

Funding Agreement

Queensland Biomedical Voucher Program

Between **State of Queensland acting through the Department of State Development, Manufacturing, Infrastructure and Planning (ABN 29 230 178 530)** of 1 William Street, Brisbane, Queensland 4000
(the State)

Name: [Insert Recipient details]

ABN:

Address:

(the Recipient)

Background

- A. The State has established the Queensland Biomedical Voucher Program (**Program**) to provide funding to eligible Queensland-based entities that provide eligible biomedical services.
- B. The Recipient has sought Financial Assistance from the State under the Program to fund up to 50% of the fees for the Services.
- C. The Recipient has prepared a Services Plan that outlines a number of Milestones required to deliver the Services.
- D. The Recipient has entered into a service contract with a Client to deliver the Services in accordance with the Services Plan with the support of the Financial Assistance.
- E. In reliance on the information provided by the Recipient in the Application, the State has agreed to provide the Financial Assistance to the Recipient to undertake the Services, and the Recipient has agreed to accept the Financial Assistance on the terms and conditions of this Agreement.

By signing below, the parties are entering into an agreement that consists of this cover page and the attached terms and Schedules.

Signed as an Agreement on 2019

Signed for and on behalf of the **State of Queensland** through the **Department of State Development, Manufacturing, Infrastructure and Planning ABN 29 230 178 530** by a duly authorised person in the presence of:

Signature of witness

Signature of Authorised Person

Full name of witness

Full name of Authorised Person

Signed by the **Recipient** in accordance with Section 127 of the *Corporations Act 2001 (Cth)*:

Signature of Director

Signature of Director / Secretary

Full name of Director

Full name of Director / Secretary

Operative provisions

1. Definitions and interpretation

1.1 Definitions

In this document:

Actual Client Contribution Amount means, for an Instalment, the actual fees paid by the Client to the Recipient for the Services the subject of that Instalment.

Actual Instalment Amount means, for an Instalment, the amount to be paid by the State to the Recipient, as calculated by the formula specified in Schedule 2.

Agreement means this document, including the cover page and Schedules.

Approval means any permit, consent, authorisation, permission, licence, approval, authority, certificate, registration or exemption by, or with, any Authority and including any condition or requirement imposed under any of the foregoing.

Authority means any governmental, semi-governmental, administrative, fiscal, judicial or quasi-judicial body, department, commission, authority, tribunal, agency or entity.

Application means the application submitted by the Recipient to the State in accordance with the Program Guidelines, including the attachments to such application.

Business Day means a day that is not a Saturday, Sunday or a public holiday in Brisbane.

Capital Item means an item of plant or equipment to be purchased by the Recipient as part of the Services.

Client means the entity specified in item 2 of Schedule 1.

Commencement Date means the commencement date specified in item 3 of Schedule 1.

Completion Date means the date specified in item 3 of Schedule 1.

Completion Report means the report presented in a format notified by the State to the Recipient from time to time, which is to include at least the information as set out in clause 8.2.

Condition means the conditions precedent as set out in clause 3.

Confidential Information means all information, including trade secrets and knowledge that:

- (a) is by its nature confidential;
- (b) is designated or marked as confidential; or
- (c) the recipient knows or ought to know is confidential,

but does not include information which:

- (d) is or becomes public knowledge other than by breach of this Agreement or any other confidentiality obligation; or
- (e) is independently developed by a party without knowledge of or access to the information.

Contact Officer means the contact person for each party specified in item 1 of Schedule 1.

Department means the Department of State Development, Manufacturing, Infrastructure and Planning ABN 29 230 178 530.

Expiry Date means the date specified in item 3 of Schedule 1.

Expected Client Contribution Amount means, for each instalment, the amount set out in Schedule 2.

Expected Instalment Amount means, for each Instalment, the maximum amount payable by the State to the Recipient under this Agreement, as set out in Schedule 2.

Financial Acquittal Report means the report presented in a format notified by the State to the Recipient from time to time, which is to include at least the information as set out in clause 8.3.

Financial Assistance means the amount payable by the State to the Recipient under this Agreement which must not exceed the Maximum Financial Assistance Amount.

