

# Service Agreement (Part A) - Standard Terms of Funding

The Department of Communities Service Agreement comprises three sections:

- Service Agreement (Part A) - Standard Terms of Funding
- Service Agreement (Part B) - Specific Terms of Funding
- Service Agreement (Part C) - Specifications



**Queensland** Government  
Department of **Communities**

# **Service Agreement (Part A) - Standard Terms of Funding**

**For Agreements entered into from 1 July 2010\***

**Version 1.0**

**\* or from 9 April 2010 for some program areas**

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## Background

- A. The Department of Communities administers various funding programs across a range of service areas such as: Child Safety, Disability, Home and Community Care, Community Mental Health, Housing and Homelessness, Community and Youth Justice, Seniors, Women, Aboriginal and Torres Strait Islander, Multicultural, Sport and Recreation.
- B. These terms are the standard terms upon which funding may be granted under any of the programs administered by the Department.
- C. These terms are incorporated into any Service Agreement You enter into with Us.
- D. The relationship between You and Us is one of mutual respect. The parties have a shared goal to ensure the delivery of quality and effective services, to work collaboratively and constructively, in a spirit of goodwill, while acknowledging the requirement for accountable, responsible and effective expenditure of public monies.

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## 1. Agreement

### 1.1 Terms used in the Service Agreement

- (a) In the Service Agreement certain words and phrases have defined meanings. They are indicated by capital letters (eg Funding).
- (b) Where a defined word or phrase is used in one clause only, it is usually defined in that clause. Otherwise, the definitions are in clause 32.

### 1.2 Parts of the Service Agreement

- (a) If there is any ambiguity in or inconsistency between the various parts of the Service Agreement, the following order of precedence applies to resolve the ambiguity or inconsistency:
  - (i) additional conditions contained in Item 11 of the Service Agreement (Part C) - Specifications;
  - (ii) the applicable Service Agreement (Part B)- Specific Terms of Funding;
  - (iii) the Service Agreement (Part A) - Standard Terms of Funding; and
  - (iv) the applicable Service Agreement (Part C) - Specifications.

## WHAT WE MUST DO

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## 2. Our obligations

### 2.1 General

- (a) We must:
  - (i) provide Funding to You as outlined in the Service Agreement; and
  - (ii) process Funding payments in a timely, transparent, effective, efficient and accountable manner.

## 2.2 Our conduct

- (a) We agree to liaise and work collaboratively with You to:
  - (i) improve Our knowledge base of service delivery practice and outcomes;
  - (ii) ensure effective expenditure of public monies; and
  - (iii) monitor, review and evaluate the Services that are the subject of the Service Agreement.
- (b) We agree to provide You with current information, including relevant government policies, procedures and guidelines, applicable to the delivery of Services.
- (c) We are subject to the *Information Privacy Act 2009*.

## WHAT YOU MUST DO

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### 3. Services to be provided by You

#### 3.1 General

- (a) You must:
  - (i) provide the Services under the Service Agreement;
  - (ii) comply with the terms and conditions of the Service Agreement;
  - (iii) comply with any departmental policies notified to You in writing;
  - (iv) ensure that the Services commence by the Service Commencement Date and that the Milestones are met.
  - (v) promptly notify Us of any relevant matters that You reasonably think might affect Your ability to provide the Services or meet Your obligations under the Service Agreement;
  - (vi) comply with any relevant legislation and requirements of any Commonwealth, State, Territory or local authority in relation to the Funding and the Service Agreement; and
  - (vii) obtain and maintain all permits, registrations and licences required to be taken out in connection with Your performance of the Services under the Service Agreement.
- (b) You are responsible for ensuring compliance with Your obligations under the Service Agreement, despite the following:
  - (i) our involvement in assisting You to perform those obligations;
  - (ii) any payment by Us made to You under the Service Agreement;
  - (iii) an arrangement where the Services are provided under Your auspices; or
  - (iv) the subcontracting of any part of the Services.

## **3.2 Your conduct**

- (a) You must conduct the activities which comprise the Services diligently, effectively and in a professional manner, including:
  - (i) providing the Services without coercion and in a manner that promotes the privacy, dignity, self-esteem and independence of Service Users; and
  - (ii) providing Service Users with access to and assistance with the Services on the basis of need, but otherwise on a non-discriminatory basis unless a Service is provided to meet the needs of specific Service Users.
- (b) You will use Your best endeavours to collaborate and coordinate with other community organisations and government agencies within the service system in which Your organisation is operating with a view to providing the most effective Services for the overall benefit of Service Users.

## **3.3 Your dispute resolution and complaints**

- (a) You must have a dispute resolution procedure and use it for disputes relating to the Services and You must make the procedure available to Service Users.
- (b) You must keep and implement a document outlining Your procedure for dealing with complaints about the Services and make it available for viewing by any person on request.
- (c) You must advise the person who makes the complaint that they may complain to Us or a relevant complaints agency if they are not satisfied with the outcome of the complaint.
- (d) You must not, if a person makes a complaint to You about the Services, discontinue or reduce the Services or otherwise take recrimination because a person makes a complaint to You about the delivery of the Services. This does not preclude You from taking action as necessary to ensure safety and prevent harm to Service Users and others that may come to Your notice through the lodgement of the complaint.

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## **4. Your general obligations**

### **4.1 Liaison with the Departmental Officer**

You must:

- (a) communicate with and provide information to Us as We reasonably require; and
- (b) comply with all of Our reasonable requests, directions, and monitoring requirements to Our satisfaction.

### **4.2 Monitoring of the delivery of the Services**

- (a) Both parties agree to meet or make contact (electronic/telephonic/in person) for the purpose of monitoring the delivery of the Services under the terms of the Service Agreement. This may include visits to Your premises and access to records (wherever they are located) as agreed, for the purpose of monitoring the delivery of the Services by You under the Service Agreement.
- (b) The parties may agree at any time, to conduct a Review of the Services that are the subject of the Service Agreement to assist You to meet Your obligations under the Service Agreement. A Review may also be for the purpose of assessing service or program effectiveness or supporting improvements in the delivery of the Services.



- (c) You agree to make available all relevant information and documents required for the purpose of the Review and warrant that the information and documents disclosed to Us are true and correct to the best of Your knowledge.

### **4.3 Your employees**

All personnel that You employ in any capacity are Your responsibility. You will be responsible for payment of all wages and entitlements to Your employees.

### **4.4 Notifications**

#### **4.4.1 Changes**

You must notify Us of any changes to Your details in Item 2 of the Service Agreement (Part C) - Specifications in the way We require.

#### **4.4.2 Other funding received by You**

- (a) Where You receive other funds from either the Commonwealth Government, another State Government department or authority or any other entity providing funds for meeting the costs of the Services; or
- (b) Where You receive other funds from either the Commonwealth Government, another State Government department or authority for meeting the costs of other services or activities that are of a similar nature to the Services,

then You must notify Us of the amount and purpose of the additional funds received, unless We state otherwise.

