under clause 13.3 (Termination for cause) if Your Organisation fails to comply with the requirements under this clause or is unable or unwilling to resolve the Conflict of Interest to the reasonable satisfaction of the Agency.

## **13. Suspension and termination**

### **13.1 Suspension or withholding the Grant**

- (a) If the Agency, acting reasonably, considers it appropriate, it may by written notice to Your Organisation, immediately suspend or withhold (either temporarily or permanently) the use and/or payment of all or any part of the Grant if:

**NSW Health Grant Agreement**

- (i) Your Organisation has failed, or in the Agency's reasonable opinion, is likely to fail to undertake the Activity in accordance with the Agreement;
  - (ii) Your Organisation has received the Grant for the Activity and that Grant has not been spent or Committed for the Activity in accordance with the Agreement, including as a result of Your Organisation having a surplus or underspend;
  - (iii) Your Organisation has breached a provision of the Agreement or another arrangement or agreement with a NSW Health organisation;
  - (iv) Your Organisation has misused, or in the Agency's opinion, is suspected to have misused, the Grant or has shown an inability to properly manage the Grant or the Assets;
  - (v) Your Organisation has breached the Agreement and the Agency has given notice to Your Organisation under clause 13.2 (Termination for cause) or clause 13.4 (Consequences of termination);
  - (vi) the Agency has concerns on reasonable grounds that Your Organisation is not financially stable; or
  - (vii) Your Organisation or any of its Personnel has breached or is suspected to have breached any Laws material to the Activity.
- (b) The Agency may, by giving written notice to Your Organisation, reduce the Activity to be provided under the Agreement to reflect any suspension or withholding of all or part of the Grant under clause 13.1(a) and Your Organisation agrees to suspend the undertaking of the Activity at the request of the Agency in accordance with this clause 13.1.
  - (c) A notice under clause 13.1(a) or clause 13.1(b) will contain the reasons for any payment being withheld or reduction of the Activity and the steps Your Organisation can take to address those reasons.
  - (d) The Agency will pay the withheld amount, subject to any suspension of the Activity under clause 13.1(a) or clause 13.1(b), once Your Organisation has addressed the reasons contained in the notice to the reasonable satisfaction of the Agency.
  - (e) Nothing in this clause 13.1 prevents a party from exercising its rights at any time under clauses 13.2 (Termination without fault) or 13.3 (Termination for cause).

**13.2 Termination without fault**

- (a) Either the Agency or Your Organisation may terminate the Agreement at any time by giving the non-terminating party at least three (3) months' written notice. A notice to terminate under this clause 13.2 does not have to include reasons.
- (b) Subject to clause 13.4 (Consequences of termination), the party electing to terminate the Agreement under this clause 13.2 will pay the non-terminating party for any reasonable costs directly and necessarily incurred as a result of termination and properly substantiated by the non-terminating party.

**13.3 Termination for cause**

- (a) The Agency may terminate the Agreement with immediate effect by giving notice to Your Organisation if:
  - (i) Your Organisation breaches any provision of the Agreement and:
    - (A) the breach is not capable of being remedied; or
    - (B) the breach is capable of being remedied and Your Organisation fails to remedy the breach within 20 Business Days following receipt of a notice requiring it to do so;
  - (ii) Your Organisation regularly or habitually commits breaches of the Agreement which collectively constitute material or serious breach, whether or not they are remedied;
  - (iii) the Agency is reasonably satisfied that any statement provided by Your Organisation and relied on by the Agency to approve the Grant is incorrect, incomplete, false or misleading in a way which would have affected the original decision to approve the Grant;



## **NSW Health Grant Agreement**

- (iv) there is a Change in Control or a change in ownership of Your Organisation which the Agency reasonably considers has an adverse impact on the decision to pay the Grant or the ability of Your Organisation to comply with its obligations under the Agreement;
  - (v) Your Organisation no longer has the requisite authorisations, licences, accreditation, registration or consents to perform its obligations under the Agreement;
  - (vi) Your Organisation suffers an Insolvency Event;
  - (vii) Your Organisation has breached any other agreement with a NSW Health or NSW Government agency or body, and that breach entitled or entitles the NSW Health or NSW Government agency or body to terminate that agreement; or
  - (viii) there has been or there is any current, pending or threatened Reputational Proceedings.
- (b) The Agency may terminate the Agreement by giving written notice to Your Organisation as soon as possible if the Agency does not receive sufficient funds from the NSW Parliament or the Commonwealth Government to finance the Activity or part of the Activity.

### **13.4 Consequences of termination**

- (a) If the Agency terminates the Agreement:
- (i) Your Organisation will:
    - (A) comply with any notice requirements;
    - (B) provide the Agency with any reports and records that the Agency reasonably requires; and
    - (C) cooperate in good faith and provide all assistance reasonably required by the Agency in relation to Confidential Information, the disposal of Assets and any transition arrangements in relation to the Agreement; and
  - (ii) the Agency will consider in its discretion the payment of the costs of the reasonable transition arrangements of Your Organisation.
- (b) The Agency is not liable to Your Organisation if the Agency exercises its rights under clause 13.3 (Termination for cause).
- (c) The liability of the Agency to Your Organisation on termination of the Agreement, including under clause 13.2 (Termination without fault), is limited to the amount of unpaid Grant remaining at the date of termination under the Agreement.
- (d) This clause 13.4 does not limit any other rights or remedies that may be available to a party.