Financial Assistance Claim means a claim for payment comprising the information and material set out in Schedule 3.

Force Majeure Event means any event beyond the reasonable control of the party affected and which occurs without fault or negligence of the affected party and may include:

- (a) acts of God;
- (b) war, riot, insurrection, vandalism or sabotage;
- (c) strike, lockout, ban, limitation of work or other industrial disturbance; and
- (d) law, rule or regulation of any government or governmental agency and executive or administrative order or act of general or particular application.

Group Entity means any related body corporate or associate of the Recipient as those terms are defined in the *Corporations Act 2001* (Cth).

GST means a goods and services tax or any similar tax, levy or impost imposed by the Commonwealth of Australia.

GST Law means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Instalment means a part of the Financial Assistance, as set out in Schedule 2.

Instalment Date means, for an Instalment, the date by which the Instalment is to be paid, as specified in Schedule 2 (if any).

Instalment Requirements means, for an Instalment, the instalment requirements specified in Schedule 2.

Intellectual Property Rights includes all present and future rights in relation to copyright, trademarks, designs, patents, trade, business or company names, trade secret, confidential or other proprietary rights, or any rights to registration of such rights whether created before or after the date of this Agreement, and whether existing in Australia or otherwise.

Key Dates mean the dates specified in item 3 of Schedule 1.

Machinery of Government Change means a change to the title, structure, functions or operations of the State or a part of the State (including corporatisation) as a result of an order made under the *Constitution of Queensland 2001* (Qld) or other Queensland legislation.

Maximum Financial Assistance Amount means the amount specified in item 4 of Schedule 1.

Milestones means the milestones set out in Schedule 4.

Milestone Date means the date for completion of each part of the Services, as stated in Schedule 4.

Moral Rights means the right of attribution of authorship, the right not to have authorship falsely attributed and the right of integrity of authorship, as defined under the *Copyright Act 1968* (Cth), and any similar rights existing under foreign laws.

Personal Information has the meaning given in the *Information Privacy Act 2009* (Qld).

Post Completion Monitoring Report means the report presented in a format notified by the State to the Recipient from time to time, which is to include at least the information as set out in clause 8.4.

Program means the Queensland Biomedical Voucher Program.

Program Guidelines means the program guidelines prepared and released by the State, and as amended from time to time, known as the 'Queensland Biomedical Voucher Program – Round 2 - Guidelines for Applicants'.

Reports means the Completion Report, the Financial Acquittal Report and the Post Completion Monitoring Reports.

Representative means an employee, agent, officer, director, contractor, subcontractor or any other authorised representative of a party.

Services means the services, including the purchase of Capital Items, set out in Schedule 4.

Services Contract means a contract for the provision of the Services entered into between the Recipient and the Client:

- (a) on terms consistent with those included in the Application; and
- (b) containing milestones, milestone dates and expected fees which are consistent with the Milestones, Milestone Dates and Expected Client Contribution amounts under this Agreement.

Services Plan means the plan set out in Schedule 4.

Special Conditions means any special conditions specified in item 6 of Schedule 1.

Tax Invoice has the meaning given to that term in the GST Law.

Term has the meaning specified in clause 2.

1.2 Interpretation

In this Agreement:

- (a) headings are for convenience only and do not affect interpretation; and
- (b) unless the context indicates a contrary intention:
 - (i) if more than one person is identified as the Recipient, then that expression refers to them, and the obligations of the Recipient under this Agreement bind them, jointly and severally;
 - (ii) **person** includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (where incorporated), a partnership and a trust;

- (iii) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or an additional trustee;
- (iv) a reference to a document (including this agreement) is to that document as varied, novated, ratified or replaced from time to time;
- (v) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (vi) a reference to a party, clause, schedule, attachment or annexure is a reference to a party, clause, schedule, attachment or annexure to or of this agreement, and a reference to this agreement includes all schedules, attachments and annexures to it;
- (vii) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (viii) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (ix) **includes** in any form is not a word of limitation;
- (x) a reference to a website by address or location is a reference to a website replacing that address or location;
- (xi) a reference to **\$** or **dollar** is to Australian currency; and
- (xii) no rule of construction will apply to a provision of this Agreement to the disadvantage of a party merely because that party drafted the provision or would otherwise benefit from it.