#### **4.4.3 Notifying alleged misconduct**

- (a) If You are aware of an Allegation, then You must report the Allegation to a relevant authority such as the Queensland Police Service.
- (b) You must notify Us:
  - (i) when You become aware of any allegation of misconduct or dishonesty concerning You; or
  - (ii) when You have reported any allegation of misconduct or dishonesty to a relevant authority.
- (c) In this clause “Allegation” means an allegation which raises a reasonable suspicion of misconduct or dishonesty of a serious nature relating to the operation of the Services including an allegation of an offence liable to imprisonment against You or Your employees, volunteers, agents or subcontractors in connection with the provision of the Services.

#### **4.4.4 Notifying major incidents**

- (a) You must notify Us of any major incident within 1 Business Day, of You becoming aware of it.
- (b) In this clause, “major incident” includes:
  - (i) incidents which affect or are likely to affect the delivery of the Services;
  - (ii) incidents that may relate to the Services or the Service Users that requires an emergency response including fire, natural disaster, bomb threat, hostage situations, death or serious injury of any person or any criminal activity;
  - (iii) incidents that may relate to Service Users subject to interventions by Us, staff and carers; or
  - (iv) matters where significant media attention has occurred or is likely to occur.

#### **4.4.5 Notification of amendment**

- (a) You must notify Us of any amendment to Your Constitution within 20 Business Days of the amendment becoming effective.
- (b) We may cease the Funding to You where an amendment to Your Constitution:
  - (i) means that You are no longer eligible for the Funding; or
  - (ii) affects Your capacity to comply with the Service Agreement.

### **4.5 Aboriginal and Torres Strait Islander service delivery**

- (a) You agree to use Your best endeavours to ensure that the Services are culturally accessible to Aboriginal and/or Torres Strait Islander peoples recognising the diversity of needs of people, including specific needs, from urban, regional and remote areas.
- (b) Where the primary Target Group for the Services are Aboriginal and/or Torres Strait Islander people, You must provide evidence, upon request, that the relevant Aboriginal and/or Torres Strait Islander individuals, families, cultural custodians, clan and language groups, community organisations, communities and/or representatives deemed appropriate by the community, to which the Services are being provided to, are engaged in the design, delivery and evaluation of programs and the Services to ensure program design and delivery of the Services are appropriate to local community and cultural needs.

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## **5. Your reporting obligations**

### **5.1 Required reports**

You must submit to Us performance, financial and annual reports as stated in the Service Agreement.

### **5.2 Your additional reporting requirements**

- (a) In addition to any requirements to provide information or reports in the Service Agreement, We may request, by written notice, that You supply Us with information in any way concerning You, Your delivery of the Services or the carrying out of Your obligations under the Service Agreement.
- (b) You must submit to Us performance and financial reports more or less regularly than as stated in the Service Agreement if required by Us.
- (c) The notice that We give You pursuant to this clause need not be in any specified form but must state:
  - (i) the information We require; and
  - (ii) the reasonable time within which You are required to provide the information.

### **5.3 Standard of reporting**

All reports provided by You under the Service Agreement must be of a standard and provided in a way reasonably acceptable to Us and provided electronically via Our online reporting systems (or in another format if agreed by Us) as specified in the Service Agreement or as otherwise notified to You by Us from time to time.

## ABOUT THE FUNDING

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### 6. Payment of Funding

#### 6.1 Mechanism for payment

- (a) We will make the Funding available to You by instalments in accordance with the Service Agreement (Part C) - Specifications.
- (b) We may withhold any installment to You if You have not complied with any obligation under the Service Agreement, including Your obligation to submit reports as required under clauses 5.1 and 5.2.

#### 6.2 Variation to the amount and timing of Funding instalments

- (a) We may vary:
  - (i) the timing of instalments (and therefore the amount of Funding in each instalment) specified in the Service Agreement (Part C) - Specifications; and
  - (ii) the periods and dates stated in the Service Agreement.
- (b) We will give You 20 Business Days notice of any such variation.

#### 6.3 Applying for an emergency advance of Funding

- (a) In the case of an emergency, You may make a written request for an instalment of the Funding in advance.
- (b) We may request any additional information from You before deciding whether to advance an instalment of the Funding to You under this clause.

#### 6.4 Future Funding

You acknowledge and agree that We are under no obligation to provide any other Funding to You beyond the expiration or termination of the Service Agreement.

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## 7. Expenditure of Funding

### 7.1 Your use of the Funding

- (a) You must use the Funding only:
  - (i) in accordance with the Funding Details and for the provision of the Services as specified in the Service Agreement;
  - (ii) in accordance with the requirements of the Governing Act under which the Funding is provided; and
  - (iii) within the time period stipulated in the Service Agreement for expenditure of the Funding.
- (b) You must not use the Funding, without Our prior written approval, to:
  - (i) provide security for any purpose;
  - (ii) make a loan or gift for any purpose;

- (iii) pay sitting fees to directors, management committee members, members of Your organisation or any other person;
  - (iv) make payments that are inconsistent with the Services; or
  - (v) relieve cash flow problems in the delivery of Your other services or carry out activities funded from other sources.
- (c) If You use the Funding for a purpose not approved by Us, We may serve You with a notice for repayment of the Funding that has been spent, used or applied without Our approval. This amount will be a debt due and owing to Us.
  - (d) If You use the Funding to provide cash cheques or cash advances then You must keep a record of the date, amount, recipient and purpose of any cash cheque that You issue or cash advance that You make.
  - (e) You must hold all Funding paid to You by Us, under the Service Agreement, in an account at an Approved Financial Institution.
  - (f) Where You receive Funding to employ staff and are bound by a registered industrial instrument requiring the payment of termination or redundancy payments in appropriate circumstances, the Funding may only be used for termination or redundancy payments if:
    - (i) the cessation of Funding is due to circumstances stated in clause 15.2; or
    - (ii) You have obtained Our prior written approval.
  - (g) The Funding provided to You by Us may be used to obtain and maintain permits, registrations and licenses required to be taken out in connection with Your performance of the Services under the Service Agreement.

## 7.2 Earnings

You must use and deal with any money earned by You from:

- (a) the operation of the Services (for example fees, rent, board, service charges); and
- (b) interest on the Funding,

as if the money earned was part of the Funding.

## 7.3 Unspent amounts

Where You submit a financial report in accordance with clause 5.1 which shows that a substantial portion of the Funding for the previous period is unspent by You, then We may:

- (a) authorise You to retain the unspent Funding and, if We so authorise, to expend some or all of that Funding for an approved purpose;
- (b) adjust a payment or instalment of the Funding to take account of the unspent Funding;
- (c) agree to a carryover of unspent Funding from one reporting period to the next where the Funding is to be used for the same purpose and when agreed by Us in writing; or
- (d) require You to refund the unspent Funding.

## 7.4 Remaining Funds held by You

If, at the expiration or termination of the Service Agreement, there remains an amount of Funding that has not been spent by You, then We may:

- (a) require You to refund the unspent Funding within 20 Business Days of the expiration or termination of the Service Agreement; or
- (b) authorise You to retain the unspent Funding and, if We so authorise, to expend some or all of that Funding for an approved purpose on terms and conditions agreed in writing by Us.