## **14. Repayment of Grant**

### **14.1 Notice concerning Grant**

If at any time the Agency forms the reasonable opinion that Your Organisation:

- (a) has not used, spent or Committed the Grant in accordance with the Agreement;
- (b) has failed to perform any of Your Organisation's obligations under the Agreement or has otherwise not complied with the Agreement; or
- (c) there is an overpayment or incorrect payment of the Grant,

the Agency may by giving notice in writing to Your Organisation:

- (d) require Your Organisation to repay that part of the Grant within 20 Business Days on receipt of a request by the Agency;
- (e) recover that part of the Grant through set-off of the amount of the Grant against any Grant payable to Your Organisation under the Agreement; or
- (f) require Your Organisation to use all or part of the Grant, or an amount equivalent to the Grant, as the Agency sees fit.

## **NSW Health Grant Agreement**

### **14.2 Organisation's rights and obligations**

- (a) Your Organisation will comply with a notice that the Agency gives under clause 14.1 (Notice concerning Grant).
- (b) Your Organisation may make a written request to the Agency to reallocate or retain the Grant specified in a notice under clause 14.1 (Notice concerning Grant). If the Agency agrees to such a request, Your Organisation agrees to use the Grant in accordance with any terms and conditions specified by the Agency.

### **14.3 Agency rights**

If Your Organisation fails to make payment required by a notice under clause 14.1 (Notice concerning Grant), Your Organisation will pay the Agency interest on any unpaid amount and the unpaid amount and the interest may be recovered by the Agency as a debt.

## **15. Relationship between the parties**

### **15.1 Status of Organisation**

- (a) The parties agree and acknowledge that:
  - (i) nothing in the Agreement creates any employment, partnership, agency or joint venture relationship between the parties; and
  - (ii) neither party has authority to incur any liability or make any representation on behalf of the other party.
- (b) Your Organisation warrants that:
  - (i) it is a legal entity capable of entering into the Agreement;
  - (ii) the execution of the Agreement and the provision and performance of the Activity complies with all Laws under which it is incorporated; and
  - (iii) all licences, accreditation, registration and consents required to be obtained by Your Organisation to provide and perform the Activity have been obtained and are valid and continuing and it is not aware of any breach of those authorisations.
- (c) If Your Organisation is a partnership, joint venture or consortium of two (2) or more persons, Your Organisation agrees that:
  - (i) all such persons are liable both individually and as a group to the Agency for the full performance of the Agreement; and
  - (ii) Your Organisation's Representative has authority to bind the partnership, joint venture or consortium and each of its members.

### **15.2 Trust warranties**

- (a) Where Your Organisation provides or carries out any or all of the Activity in its capacity as a trustee, Your Organisation warrants that:
  - (i) it is the sole trustee of the Trust and it has been validly appointed;
  - (ii) it has full and valid power, authority, consents and approvals under the Trust to sign the Agreement and to undertake the transactions contemplated by the Agreement; and
  - (iii) it has the right to be indemnified out of the assets of the Trust for all liabilities incurred by it under the Agreement.
- (b) Your Organisation acknowledges and agrees that Your Organisation is liable in its own capacity and in its capacity as trustee of the Trust in respect of any liability of Your Organisation to the Agency arising out of the Agreement.

## **16. Dispute resolution**

- (a) The parties agree that they will enter into discussions to resolve any dispute arising under the Agreement.
- (b) If a dispute cannot be resolved under clause 16(a), it will be resolved as follows:

**NSW Health Grant Agreement**

- (i) the party claiming that a dispute has arisen will give written notice to the other party, describing in full the details of the dispute (the "First Notice");
  - (ii) within 15 Business Days of receipt of the First Notice, the parties will meet to discuss and try and resolve the dispute;
  - (iii) if the dispute remains unresolved 20 Business Days after receipt of the First Notice, either party may give written notice (the "Second Notice") to the other party, requesting that the dispute be referred to the Dispute Resolution Officer for resolution;
  - (iv) within 15 Business Days of receipt of the Second Notice, the parties will either (i) meet with the Dispute Resolution Officer to discuss the dispute or (ii) provide written submissions regarding the dispute; and
  - (v) within 30 Business Days of receipt of the Second Notice the Dispute Resolution Officer will provide their decision to the parties in writing.
- (c) The parties agree that any decision of the Dispute Resolution Officer will be final and binding on the parties.
  - (d) The parties will continue to perform their obligations under the Agreement despite the existence of any dispute.
  - (e) Nothing in clause affects a party's ability to:
    - (i) seek urgent interlocutory relief from a court; or
    - (ii) exercise their rights under clause 13 (Suspension and Termination).

**17. General****17.1 Variations**

- (a) The parties agree that the Agreement may only be varied if:
  - (i) both parties agree in writing; or
  - (ii) the Agency notifies Your Organisation of a proposed change in writing which is a minor variation and Your Organisation does not, with 10 Business Days of receipt of the notice, advise the Agency of an objection to the proposed change.
- (b) This clause does not apply to any change to the Agreement resulting from a party exercising its rights under the Agreement.

**17.2 Notice requirements**

- (a) Any notice, approval or consent under the Agreement must in be in writing and directed and sent to the other party's Representative at the address stated in the Grant Schedule or any other address which the other party has most recently notified the sending party in writing.
- (b) Any notice served in accordance with this clause 17.2 will be deemed to be received:
  - (i) if delivered by hand, on delivery;
  - (ii) if posted, on the earlier date of the receipt and three (3) Business Days after the date of posting;
  - (iii) if an email, on the day of receipt of the confirmation report or any other written evidence that the email has reached the recipient's mail box OR, if on a non-Business Day or after 5.00pm on a Business Day, on the next Business Day.

**17.3 Assignment**

- (a) Your Organisation may not assign the Agreement, or any of its benefits or obligations under it, without the prior written approval of the Agency.
- (b) The Agency may by notice to Your Organisation assign the Agreement, or any of its benefits or obligations under it, to any other NSW Government entity that replaces or assumes the Agency's responsibilities. If requested, Your Organisation agrees to execute such documents the Agency may reasonably require to formalise such arrangements.

## **NSW Health Grant Agreement**

### **17.4 Non-Waiver**

- (a) No waiver by a party in exercising any right under the Agreement will be, or deemed to be, effective unless it is in writing and signed by the party.
- (b) Any waiver or partial waiver of a right under the Agreement will not be construed as a waiver of any further breach of the same or any other provision.

### **17.5 Severability**

If any part of the Agreement is prohibited, void, illegal or unenforceable, then that part is severed from the Agreement, but without affecting the continued operation of the remainder of the Agreement.

### **17.6 Clauses that continue to apply after the Term**

The following clauses survive and continue to apply after the Term:

- (a) clause 5 – Records and Reports (all clauses);
  - (b) clause 6 – Financial Arrangements: clauses 6.9 (Budgeted and Unspent Grant during the Term), 6.10 (Residual Grant at end of Term);
  - (c) clause 8 – Assets and Capital Works: clauses 8.1 (Assets) and 8.5 (Depreciation of Assets);
  - (d) clause 9 – Reviews and Audits: all clauses;
  - (e) clause 10 – Intellectual Property Rights and Information: all clauses;
  - (f) clause 11 – Acknowledgement and Publicity: all clauses;
  - (g) clause 12 – Dealing with Risk: clauses 12.1 (Insurance) and 12.2 (Indemnity);
  - (h) clause 13 – Suspension and Termination: clause 13.4 (Consequences of termination);
  - (i) clause 14 – Repayment of Grant: all clauses;
  - (j) clause 16 – Dispute resolution: all clauses,
- and any other clauses which by their nature should survive.

### **17.7 Governing law and jurisdiction**

The Agreement is governed by the laws of New South Wales and the parties submit to the exclusive jurisdiction of the courts of New South Wales.

## **18. Dictionary and interpretation**

### **18.1 Dictionary**

In these Standard Conditions and the Agreement, unless the context is otherwise expressed:

**Action Plan** means a document for the Activity that is approved by the Agency under clause 3.1;

**Activity** means the Activity described in the Grant Schedule and, if more than one Activity is described in the Grant Schedule, a reference to the Activity is a separate reference to each Activity, and includes:

- (a) to any Target Group to whom that Activity must be provided;
- (b) at any premises or location at which the Activity will be provided; and
- (c) all related activities, responsibilities and roles not specifically described but which are incidental to or connected or are required for the proper performance and provision of the specified Activity;

**Activity Commencement Date** means the date for commencement of the Activity that is stated in the Grant Schedule;

**Activity End Date** means the date by which the Activity is to be completed that is stated in the Grant Schedule (and excludes reports and Material to be provided to the Agency after the Activity End Date);

**Activity Period** means the period during which the Activity must be completed from the Activity Commencement Date to the Activity End Date as stated in the Grant Schedule;

**Agency** means the NSW Health legal entity named in the Grant Details that enters into and is a party to the Agreement and, where relevant, includes its officers, employees, contractors and agents;

## **NSW Health Grant Agreement**

**Agreement** means the agreement between the parties and comprises the Grant Details, the Grant Schedule including any Supplementary Conditions, any documents incorporated by reference into the Grant Schedule and these Standard Conditions;

**Alleged Misconduct** means an allegation which raises a reasonable suspicion of misconduct which may have a serious impediment to the provision or performance of the Activity, including but not limited to serious or persistent harassment or bullying, or a criminal offence such as theft, fraud or assault;