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## 8. Financial accountability

### 8.1 Your statements

- (a) Unless We notify otherwise, You must provide Us with the following documents:
  - (i) where applicable, a list of assets prepared in accordance with clause 12.3;
  - (ii) a copy of the financial statements which You are required to lodge under Your incorporating legislation;
  - (iii) Financial Acquittal Reports in the format and timing specified in Your Service Agreement (Part C) – Specifications; and
  - (iv) any additional statements as specified in Your Service Agreement (Part B) - Specific Terms of Funding and/or Your Service Agreement (Part C) - Specifications.
- (b) You acknowledge that it is Our policy that if You have not submitted the financial statements required in this clause for previously granted funding, You may be excluded from consideration for subsequent funding.

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## 9. Varying the Services or Funding

### 9.1 Variation to the Services or Funding

The parties acknowledge that:

- (a) the Service Agreement may be varied by an authorised representative of both parties agreeing to the variation in writing;
- (b) a variation which reduces the scope of the Services may result in a reduction of the amount of Funding provided to You under the Service Agreement; or
- (c) a variation which increases the scope of the Services may result in an increase to the amount of Funding provided to You under the Service Agreement.

### 9.2 Increase in Funding

- (a) We may, in Our absolute discretion, increase Funding to You from time to time without a variation to the Service Agreement.
- (b) We may make an Indexation increase of the Funding to You from time to time, without a variation to the Service Agreement.
- (c) For the purposes of this clause “Indexation” means a percentage increase of Funding as determined by Us.

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## 10. GST

### 10.1 Amounts specified exclusive of GST

- (a) The amounts of Funding specified in the Service Agreement (Part C) – Specifications are exclusive of GST.
- (b) We must pay You the GST Amount at the same time as paying You the Funding.
- (c) You hereby certify that the information provided pursuant to the Service Agreement presents fairly the financial position and the associated financial returns of the Services.

### 10.2 Adjustment

If, for any reason, including:

- (a) any amendment to the GST Legislation;
- (b) the issue of a ruling or advice by the Commissioner of Taxation;
- (c) a refund in respect of a supply made under the Service Agreement; or
- (d) a decision of any tribunal or court.

the amount of GST paid by Us differs from the amount of GST paid or payable by You to the Commissioner of Taxation, then We must issue an appropriate adjustment note and any difference must be paid to or by Us as the case may be.

### 10.3 Exchange of information

The parties agree to exchange such information as is necessary to enable each party to accurately assess its rights and obligations under this clause.

### 10.4 Recipient Created Tax Invoice

If you are registered for GST, You agree to allow Us to issue You with a Recipient Created Tax Invoice (RCTI) in respect of GST applicable to advances of the Funding. The following requirements will apply for the duration of the Service Agreement:

- (a) We may issue You with a RCTI in respect of the Taxable Supply;
- (b) You must not issue tax invoices in respect of the Taxable Supplies for which We issue RCTIs;
- (c) You acknowledge that You are registered for GST and agree to notify Us if You cease to be registered or if You cease to satisfy any of the requirements relating to RCTI's; and
- (d) We acknowledge that We are registered for GST and agree to notify You if We cease to be registered or if We cease to satisfy any of the requirements relating to RCTI's.

By fulfilling all these conditions We will issue a RCTI upon each payment made to You for the Services outlined in the Service Agreement for the duration of the term of the Service Agreement.

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## 11. Your acknowledgment of the Funding

- (a) You must ensure that the Funding received from Us is acknowledged in Your annual report (if You produce an annual report) and promotional materials where the Services and any related projects are being promoted that have been funded wholly or in part by Us during the Term of the Service Agreement.
- (b) You must also comply with any additional requirements regarding acknowledgment of the Funding stated in the Service Agreement (Part B) - Specific Terms of Funding or the Service Agreement (Part C) - Specifications.
- (c) Any acknowledgment in promotional material about the Services must use an acknowledgment logo which must be obtained from Us.
- (d) You must invite the Minister to attend and speak at significant public events, including but not limited to launches, openings, conferences and other ceremonies related to the Services.

## ASSETS

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### 12. Assets

#### 12.1 Ownership of assets

- (a) You must be the legal and beneficial owner of any asset purchased with the Funding.

#### 12.2 Your obligations regarding assets

You must:

- (a) only use the asset for purposes connected with the Services outlined in the Service Agreement;
- (b) keep the receipts evidencing the expenditure of the Funding to purchase the asset;
- (c) not encumber, use as a security, or deal with or use the asset other than in accordance with the Service Agreement without Our prior written approval;
- (d) hold the asset securely and put in place reasonable safeguards against theft, loss, damage or unauthorised use;
- (e) maintain the asset in good working order;
- (f) if required by Us, maintain current insurance against risk, loss or damage over the asset for the full insurable value of the asset;
- (g) if required, maintain registration and licensing of the asset;
- (h) comply with any reasonable request from Us concerning the asset including registering Our interest in the asset if required by Us;
- (i) be fully responsible for, and bear all risks relating to, the purchase, use or disposal of the asset; and
- (j) maintain an asset register in the format as specified in clause 12.3.

## 12.3 Register of assets

- (a) Where We have given written approval for You to purchase an asset either wholly or partially with the Funding, and that asset is worth more than \$5,000 and has a useful life greater than one year, You must record in a register the following information for each asset:
  - (i) asset description, including model and engine number (if a vehicle);
  - (ii) date of purchase and the name of the supplier;
  - (iii) purchase/acquisition price;
  - (iv) depreciation rate (prime cost or diminishing value) as provided under relevant sections of the *Income Tax Assessment Act 1936* and the *Income Tax Assessment Act 1997*;
  - (v) the effective/useful life of the asset; and
  - (vi) written down/book value.
- (b) Assets to be included in the register exclude buildings (either significant extensions or whole buildings) or land.

## 12.4 Sale or disposal

Unless notified by Us otherwise in the Service Agreement, if You no longer require an asset, for whatever reason (including redundancy of the asset, dilapidation or the need for upgrading) You will:

- (a) use Your best endeavours to achieve fair market value upon sale of the asset;
- (b) apply sale proceeds only for the Services.

# SUSPENSION, REDUCTION AND TERMINATION OF FUNDING

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## 13. Suspension

### 13.1 Suspension of Funding

- (a) If, in Our reasonable opinion, You:
  - (i) have failed to provide the Services or otherwise comply with the Service Agreement;
  - (ii) have expended the Funding otherwise than in accordance with clause 7;
  - (iii) have changed any part of the Services and did not obtain Our prior approval for the change;
  - (iv) have not provided any information or reports as required by the Service Agreement or requested by Us; or
  - (v) have failed to comply with any relevant legislation, including the Governing Act,then We may suspend payment of the Funding, or part thereof, to You under the Service Agreement for a period of time and on specified conditions as notified by Us.
- (b) If required under the Governing Act, We will only suspend payment of the Funding after following the show cause process under clause 14.