**Approved Auditor** means a person who is:

- (a) registered as a company auditor under the *Corporations Act 2001* (Cth) or an appropriately qualified member of the National Institute of Accountants, Institute of Chartered Accountants or CPA Australia;
- (b) acting in a professional capacity as an auditor; and
- (c) not Personnel or a member or shareholder of Your Organisation or of a related body corporate of Your Organisation;

**Assets** means any non-consumable item of tangible property (including equipment, furniture, vehicles and buildings) that has a service life of more than one (1) year purchased, leased, hired, financed, created (except in the case of Intellectual Property rights) or otherwise brought into existence either wholly or in part with use of the Grant, which has a value over \$10,000 inclusive of GST;

**Assets Register** means a written register kept in accordance with Australian Accounting Standards and audited annually which contains details of Assets purchased or leased wholly or in part using the Grant, including but not limited to:

- (a) the date of purchase or lease of each Asset;
- (b) a description of each Asset;
- (c) the address at which each Asset is located;
- (d) the purchase or lease price of the Asset, exclusive of GST;
- (e) the amount of the Grant used to purchase or lease the Asset; and
- (f) where relevant, the details of Asset disposals including sale price.

**Audited Financial Reports** means a financial report audited by an Approved Auditor in accordance with applicable Australian Accounting Standards and any statutory requirements that govern Your Organisation's accounting and financial records;

**Auspice Body** means an incorporated applicant who will use an unincorporated End Recipient to conduct or perform the Activity;

**Australian Accounting Standards** means the standards issued by the Australian Accounting Standards Board as in force for the time being;

**Australian Auditing Standards** means the auditing standards made by the Auditing and Assurances Standards Board in accordance with applicable legislation and as in force from time to time;

**Bank Account** means an account that is maintained with an established bank, building society or credit union authorised under Law to carry on banking business in Australia and that is operated solely by Your Organisation;

**Budget** means the budget (if any) detailing the Grant for the Activity, including sources of income that constitute any Co-contribution, for the expenditure of the Grant as stated in the Grant Schedule or approved by the Agency under clause 3.1 (Planning the Activity).

**Business Day** means a day that is not a Saturday, Sunday or public holiday in NSW;

**Capital Works** means that part of the Activity which relates to the design, construction and fit-out (construction and fit out may include site preparation, modification, expansion, refurbishment, furnishing and equipping as applicable), and related activities;

**Change in Control** means, if Your Organisation is a corporation, there is any change in the direct or indirect beneficial ownership or control of Your Organisation;

**Claim** includes any claim, rights, demand, action, proceeding, costs (including legal costs), losses, damages and expenses.

## **NSW Health Grant Agreement**

**Co-contribution** means the contribution from Your Organisation's own funds or a third party's funds, upon which the Grant is contingent, to be contributed to the costs of the Activity as stated in the Grant Schedule and used by Your Organisation to provide the Activity;

**Committed** means contractually obliged to pay a third party in respect of any part of the Activity and that can be identified in written contractual arrangement with that third party;

**Confidential Information** means information that:

- (a) is by its nature confidential;
- (b) is designated by a party as being confidential; or
- (c) a party knows or ought to know is confidential;
- (d) but does not include information that:
  - (i) is or becomes public knowledge, other than by breach of the Agreement or by any unlawful means;
  - (ii) is in the possession of a party without restriction in relation to disclosure before the date of receipt from the other party; or
  - (iii) has been independently developed or acquired by a party;

**Conflict of Interest** means having an interest (whether personal, financial or otherwise) which conflicts or which may reasonably be perceived as conflicting with Your Organisation's ability to fairly and independently perform its obligations under the Agreement;

**Date of the Agreement** means the date specified in the signing page of the Grant Details;

**Designated Use Period** means the period stated in the Grant Schedule, if any;

**Dispute Resolution Officer** means the person for the time being holding, occupying or performing the duties of the Dispute Resolution Officer stated in the Grant Schedule or as otherwise advised by the Agency from time to time;

**End Recipient** where Your Organisation is an Auspice Body, means the unincorporated organisation who will conduct or provide the Activity as identified Schedule;

**Existing Material** means any Material that is developed prior to the Commencement Date or independently of the Agreement and that is incorporated into the New Material;

**Financial Year** means each 12 month period beginning on 1 July during the Term or, if Your Organisation has a financial year that begins on some other date, that date;

**General Infrastructure** means the basic physical systems of Your Organisation, including communication, sewerage, water and electric systems;

**Grant** means the money, or any part of it, payable by the Agency to Your Organisation to undertake the Activity as stated in the Grant Schedule;

**Grant Details** means the part of the Agreement titled "Grant Details";

**Grant Schedule** means the part of the Agreement titled "Grant Schedule";

**Insolvency Event** means the occurrence of any one or more of the following events in relation to Your Organisation:

- (a) an order is made or an effective resolution is passed for winding up or dissolution without winding up (other than for the purposes of solvent reconstruction or amalgamation) of Your Organisation and the order or resolution remains in effect for a period of five (5) Business Days;
- (b) a receiver, receiver and manager, official manager, administrator, provisional liquidator, liquidator, or like official is appointed over the whole or substantial part of the undertaking and property of Your Organisation and the appointment remains in effect for a period of five (5) Business Days;
- (c) a holder of an encumbrance takes possession of the whole or any substantial part of the undertaking and property of Your Organisation;
- (d) Your Organisation is unable to pay its debts as they fall due;