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## 14. Show cause process

### 14.1 Show cause process

If We suspect on reasonable grounds that You are not complying with or have not complied with a term of the Service Agreement or the relevant provisions of any relevant legislation, including the Governing Act, or if any of the grounds in 13.1(a) apply, We may, in Our absolute discretion and in addition to any other remedy which may be available to Us, send to You a show cause notice.

- (a) Under the show cause process, We must give You a notice (a “Show Cause Notice”) stating the following:
  - (i) the action (the “Proposed Action”) We propose taking under clauses 13.1 or 15.1;
  - (ii) the grounds for the Proposed Action;
  - (iii) an outline of the facts and circumstances forming the basis for the grounds; and
  - (iv) an invitation to You to show within a stated period (the “Show Cause Period”) why the Proposed Action should not be taken.
- (b) The Show Cause Period must be a period ending at least 7 days, or the period stated in the Governing Act, after the Show Cause Notice is given to You.
- (c) During the show cause period You may make written representations to Us, stating why the Proposed Action should not be taken.
- (d) We must consider all written representations (the “Accepted Representations”) made under this clause 14.
- (e) If, after considering the Accepted Representations for the Show Cause Notice, We no longer believe the grounds exist to take the Proposed Action, We:
  - (i) will not take further action about the Show Cause Notice; and
  - (ii) will, as soon as practicable, give notice to You that no further action is to be taken about the Show Cause Notice.
- (f) We may suspend payment of Funding under clause 13.1 or terminate the Service Agreement under clause 15.1 and notify You in writing of Our decision if:
  - (i) after considering the Accepted Representation for the Show Cause Notice, We still believe the grounds exist to take action to suspend or stop assistance, and We believe the action is warranted; or
  - (ii) there are no Accepted Representations made by You in relation to the Show Cause Notice.

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## 15. Termination

### 15.1 Breach of the Service Agreement

We may terminate the Service Agreement, by notice to You, after following the show cause process in clause 14, if:

- (a) We are satisfied that any of the provisions of the Service Agreement are not being or have not been complied with by You;
- (b) an amendment to Your Constitution or operations means that You are no longer eligible for the Funding or You are no longer able to comply with the Service Agreement;

- (c) You are in breach of any relevant legislation, including the Governing Act;
- (d) You become insolvent;
- (e) You become subject to any form of external administration;
- (f) You enter into an arrangement with Your creditors or otherwise take advantage of any laws in force in connection with insolvent debtors; or
- (g) You are wound up, voluntarily or involuntarily.

## 15.2 Right to terminate

- (a) Where We:
  - (i) are required to cease the Funding to You because of changes to the State budget or any guidelines or policies of the State or Commonwealth Government; or
  - (ii) determine that the needs of the Service Users and the Target Group no longer justifies the Funding or that other persons are in greater need than the Service Users and the Target Group

even though You are not in default, We may exercise Our right, subject to the provisions of the Governing Act, to terminate the Service Agreement at any time by giving You a minimum of three months notice.
- (b) You may terminate the Service Agreement upon a minimum of three months notice to Us.
- (c) A notice to terminate under clause 15.2(a) or (b) must contain reasons for the decision to terminate.
- (d) Where We terminate the Service Agreement under clause 15.2(a) We will consider, in Our absolute discretion, the payment of reasonable exit costs, including but not limited to the payment of transitional arrangement costs for Service Users.
- (e) Where funding under another agreement with You has been terminated by Us, We may terminate the Service Agreement, without following the show cause process in clause 14, unless required under the Governing Act.

## 15.3 Consequences of termination

- (a) If the Service Agreement is terminated under clauses 15.1 or 15.2 , You must:
  - (i) comply with the requirements specified in any notice, and any directions regarding the disposal of assets Funded under the Service Agreement;
  - (ii) do everything possible to mitigate all losses, costs, and expenses that You may incur as a result of the termination;
  - (iii) comply with the Exit Strategy for the relevant Service Agreement;
  - (iv) repay to Us any part of the Funding that We require to be repaid as a result of the termination, which will be a debt due and owing to Us.
- (b) If We notify You under this clause 15 that We are terminating the Service Agreement, the Funding provided under the Service Agreement will terminate immediately and any unexpended part of the Funding must be returned to Us in accordance with the provisions of the relevant Service Agreement.
- (c) We are not liable to pay You compensation for any loss of profit or benefits that You would have received had the termination not occurred.
- (d) This clause does not limit any other rights or remedies that may be available to Us.

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## 16. Reducing Funding

### 16.1 Reducing Funding

- (a) Where We:
  - (i) are required to cease the Funding to You because of changes to the State budget or any guidelines or policies of the State or Commonwealth government; or
  - (ii) determine that the needs of the Service Users and the Target Group no longer justifies the Funding or that other persons are in greater need than the Service Users and the Target Group,even though You are not in default, We may reduce the Funding at any time, subject to the Governing Act, by giving You reasonable written notice.
- (b) Where the Funding is reduced under this clause 16.1, then We must review the scope of the Services with You.
- (c) If We reduce the Funding under this clause 16.1, We are only liable to You for:
  - (i) instalments of the Funding that were due to You up to the date of reduction; and
  - (ii) reasonable costs You incur as a direct result of the reduction, subject to Our reasonable approval.
- (d) If We reduce the Funding under this clause 16.1, then You must:
  - (i) immediately stop carrying out Your obligations in relation to any Services, that may have been removed by the reduction;
  - (ii) immediately do everything You can to mitigate and lessen all losses, costs and expenses that You may suffer in relation to the reduction;
  - (iii) repay to Us any part of the Funding that We require to be repaid as a result of the reduction, which will be a debt due and owing to Us;
  - (iv) provide written evidence to satisfy Us of the amounts claimed as reasonable costs; and
  - (v) comply with any reasonable request made by Us in relation to the reduction of the Funding.
- (e) We are not liable to pay You compensation for any loss of profit or benefits that You would have received had the reduction not occurred.
- (f) This clause does not limit any other rights or remedies that may be available to Us.

## PERFORMANCE REVIEW AND AUDIT ACCESS

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### 17. Performance Review and audit access

#### 17.1 Access to Your premises and records

- (a) To ensure You are meeting Your obligations under the Service Agreement, We may notify You that a Departmental Officer requires access to:
  - (i) the premises where the Services are provided and/or the premises from which You conduct Your business; and

- (ii) copies of records held or created by You relating to the provision of the Services by You.
- (b) The notice referred to in clause 17.1(a) need not be in any particular form. In giving You notification under this clause, We will explain to You why access is required. You must comply with any notice given to You under this clause.
- (c) When accessing premises and/or records in accordance with a notification under clause 17.1(a), We will use Our best endeavours to minimise interference to Your employees and the conduct of the Services.

## **17.2 Performance Review**

- (a) To ensure You are meeting Your obligations under the Service Agreement We may conduct a Performance Review of any aspect of the Services that are the subject of the Service Agreement and where appropriate will seek to involve You in any Performance Review that We intend to conduct.
- (b) When conducting a Performance Review under clause 17.2(a), We will:
  - (i) notify You in writing
  - (ii) use Our best endeavours to minimise interference to Your employees and the conduct of the Services.
- (c) You agree to co-operate with Us in the conduct of any review that We undertake in accordance with this clause including, without limitation, giving Our officers or contractors conducting the review full and free access to:
  - (i) Your employees;
  - (ii) Your premises or the premises (within Your control) where the Services are provided; and
  - (iii) Your records, documents and papers that relate directly or indirectly to the conduct of the Services.

## **17.3 Nomination of auditors**

We may nominate auditors to conduct financial and compliance audits of Your organisation.

## **17.4 Access to Your employees, premises and records**

You will give Our nominated auditors, full and free access to:

- (a) Your employees;
- (b) the premises where the Services are provided and/or the premises from which You conduct Your business; and
- (c) Your accounts, records, documents and papers that relate directly or indirectly to the receipt, expenditure, or payment of the Funding or the conduct of the Services.

## **17.5 Prior notice**

In carrying out Our powers under this clause 17, We will, where possible, give reasonable notice.

## **17.6 Assistance**

You must give to Our nominated auditors reasonable assistance required to:

- (a) meet with Your employees;

- (b) inspect the performance of the Services; and
- (c) locate and make copies of any of Your accounts, records, documents and papers that relate directly or indirectly to the receipt, expenditure, or payment of the Funding or the conduct of the Services.

### **17.7 Minimum interference**

When conducting audits under this clause 17, Our nominated auditors will use their best endeavours to minimise interference to Your employees and the conduct of the Services.

### **17.8 Other information to be provided**

On receipt of reasonable written notice either from Us or from Our nominated auditors, You must provide any information relevant to Your obligations in the Service Agreement required by Us for Our review and audit purposes.

### **17.9 Subcontracts**

You must ensure that where the Services are provided under a subcontract, any subcontract contains equivalent clauses permitting Us and Our nominated auditors to have access to the employees, premises and accounts, records, documents and papers of the subcontractor to the extent provided for in this clause 17.

### **17.10 Services provided under Your auspices**

You must ensure, that where the Services are provided under Your auspices, that the entity providing the Services under Your auspices will permit Us and Our nominated auditors to have access to its employees, premises and accounts, records, documents, papers to the extent provided for in this clause 17.

### **17.11 Application of this clause**

Our rights under this clause 17 are in addition to other similar rights under the Service Agreement.

## **MATERIAL AND INFORMATION**

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### **18. Intellectual Property Rights**

#### **18.1 Ownership of Intellectual Property Rights**

- (a) Intellectual Property Rights in Your Material vest in You.
- (b) Intellectual Property Rights in Our Material vest in Us.

#### **18.2 Licence of Intellectual Property Rights to the State**

- (a) You grant to the State of Queensland a perpetual, irrevocable, royalty-free, world wide and non-exclusive licence (including a right to sub-licence) to use, communicate, reproduce, publish, adapt and modify Your Material and any Existing Material.
- (b) We licence You to use Our Material (including copying it and supplying it to others) but only for the purposes of performing the Services under the Service Agreement.

### **18.3 Documentation**

If requested by Us, You will sign, execute, or otherwise complete any document that may be necessary or desirable to give effect to this clause 18.

### **18.4 Use of Intellectual Property Rights**

- (a) You warrant that You are entitled, or will be entitled at the required time, to deal with the Intellectual Property Rights in Your Material and any Existing Material in the manner provided for in this clause 18.
- (b) We warrant that We are entitled, or will be entitled at the required time, to deal with the Intellectual Property Rights in Our Material in the manner provided for in this clause 18.

### **18.5 Protection of Intellectual Property and Moral Rights**

- (a) You agree to take all reasonable steps to protect the Intellectual Property Rights in Your Material and to comply with the warranties in clause 18.4(a).
- (b) You will ensure that in providing the Services and complying with the Service Agreement, You (including Your employees, agents, volunteers and subcontractors) do not:
  - (i) infringe any person's Intellectual Property Rights or an individual's Moral Rights; or
  - (ii) authorise the infringement of any such rights.

### **18.6 Aboriginal and Torres Strait Islander cultural sensitivity**

In addition to clause 18.5, You agree that in delivering the Services You will:

- (a) respect the cultural and spiritual significance of Aboriginal and/or Torres Strait Islander people;
- (b) refrain from incorporating any elements derived from Aboriginal and/or Torres Strait Islander cultural heritage into any material created under the Service Agreement without the informed and written consent of the cultural custodians, clan or language groups and community representatives deemed acceptable by each community; and
- (c) inform Us in writing about any elements derived from Indigenous cultural heritage which You incorporate into any material which You create and deliver to Us under the Service Agreement, and of any consent which You have obtained relating to the use of such elements.

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## **19. Disclosure of Confidential Information**

### **19.1 Approval to disclose**

- (a) You must not disclose Confidential Information belonging to Us except where You have obtained Our prior written approval (which may be subject to conditions) or where required by law.
- (b) We reserve the right, in Our absolute discretion and without any liability to account to You or any third person, to make available, disclose, and allow the disclosure of, to the extent that it is not prohibited or regulated by any legislation, any information received from You or otherwise relating to the Service Agreement to:
  - (i) any Commonwealth department, Queensland Government department, agency, authority, or Minister; and

- (ii) any third person, including any court, tribunal, governmental committee or other person within government, where such disclosure would be permitted or required by law, or otherwise would be consistent with established government policies, procedures or protocols or for public accountability purposes to the extent required in those circumstances.
- (c) We may give information about You to:
  - (i) an entity that provides other funding or other assistance to You; or
  - (ii) another entity if We consider the entity has an interest in the proper and efficient delivery of Services by You.

## 19.2 Your undertaking

- (a) You must make every reasonable effort to ensure that Your employees, volunteers, agents and subcontractors are aware of and comply with the obligations of confidentiality in this clause 19.
- (b) We may, at any time, require You to give, and for You to arrange for Your subcontractors, employees, and volunteers engaged in the performance of the Services to give, written undertakings in a form reasonably required by Us relating to the non-disclosure of Confidential Information under this clause 19.
- (c) You must notify Us immediately if You know or suspect that Confidential Information has been disclosed without Our authorisation.

## 19.3 Department's undertaking

We will make every reasonable effort to ensure that Our employees, volunteers, agents and subcontractors are aware of and comply with the obligations of confidentiality in this clause 19.

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## 20. Protection of Personal Information

### 20.1 Your privacy obligations

If You collect or have access to Personal Information for the purposes of the Service Agreement, You must:

- (a) comply with Parts 1 and 3 of Chapter 2 of the *Information Privacy Act 2009* in relation to the discharge of Your obligations under the Service Agreement as if You were Us;
- (b) not use Personal Information other than for the purposes of the Service Agreement, unless required or authorised by law;
- (c) not disclose Personal Information without Our prior written consent, unless required or authorised by law;
- (d) not transfer Personal Information outside of Australia without Our prior written consent;
- (e) ensure that access to Personal Information is restricted to those of Your employees, volunteer workers and officers who require access in order to perform their duties;
- (f) ensure that Your employees, volunteer workers and officers do not access, use or disclose Personal Information other than in the performance of their duties;
- (g) ensure that Your contractors and Your auspices who have access to Personal Information comply with the obligations the same as those imposed on You under this clause;
- (h) fully co-operate with Us to enable Us to respond to applications for access to, or amendment of a document containing an individual's Personal Information and to privacy complaints; and
- (i) comply with such other privacy and security measures as We reasonably advise You in writing from time to time.