## **NSW Health Grant Agreement**

- (e) Your Organisation becomes insolvent or is deemed to become insolvent under any applicable Laws; or
- (f) Your Organisation ceases to carry on business or threatens to do so;

**Intellectual Property Rights** means all intellectual property rights including:

- (a) copyright, patent, trademark, design, semi-conductor or circuit layout rights, registered design, trademarks or trade name and other protected rights, or related rights, existing worldwide; and
- (b) any licence, consent, application or right, to use or grant the use of, or apply for the registration of, any of the rights referred to in (a),

but does not include the right to keep Confidential Information confidential, Moral Rights, business names, company names or domain names.

**Law** means common law, principles of equity, and laws made by the Commonwealth, State(s) and Territory(ies) in which the Activity will be provided (and regulations and other instruments under them, and consolidations, amendments, re-enactments or replacements of any of them) and any lawful directions by any person exercising statutory powers regarding the Activity;

**Material** includes any document, information, goods, data, equipment and software (including source code and object code versions) stored by any means including copies and extracts of them.

**Milestones** means a milestone or stage for the Activity as stated in the Grant Schedule;

**Moral Rights** means the right of integrity of authorship, the right of attribution of authorship and the right not to have authorship falsely attributed as defined in the *Copyright Act 1968* (Cth);

**New Material** means any Material, other than Reporting Material, created by or on Your Organisation's behalf for the purpose of the conducting or performing the Activity (other than from the Agency), including documents, software and data stored by any means;

**Personal Information** means any information which is:

- (a) "personal information" or "health information" within the meaning of the Privacy Law; and
- (b) received (from any source) or generated by Your Organisation or Organisation Personnel;

**Personnel** means Your Organisation's employees, officers, agents and subcontractors, the employees, officers, agents and subcontractors of Your Organisation's subcontractors and any volunteers engaged by Your Organisation or Your Organisation's subcontractors;

**Privacy Law** means the *Privacy and Personal Information Protection Act 1998* (NSW), the *Health Records and Information Privacy Act 2002* (NSW) and the *Privacy Act 1988* (Cth) and includes any code of practice and principles under these Acts;

**Public Accountability Body** includes the NSW Auditor-General, the NSW Ombudsman and the NSW Privacy Commissioner;

**Representative** means the relevant party's person stated in the Grant Details or as notified in writing from time to time;

**Reputational Proceedings** means any inquiry, investigation, conciliation, mediation, arbitration or such similar proceedings against Your Organisation or any director, officer, employee, subcontractor or agent of Your Organisation that could or has the potential to, in the reasonable opinion of the Agency, have an adverse effect on reputation of the Activity, Agency or the NSW Government;

**Residual Grant** means that part of the Grant paid to Your Organisation that has not been spent or Committed for the Activity;

**Serious Incident** means an incident that:

- (a) is likely to impact on Your Organisation's ability to conduct or provide the Activity or otherwise fulfil its obligations under the Agreement;
- (b) may affect or has affected Your Organisation's obligations, or its performance of those obligations, under the Agreement and requires an emergency response, death or serious injury or any criminal activity; and
- (c) has or may attract significant public interest and attention.

**Standard Conditions** means this document;

## **NSW Health Grant Agreement**

**Supplementary Conditions** means additional terms and conditions stated in the Grant Schedule and which form part of the Agreement;

**Target Group** means those persons or groups of persons (if any) stated in the Grant Schedule;

**Term** means the term of the Agreement set out in clause 1.3 (Term of the Agreement);

**Trust** means the trust as stated in the Grant Details;

**Unforeseen Event** means circumstances beyond Your Organisation's reasonable control, including but not limited to natural disasters, fire, floods, unavoidable accidents, strikes, lockouts or other industrial disputes;

**Unspent Grant** at a particular date means that part of the Grant that has not been spent or Committed by Your Organisation in accordance with the Agreement; and

**Your Organisation** means the person or body corporate named in the Grant Details that enters into and is a party to the Agreement, and, where relevant, includes its officers, employees, contractors and agents.