## 20.2 Privacy deed

On Our request, You must obtain from Your employees, volunteer workers, officers and contractors engaged for the purposes of the Service Agreement, an executed deed of privacy in a form acceptable to Us.

## 20.3 Your Privacy Notice

- (a) If You collect, record or otherwise deal with Personal Information, You must make available a copy of Your Privacy Notice to the person giving You the Personal Information.
- (b) Your Privacy Notice must be of a standard reasonably acceptable to Us and must state that information You collect may be provided to Us to ensure that You are providing quality Services.

## 20.4 You will notify Us

- (a) You must make every reasonable effort to notify Us immediately upon becoming aware of any breach of this clause 20.
- (b) You must notify Us immediately in the event that You become aware that disclosure of Personal Information, in relation to a child/ren subject to the *Child Protection Act 1999* or the *Juvenile Justice Act 1992*, is made or may be required by law.

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## 21. Recordkeeping

### 21.1 Your records and files

- (a) You must store all records and files regarding the provision of the Services in secure storage for at least seven years from the expiry or termination of the Service Agreement.
- (b) You must comply with any additional recordkeeping obligations set out in the Service Agreement.

### 21.2 Our Material

- (a) You must ensure that any of Our Material is only used, copied, supplied or reproduced for the purposes of providing the Services.
- (b) On the expiration or termination of the Service Agreement, You must return to Us all of Our Material that We require You to return.

## DEALING WITH RISK

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## 22. Insurance and Indemnity

### 22.1 You must obtain insurance

- (a) Unless stated otherwise in the Service Agreement, You must effect and maintain the following insurances for the term of the Service Agreement:
  - (i) public liability insurance policy for a sum of not less than \$10 million for any one event in respect of accidental death or of accidental bodily injury to persons, or accidental damage to property, arising out of or in the course of performing the Services under the Service Agreement; and
  - (ii) any other insurance required by Us.



- (b) The public liability insurance policy must be effected with an insurer authorised by the Commonwealth Superannuation and Insurance Commission to operate in Australia
- (c) Upon Our request, You must provide Us with a copy of any insurance policy obtained in accordance with this clause 22.1 and a certificate of currency.

## 22.2 Indemnity

You release, discharge, indemnify and keep indemnified Us, Our officers, employees and agents from and against any Claim that may be made or brought by any person against Us in connection with:

- (a) You failing to observe or perform any of Your obligations under the Service Agreement;
- (b) any negligent or unlawful act or omission of You, Your officers, employees, volunteer workers or subcontractors; and
- (c) contravention of any legislative requirement by You, Your officers, employees, volunteer workers or subcontractors,

but Your liability to provide indemnity under this clause will be reduced proportionally to the extent that an act or omission of Ours contributed to the Claim.

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## 23. Conflict of Interest

### 23.1 Warranty

You warrant that, to the best of Your knowledge and belief, after making diligent inquiries at the date of signing the Service Agreement, no Conflict of Interest exists in the performance of Your obligations under the Service Agreement.

### 23.2 Resolution of Conflict of Interest

If, during the Term, a Conflict of Interest arises, or appears likely to arise, You undertake to notify Us immediately in writing and to take such steps to resolve or otherwise deal with the conflict to Our satisfaction.

### 23.3 Policy

You must keep and implement a policy about Conflicts of Interest of Your executive officers, employees and volunteers. The policy must include guiding principles and procedures for identifying, declaring and dealing with Conflicts of Interest.

### 23.4 Record

You must keep a record of each instance of a Conflict of Interest arising in the provision of the Services and how the matter was dealt with.

### 23.5 Definition

In this clause 23 “**Conflict of Interest**” means having an interest (whether personal, financial or otherwise) which conflicts or which may reasonably be perceived as conflicting with Your ability to perform Your obligations under the Service Agreement fairly and objectively

## OTHER LEGAL MATTERS

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### 24. Subcontracting Services under the Service Agreement

#### 24.1 Consent for subcontracting

- (a) You must not, without Our prior written consent, subcontract the whole, or any part, of Your obligations under the Service Agreement. We will not unreasonably withhold consent.
- (b) We may impose any terms and conditions We think fit when giving approval under this clause 24.1.

#### 24.2 Your obligations

- (a) You are responsible for ensuring the suitability of a Subcontractor and for ensuring that any part of the Services performed by the subcontractor meets the requirements of the Service Agreement.
- (b) Our consent to any subcontract will not relieve You from any liability or obligation under the Service Agreement.
- (c) You remain liable under the Service Agreement for the acts or omissions of any past Subcontractors as if they were current Subcontractors.
- (d) You must ensure that:
  - (i) any subcontract entered into is consistent with the Service Agreement; and
  - (ii) all subcontractors comply with their sub-contracts and the terms of the Service Agreement as if they were a party to it.

#### 24.3 The Department's rights

We may revoke the approval of a Subcontractor on any reasonable ground at any time.

#### 24.4 Procedure

Upon receipt of a written notice from Us revoking Our approval of a Subcontractor, You will:

- (a) immediately replace the Subcontractor; or
- (b) as soon as practicable, cease using that Subcontractor to perform the Services,

and You agree to release, indemnify and keep indemnified Us for any loss or damage suffered by You, or for any Claim made by You or any other person against Us, whether in respect of Your contract with a Subcontractor or otherwise, arising out of Your compliance with this clause.

#### 24.5 Definition

In this clause 24 a reference to "Subcontractor" includes a reference to an agent, authorised representative or auspice.

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## 25. Governing law

The Service Agreement will be governed by and construed in accordance with the laws of Queensland and the parties submit to the non-exclusive jurisdiction of the courts of Queensland.

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## 26. Compliance

### 26.1 Right to information

The parties acknowledge that all documents held by Us are subject to the *Right to Information Act 2009*.

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## 27. Waiver

- (a) A waiver by a party of any breach of a provision of the Service Agreement, including a failure to enforce an obligation, is not, and will not be deemed to be, a waiver of any other or subsequent breach.
- (b) Any waiver by Us to You must be in writing and signed by the Chief Executive or an authorised delegate.

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## 28. Dispute resolution

### 28.1 Dispute resolution under the Service Agreement

- (a) Where You dispute an administrative decision made by Us under the Service Agreement both parties agree to address the dispute using this dispute resolution process.
- (b) Where You dispute a decision made by Us under a provision in the Service Agreement, You may elect to seek a review of the decision using the review process in clause 28.2.
- (c) Both parties agree to initiate discussions with the other party to resolve concerns prior to seeking a review of the decision.
- (d) Whether or not a dispute exists, each party must continue to perform its obligations under the Service Agreement.

### 28.2 Review of decision

- (a) This review process is not intended as a mechanism for suspending or ceasing the Funding to You.
- (b) Within 20 Business Days after You have been given notice in writing of Our decision in relation to the matter under dispute You can seek a review of the decision by writing to the relevant Departmental Officer.
- (c) Your request for a review of the decision must include:
  - (i) details about the decision to be reviewed;
  - (ii) a written statement outlining Your reasons why a decision should be reviewed;
  - (iii) any evidence to substantiate the request for a review; and
  - (iv) the signature of an accountable officer of Yours.
- (d) Following receipt of a request for a review of a decision from You, We may appoint a reviewing officer. The reviewing officer will be a Department staff member, who is independent from the situation that gave rise to the dispute.
- (e) You will be provided written notification of the outcome of the review within 20 Business Days of Your written request for a review.

- (f) If You do not accept the outcome of the review, You may give written notification to the relevant Departmental Officer:
  - (i) within 10 Business Days of receipt of the review outcomes;
  - (ii) providing a statement for further consideration including Your reasons why further consideration is required and any evidence to substantiate the request for further consideration;
  - (iii) under the signature of an accountable officer of Yours.
- (g) The matter will be referred to the relevant appointed officer for final decision. The appointed officer will be a Departmental staff member who is independent from the situation that gave rise to the dispute and who is senior to the reviewing officer.
- (h) You will be provided written notification of the outcome of the relevant appointed officer's final decision.

### **28.3 Exceptions to review**

- (a) A party does not need to follow the review procedures set out in clauses 28.1 or 28.2 if they are seeking urgent interlocutory relief from a court.
- (b) You cannot seek a review under clauses 28.1 or 28.2 in relation to action We take under clauses 13, 14, 15 or 16, or if the disputed decision has been made under the Governing Act.
- (c) Use of the review process in clause 28.2 does not preclude other action being taken under a Governing Act or action taken in regard to a suspected breach of the Service Agreement.

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## **29. Notices, requests and other communications**

### **29.1 Address for notices**

Any notice, request, or other communication to be given or served under the Service Agreement must be in writing and dealt with as follows:

- (a) if given by You to Us, addressed and forwarded to Us to the attention of the Departmental Officer at the address indicated in the Service Agreement, or as otherwise notified in writing by Us; or
- (b) if given by Us to You, forwarded to Your Contact Officer at the address indicated in the Service Agreement (Part C) – Specifications, or otherwise forwarded to You at Your current address.

### **29.2 Method of delivery**

- (a) Any such notice, request, or other communication will be delivered by hand, sent by post, facsimile or electronic mail to the address of the party to which it is sent.
- (b) The parties consent to providing information required under the Service Agreement by way of electronic communication.

### **29.3 Receipt of notice**

- (a) Any notice, request, or other communication will be deemed to be received:
  - (i) if delivered by hand, on the date of delivery;
  - (ii) if sent by post within Australia, upon the expiry of two Business Days after the date on which it was sent;

- (iii) if transmitted by facsimile, upon receipt by the sender of an acknowledgment that the communication has been properly transmitted to the recipient; and
  - (iv) if transmitted by electronic mail, upon receipt by the sender of an acknowledgment that the communication has been properly transmitted to the recipient.
- (b) A notice to be given or served pursuant to clauses 13, 14, 15, or 16 must not be sent via electronic mail.

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## **30. General Provisions**

### **30.1 Act not limited**

If You are receiving the Funding under one or more of the *Community Services Act 2007*, the *Family Services Act 1987*, the *Disability Services Act 2006* and the *Housing Act 2003*, nothing in the Service Agreement limits:

- (a) the information or material You may be required to provide under the Governing Act;
- (b) Our, the Chief Executive's or any other person's rights under the Governing Act; or
- (c) Your or any other person's obligations under the Governing Act.

### **30.2 Entire agreement**

The terms of the agreement between You and Us are those set out in the Service Agreement, and no written or oral agreement, arrangement or understanding made or entered into prior to the Service Commencement Date specified in the Service Agreement will in any way be read or incorporated into the Service Agreement.

### **30.3 No assignment**

You may not assign the Service Agreement or any of the benefits or obligations under the Service Agreement to another party without Our prior written consent.

### **30.4 Relationship**

No agency or legal partnership exists between You and Us and You must not represent Yourself or allow Yourself to be represented as a partner, employee or agent of Us.

### **30.5 Time**

Any act, matter or thing required under the Service Agreement to be done on a day which is not a Business Day must be done on the next succeeding Business Day.

### **30.6 Survival**

The following clauses of this Service Agreement (Part A) – Standard Terms of Funding will survive termination or expiration of the Service Agreement:

- (a) clause 5 – Your reporting obligations;
- (b) clause 7 – Expenditure of Funding;
- (c) clause 18 – Intellectual Property Rights;
- (d) clause 19 – Disclosure of Confidential Information;

- (e) clause 20 – Protection of Personal Information;
- (f) clause 21 – Recordkeeping;
- (g) clause 22 – Insurance and Indemnity; and
- (h) clause 24 – Subcontracting Services under the Service Agreement.

### **30.7 Further Assurances**

The parties agree to do any act and sign any document required to give effect to any provision in the Service Agreement.

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## **31. Intervening Event**

- (a) You must notify Us if You are unable to carry out wholly or in part, any of Your obligations under the Service Agreement due to natural disasters, strikes, lockouts, or other industrial disturbances, acts of terror, unavoidable accident, fire, flood, or explosion (an "Intervening Event").
- (b) Your notice to Us must provide the extent to which You expect to be unable to perform or will be delayed in performing the Services.
- (c) You must take all reasonable steps to reduce the effect of the Intervening Event. We acknowledge that the Services may be suspended to the extent that they are affected by the Intervening Event.
- (d) Once the Intervening Event has ended, You must as soon as possible recommence the Services and where possible, carry out all acts which You would have been liable to carry out had the Intervening Event not occurred.

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## 32. Definitions and Interpretation

### 32.1 Definitions

In the Service Agreement including all parts, unless the contrary intention appears, a word with a defined meaning has the meaning given to that term as follows:

**"Approved Financial Institution"** means a financial institution registered in Australia and operating as a bank, credit union or building society;

**"Business Day"** means any day other than a Saturday, Sunday or public holiday in Queensland;

**"Claim"** includes any claim, action, proceeding, demand, liability, obligation, costs (including legal costs), losses, damages and expenses, including those arising out of the terms of any settlement;

**"Confidential Information"** means information that is by its nature confidential, and:

(a) when We receive it is marked as confidential in nature;

but does not include information which:

(b) is or becomes public knowledge other than by:

(i) breach of the Service Agreement; or

(ii) any other unlawful means;

(c) is in the possession of either of Us without restriction in relation to disclosure before the date of receipt from the other;

(d) has been independently developed or acquired by either of the parties;

(e) is disclosed by compulsion of law, including during testimony before any judicial or quasi-judicial court or tribunal, under court subpoena, parliamentary order or as part of discovery during legal proceedings; or