### **18.2 Interpretation**

- (a) The following rules of interpretation apply unless the contrary intention appears:
- (i) headings are for convenience only and do not affect the interpretation of the Agreement;
  - (ii) the singular includes the plural and vice versa;
  - (iii) the words 'includes' and 'including' and similar expressions are not used as, nor are intended to be, interpreted as words of limitation;
  - (iv) a reference to:
    - (A) a person includes any type of body or person whether or not it is incorporated or has a separate legal entity;
    - (B) a party includes its successors and permitted assigns of that party;
    - (C) a document, including policy or guidelines, includes all amendments or supplements to that document;
    - (D) a clause is to a clause in these Standard Conditions;
    - (E) a part, schedule, attachment or annexure is a reference to a part, clause, schedule, attachment or annexure to these Standard Conditions or Grant Schedule as the case may be;
    - (F) the Agreement includes all schedules, attachments and annexures to it;
    - (G) any legislation includes any regulations or rules made under that legislation and any amendment, modification to or replacement of that legislation which may be made from time to time;
    - (H) an agreement other than the Agreement includes an undertaking, or legally enforceable arrangement or understanding, whether or not in writing;
    - (I) a monetary amount is in Australian dollars; and
    - (J) "discretion" means "absolute discretion".
- (b) To the extent that the parties have not completed items in the Grant Schedule, unless otherwise stated in the Grant Schedule, that item will be taken to be "not applicable" for the purposes of the Agreement.
- (c) The Agreement represents the entire agreement between the parties in relation to the Activity and the Grant and supersedes all prior representations, communications, agreements, statements and understandings, whether oral or in writing.
- (d) The parties may undertake business by the electronic exchange of information and the Agreement may be executed in electronic format to the extent permitted by Law, and the Agreement will be interpreted to give effect to undertaking business in this manner.



## Short-form Grant Agreement

We agree to provide You, and You agree to accept, the Grant for the purpose of You carrying out the Activity in accordance with the terms and conditions of this agreement.

### Grant Agreement: Details

This part sets out the details which apply to this agreement and its scope.

#### This agreement is between the following parties:

<b>NSW Health agency</b> (We, Us, Our)	Name: [insert full legal name of agency] ABN: [insert] Representative: person occupying the position of [insert], currently being [insert]. Address: [insert] Tel: [insert] Email: [insert]
<b>Organisation</b> (You, Your)	Name: [insert full legal name of Organisation] ABN: [insert] Incorporation details: incorporated under [delete as appropriate: Corporations Act 2001 (Cth)/ Associations Incorporation Act 2009 (NSW)/ Cooperatives Act 1992 (NSW)/ Aboriginal Councils & Associations Act 1976 (Cth)/ other [insert]]: Representative: person occupying the position of [insert], currently being [insert]. Address: [insert] Tel: [insert] Email: [insert]

#### Activity description

Activity name	[Insert Activity name]
Activity description	[insert brief description of Activity]
Activity objectives	You agree to undertake the Activity in a way that promotes the following objectives: [insert]
Activity background	[Optional]
Anticipated outcomes/ outputs	[Optional] You agree to endeavor, in good faith, to carry out the Activity so as to meet the following outcomes/outputs: [insert]
Location of Activity	[Optional] The Activity will provided at the following location: [insert]
Term	Unless sooner terminated, the term of this agreement is as set out below: Start Date: [insert details or "on the date the last party signs this agreement"] End Date: [insert details]  If, for whatever reason, You are unable to proceed with the Activity, You will inform Us as soon as possible in writing and immediately repay the Grant to Us.

#### Grant

[Option for one-off grant. Total payment: \$[amount] [inclusive/exclusive GST]

Payment will be made within 30 days after We provide You with a recipient created tax invoice, or where this agreement requires You to provide Us with a tax invoice (or where a tax invoice is not required, an invoice) for that payment.]

[Option for payment on an annual basis and/or on receipt of progress and/or financial report. Subject to the terms of this agreement, including the receipt of reports to Our reasonable satisfaction, We will pay the amount set out in the table below in the instalments set out in the table below to You within 30 days after:

- (a) You satisfy the preconditions specified in the table for that payment; and
- (b) We provide You with a recipient created tax invoice, or where this agreement requires You to provide Us with a tax invoice (or where a tax invoice is not required, an invoice), for that payment.

**NSW Health Short-form Grant Agreement**

Milestone with achievement criteria	Amount \$	Due date
[insert]	\$(amount)	[insert]
[insert]	\$(amount)	[insert]
[insert]	\$(amount)	[insert]
[insert]	\$(amount)	[insert]
<b>Total</b>		<b>\$(amount)</b>

**Reports**

You agree to provide Us with the below Reports.

- (a) [Optional] A progress report on the funded project, provided [every 6 months] and in any event on request by Us.
- (b) [Optional] A (brief) written report on the achievements of the Activity against agreed performance measures within one month of the End Date.
- (c) A statement of acquittal for each financial year in which the Grant is paid (including any part thereof) on or before 31 October after the relevant financial year (each an “**Annual Acquittal Statement**”). The Annual Acquittal Statement is to be in the form of a Special Purpose Financial Report, a sample which We make available to You from time to time.

**Supplementary Conditions**

[Insert any supplementary conditions or write “Nil”]

**Scope**

The parties agree that by signing below, they enter into an agreement comprising the following parts:

- (a) the **Grant Conditions**;
- (b) these **Grant Details**; and
- (c) any document incorporated in these Grant Details.

If there is ambiguity or inconsistency between parts or documents comprising this agreement, the part or document appearing higher in the list will have precedence.

This agreement may be signed and dated by the parties on separate, but identical, copies. All signed copies constitute one (1) agreement.

**Executed as an agreement**

**Date of agreement:** is the date on which it is signed by the last party.

Signed for and on behalf of the **NSW Health agency** by its authorised representative in the presence of:

➔.....

Signed by NSW Health agency representative

Print name:

Date:

Signed for and on behalf of the **Organisation** by its authorised representative in the presence of:

➔.....

Signed by Organisation representative

Print name:

Date:

➔.....

Witnessed by

Print name:

➔.....

Witnessed by

Print name:

## NSW Health Short-form Grant Agreement

### Grant Conditions

#### 1. Defined terms

Capitalised terms have the meanings set out in the Grant Details, unless the contrary intention appears.

#### 2. Activity

You agree to carry out the Activity in accordance with this agreement, including:

- (a) **(timeframes)** so as to meet any agreed Milestones and other timeframes and in any event by the End Date;
- (b) **(Our directions)** in accordance with Our reasonable directions;
- (c) **(compliance with law and policy)** complying with applicable laws and any NSW government policies that We notify You;
- (d) **(subcontracting)** not subcontracting any part of this agreement without Our prior consent and, where Our consent is provided, remaining responsible for compliance with this agreement notwithstanding that any tasks are undertaken by subcontractors;
- (e) **(records)** maintaining accurate records and accounts of the expenditure of the Grant;
- (f) **(Reports and consultation)** providing the Reports to Us in the form and with content satisfactory to Us, and otherwise reporting to, meeting with and/or consulting with Us as We may reasonably require; and
- (g) **(Supplementary Conditions)** complying with any Supplementary Conditions.

#### 3. Grant and Payment

- 3.1 **(Spending the Grant)** You agree to spend the Grant only for the purposes of undertaking the Activity and during the period starting on the Start Date and finishing on the End Date.
- 3.2 **(Unspent or residual Grant)** You agree to repay to Us any unspent or residual Grant within one (1) month of the End Date, unless otherwise agreed in writing by Us.
- 3.3 **(Payment of the Grant)** We will pay the Grant to You at the times and on the conditions set out in the Grant Details.

- 3.4 **(Processing of Grant)** We will process the Grant in a timely, efficient, accountable and responsible manner.
- 3.5 **(Withholding payment)** We may by notice to You withhold the use and/or payment of any amount of the Grant where We reasonably believe that You have not complied with this agreement or that You are unable to carry out the Activity. A notice under this clause will contain the reasons for any payment being withheld and the steps You can take to address those reasons. We will pay any withheld amount once You have satisfactorily addressed the reasons contained in a notice under this clause.

#### 4. Taxes and charges

- 4.1 **(GST exclusive)** To the extent that any Grant payable under this agreement are stated to be GST exclusive, on receipt of a valid tax invoice We will also pay You the GST amount in respect of those Grant, being the amount of GST for which You are liable in respect of the supplies that You make under this agreement for which those Grant are payable, provided that We will not pay an amount of GST on a Grant for which You can claim an input tax credit.
- 4.2 **(GST inclusive and Recipient Created Tax Invoices)** To the extent that the Grant payable under this agreement is stated to be GST inclusive, if You are registered for GST and comply with the requirements or criteria in all GST law relating to the issuing of Recipient Created Tax Invoices (RCTIs), You agree to allow Us to issue to You an RCTI in respect of GST applicable to each payment of the Grant during the Term. The following requirements will apply for the duration of the Term:
  - (a) We may issue You with a RCTI for the supply;
  - (b) You must not issue a tax invoice in respect of the supplies for which We issue You an RCTI;
  - (c) We are registered for GST and must notify You immediately of any change to its GST registration status;
  - (d) You are registered for GST and must notify Us immediately of any change to Your GST registration status; and
  - (e) You agree to notify Us if You do not wish to accept this arrangement.
- 4.3 If for any reason the RCTI arrangement set out in the above clause is unable to be

## NSW Health Short-form Grant Agreement

implemented or ceases, payment of the Grant is subject to You providing Us with a valid tax invoice in respect of any taxable supply prior to any payment of Grant to You.

- 4.4 **(Other taxes)** You will pay all other taxes and charges payable in connection with this agreement.

### 5. Audits

You agree that We may conduct or authorise others to conduct audits or reviews concerning this agreement and You will cooperate with us and any other persons authorised by Us to conduct such audits or reviews.

### 6. Intellectual Property

- 6.1 **"New Material"** means any material that is created, written or otherwise brought into existence by You or on Your behalf in the course of undertaking the Activity.
- 6.2 You own the New Material, including all intellectual property in that material.
- 6.3 You grant Us, and We accept, a permanent, irrevocable, royalty-free, worldwide, transferable, non-exclusive licence (including a right of sublicense) to use, reproduce, communicate, adapt and exploit the New Material.