(f) is required by Queensland Government policy to be disclosed to any government agency, authority, department or to any parliamentary committee;

**"Chief Executive"** means the Director-General or other person from time to time holding the office of chief executive or having delegated responsibilities under relevant legislation;

**"Constitution"** means:

(a) a company's or incorporated association's constitution, or equivalent documents, which (where relevant) includes rules and any amendments that are part of the constitution; or

(b) in relation to any other kind of body:

(i) the body's charter or memorandum; or

(ii) any instrument or law constituting or defining the constitution of the body or governing the activities of the body or its members;

**"Contact Officer"** means the person nominated by You responsible for liaising with the Departmental Officer, as specified in the Service Agreement (Part C) - Specifications, or as otherwise notified in writing by You to Us;

**"Date of Commencement"** means date of commencement of the Service Agreement as listed in Service Agreement (Part C) – Specifications;

**"Date of Expiration"** means the date of expiration of the Service Agreement as listed in Service Agreement (Part C) – Specifications;

**“Department, Us, We or Our”** means the State of Queensland acting through the Department of Communities (includes the Chief Executive) or any other department or agency of the Queensland Government responsible for the administration of the Service Agreement;

**“Departmental Officer”** means the person for the time being holding, occupying, or performing the duties of an officer of the Department, as specified in the Service Agreement (Part C) - Specifications, or any other persons specified by the Chief Executive and notified in writing to You;

**“Existing Material”** means any information, document, file, record, electronic image, cinematographic film, video, equipment, software or data that has been incorporated in, or supplied as part of Your Material that was either:

- (a) in existence prior to the Service Commencement Date; or
- (b) produced after the Service Commencement Date independently of the Service Agreement.

**“Exit Strategy”** means the strategy in the Service Agreement (Part C) - Specifications which the parties must follow in order to exit the Service Agreement;

**“Financial Acquittal Report”** means a report of Your financial performance relating to the delivery of the Services as outlined in the Service Agreement;

**“Funding”** means the money which the State may grant to You to deliver the Services inclusive of funding increases that may be provided from time to time;

**“Funding Details”** means the funding details shown in Item 7 of the Service Agreement (Part C) - Specifications, approved by Us for expenditure of the Funding by You under the Service Agreement;

**“Governing Act”** means the applicable Act and regulation, if any, under which We have provided the Funding to You by way of the Service Agreement;

**“GST”** means Goods and Services Tax imposed by or through the GST Legislation;

**“GST Amount”** means the GST payable in respect of a taxable supply under the Service Agreement, calculated at the rate of GST applicable at the time (10% as at the date of the Service Agreement);

**“GST Legislation”** means *A New Tax System (Goods and Services Tax) Act 1999* and any related tax imposition Act and any legislation which is enacted to validate, recapture or recoup the tax imposed by any of such Acts;

**“Intellectual Property Rights”** includes copyright except for copyright in “artistic works” as that expression is defined in the *Copyright Act 1968 (Commonwealth)*, rights in relation to inventions (including patent rights), registered and unregistered trademarks (including service marks), registered designs, Confidential Information (including trade secrets and know how), and other rights resulting from the intellectual activity in the industrial, scientific, literary or artistic fields, but does not include Moral Rights;

**“Milestone”** means an activity, stage and/or timeframe specified in the Service Agreement (Part C) - Specifications;

**“Minister”** means the Minister responsible for administering the enabling Act;

**“Moral Rights”** means the right of integrity of authorship, the right of attribution of authorship and the right not to have authorship falsely attributed, more particularly as conferred by the *Copyright Act 1968 (Commonwealth)*, and the rights of a similar nature anywhere in the world whether existing before, on or after the commencement of the Service Agreement;

**“Our Material”** means any information, document, file, record, electronic image, cinematographic film, video, equipment, software or data stored by any means which is given to You by Us for the purposes of providing the Services, including all copies and extracts;



**“Performance Review”** means gathering and analysing information about the Services in order to assess the extent to which a condition/s of the Service Agreement can be or is being met for the purposes or recommending a course of action to ensure compliance or to seek remedy of any non-compliance.

**“Personal Information”** means information or an opinion (including information or an opinion forming part of a database), whether true or not and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion;

**“Privacy Notice”** means the document which describes how You will deal with any Personal Information provided to You;

**“Recipient Created Tax Invoice”** has the meaning given in the GST Legislation;

**“Review”** means gathering and analysing information about the Services, for the purpose of assessing the functioning and effectiveness of one service, any number of services, a service system or program;

**“Service Agreement”** means the executed agreement entered into by You and Us which details any grant of Funding or assistance by Us to You for the purpose of delivering the Services including the Service Agreement (Part A) - Standard Terms of Funding, the applicable Service Agreement (Part B) - Specific Terms of Funding and the applicable Service Agreement (Part C) - Specifications;

**“Service Commencement Date”** means the date stipulated in the Service Agreement (Part C) – Specifications by which You must commence delivery of the Services;

**“Service User”** means the client of the Services stated in the Service Agreement (Part C) - Specifications;

**“Services”** means the services or projects specified in the Service Agreement (Part C) – Specifications that You must provide using the Funding that has been granted;

**“Target Group”** means those persons or groups of persons stated in the Service Agreement (Part C) - Specifications (if any);

**“Taxable Supply”** has the meaning given in the GST Legislation;

**“Term”** means the period of time starting on the Date of Commencement of the Service Agreement, and subject to early termination, ending on the Date of Expiration of the Service Agreement as specified in the Service Agreement (Part C) – Specifications;

**“You”** and related parts of speech or other grammatical forms means the funded organisation which is a party to the Service Agreement; and

**“Your Material”** means any information, document, electronic image, cinematographic film, video, equipment, software or data stored by any means which is created by You or on Your behalf in performing the Services under the Service Agreement.

## 32.2 Interpretation

Unless the context otherwise requires:

- (a) words indicating the singular include the plural and words indicating gender includes other genders;
- (b) where there is more than one organisation, the obligations of each organisation will be joint and several;
- (c) reference to a person includes an individual and a corporation;
- (d) reference to any legislation includes any subordinate legislation made under it and any legislation amending, consolidating or replacing it;

- (e) the headings in the Service Agreement are included for convenience only and do not affect the interpretation of the Service Agreement;
- (f) reference to a clause, paragraph or schedule is reference to a clause, paragraph or schedule of the Service Agreement;
- (g) reference to a document or agreement includes reference to the document or agreement as amended, notated, supplemented, varied or replaced from time to time;
- (h) if the day on or by which anything is to be done under the Service Agreement is not a Business Day, that thing may be done on the next proceeding Business Day;
- (i) a reference to You includes Your administrators, successors and permitted assigns;
- (j) a reference to a government entity (as that term is defined in the *Public Service Act 2008*) in the event that entity is reconstituted or replaced, will be a reference to the entity then carrying out its powers or functions; and
- (k) where there is any inconsistency between these terms and conditions and the Act or Regulation under which a grant is provided, the Act and Regulations shall have precedence.