### 7. Acknowledgement

You agree to acknowledge the Grant in accordance with the following set of principles:

- (a) acknowledge Our contribution in any written material in relation to the Activity;
- (b) consult with Us on the use of Our logo in any publicity provisions of any kind (including any brochures, signage, advertising and invitations); and
- (c) issue an invitation to Our representative to any significant public event associated with the Grant and where they are able to attend, they are acknowledged as official guests. Where practicable, they should be afforded the courtesy of publicly addressing the event.

### 8. Confidentiality and personal information

- 8.1 **(Confidentiality)** You agree not to disclose without Our prior consent any information in connection with the Activity or this agreement other than as necessary to carry out the Activity, with respect to any matter

that is public knowledge or as legally required.

- 8.2 **(Personal information)** If the Activity involves access to personal information about individuals, You agree to:
- (a) comply with all applicable privacy legislation and any other measures that We may reasonably require to maintain privacy; and
- (b) keep personal information safe and secure, only using it for the purpose of this agreement (or as legally authorised or required) and only disclosing it to third parties with Our prior consent (or as legally authorised or required).

### 9. Insurance and indemnity

- 9.1 **(Insurance)** You must take out and maintain adequate insurance for the Term, with a reputable insurer, and provide Us with proof when requested.
- 9.2 **(Indemnity)** You indemnify Us (and Our personnel, officers and contractors) against any claim, loss or damage that We suffer arising from or in connection with the Activity. Your obligation to indemnify Us (and Our personnel, officers and contractors) will reduce proportionally to the extent any act or omission involving fault of Us (and Our personnel, officers and contractors) contributed to the claim, loss or damage.

### 10. Conflict of interest

You warrant that, to the best of Your knowledge, as at the Start Date You do not have a conflict of interest, and no conflict of interest is likely to arise for You, in the performance of Your obligations under this agreement. You will notify Us immediately You become aware of the existence or possibility of a conflict of interest.

### 11. Disputes

We will both seek to resolve any dispute arising between Us by negotiations in good faith for a period of ten (10) business days before resorting to any court proceedings.

### 12. Termination

- 12.1 **(For convenience)** We may terminate this agreement at any time for convenience, on five (5) business days' prior written notice to You (or on such longer period as may be stated in the termination notice).
- 12.2 **(For cause)** We may, by written notice, immediately terminate this agreement if You:

## NSW Health Short-form Grant Agreement

- (a) breach this agreement in a way which, in Our opinion, is not capable of remedy; or
- (b) fail to remedy a breach which, in Our opinion, is capable of being remedied, within five (5) business days of receiving notice from Us requiring You to do so, or such longer period as We may reasonably allow, having regard to the particular breach;
- (c) are declared bankrupt or bankruptcy proceedings are commenced against You or You become subject to any form of insolvency administration; or
- (d) are the subject of proceedings or investigations by ICAC, the police or similar public body.

### 13. Upon termination

13.1 Upon notice of termination of this agreement You must immediately:

- (a) stop undertaking the Activity in accordance with the notice;
- (b) take all reasonable steps to mitigate any costs arising due to early termination;
- (c) return or destroy (as instructed by Us) any material that We have supplied to You in connection with this agreement; and
- (d) provide Us with the New Material in any format/s that We reasonably request.

13.2 If We terminate for convenience, We will pay You:

- (a) any Grant payable for the Activity up to the date of termination; and
- (b) Your reasonable costs and expenses that We are satisfied You have unavoidably incurred as a direct result of Our early termination (excluding any loss of profit), up to an amount equal to the value of one month of the Activity,

less any amount that We may deduct by reason of a previous overpayment of Grant made in error, a payment owed by You to Us under Your indemnity, an amount of any payment We are legally required to make for You or Your employees in the way for superannuation, payroll tax, workers compensation or wages or a prepayment of Grant for Activity not yet carried out at the date of termination.

### 14. Repayment

If the Grant has been spent other than in accordance with this agreement or any amount of the Grant is additional to the requirements of the Activity, You agree to repay that amount to Us unless otherwise agreed. We may deduct any such amount to be repaid under this clause from subsequent payments of the Grant.

### 15. Notices

Each party agrees to notify the other party of anything reasonably likely to affect the undertaking of the Activity or otherwise required under this agreement. A notice under this agreement must be in writing, signed by the party giving notice and addressed to the other party's representative.

### 16. General

- 16.1 **(Relationship)** You are not Our employee, agent or partner or authorised to bind or represent Us.
- 16.2 **(Variation)** This agreement may only be varied in writing, signed by both of us.
- 16.3 **(Assignment)** You must not assign Your rights in relation to this agreement (and may only transfer Your obligations with Our prior consent).
- 16.4 **(Waiver)** Any waiver of a breach must be in writing and will not amount to a waiver of any other breach.
- 16.5 **(Terms and conditions that survive beyond the Term)** Any term of this agreement that is capable of continuing to apply beyond the Term will do so including terms and conditions relating to Reports, unspent or residual Grant, liability, indemnity, insurance and intellectual property.
- 16.6 **(Applicable law)** This agreement is governed by the law of New South Wales.