2. Term

This Agreement commences on the Commencement Date and continues until the Expiry Date, unless terminated earlier in accordance with clause 19.

3. Conditions Precedent

- (a) This Agreement is conditional upon the Recipient providing the State with:
 - (i) a copy of the executed Services Contract; and
 - (ii) a declaration that the document provided under paragraph (a) is a true and complete copy of the Services Contract,
within 20 Business Days of the date the last party signs this Agreement (**Conditions Precedent Deadline**),
(Conditions Precedent).
- (b) If any Condition Precedent is not satisfied by the Conditions Precedent Deadline, then:
 - (i) the State may, at its option, terminate this Agreement by giving written notice to the Recipient; and
 - (ii) neither party will have any claim against the other party in connection with this Agreement or a Services Contract.

4. Financial Assistance

4.1 Payment of Financial Assistance

- (a) The State agrees to provide the Financial Assistance to the Recipient on the terms set out in this Agreement.
- (b) If the State is satisfied, in its absolute discretion, that:
 - (i) any Instalment Requirements applicable to the Instalment have been satisfied; and
 - (ii) at the time of payment, the Recipient is not in breach of this Agreement, the State will pay the Instalment.
- (c) Subject to clause 4.1(b), the State will pay each Actual Instalment Amount to the Recipient by the latter of the following dates:
 - (i) 20 Business Days after the last of the Instalment Requirements for the Instalment being satisfied; and
 - (ii) where a specific Instalment Date is set out for the Instalment in Schedule 2, that date,by way of a bank transfer to the Recipient's bank account as specified in item 5 of Schedule 1.
- (d) For the avoidance of doubt, if the State is not satisfied that any one or more of the Instalment Requirements have been satisfied:
 - (i) the State may, without limiting or affecting any other right, defer payment of the Instalment until it is satisfied that the relevant Instalment Requirements have been satisfied; and
 - (ii) the Recipient must continue performing its obligations under this Agreement despite any such deferral of payment.
- (e) Without limiting clause 4.1(d), if an Instalment Requirement relates to the provision of a Report:
 - (i) the State may, by notice to the Recipient, require the Recipient to provide such further information as the State considers necessary or appropriate, including for the purposes of verifying anything in a Report, within a reasonable timeframe to be specified in the notice; and
 - (ii) if a notice is given under clause 4.1(e)(i), the Recipient must provide the further information within the timeframe specified in the notice.
- (f) The Recipient acknowledges that:
 - (i) the Financial Assistance is the total maximum amount of the State's commitment, and will not exceed the Maximum Financial Assistance Amount;
 - (ii) the Recipient is responsible for all costs, expenses and fees associated with provision of the Services in excess of the Financial Assistance; and
 - (iii) there is no obligation on the State to provide any additional or future financial assistance in respect of the Milestones or the Services.

4.2 Suspension of Financial Assistance

The State may suspend the payment of any Instalment (or part of any Instalment) at any time if the Recipient fails to comply with this Agreement, including failing to complete any Milestones.

5. Recipient's Obligations

5.1 Services

The Recipient must:

- (a) have and maintain an Australian Business Number (ABN) for the Term;
- (b) be registered for GST or have a valid exemption;

- (c) commence the Services by the Commencement Date;
- (d) undertake the Services in accordance with the Services Plan;
- (e) undertake the Services at a place located in Queensland;
- (f) complete each Milestone:
 - (i) as described in the Services Plan;
 - (ii) by the Milestone Date;
- (g) complete all of the Services by the Completion Date;
- (h) immediately notify the State of any matter which may adversely affect:
 - (i) the Services;
 - (ii) the Recipient's ability to complete a Milestone by the relevant Milestone Date; or
 - (iii) the Recipient's ability to complete the Services by the Completion Date; and
- (i) not do anything or become involved in any situation which, in the reasonable opinion of the State, reflects unfavourably upon the State.

5.2 Compliance with Agreement, laws, directions and guidelines

The Recipient must comply with:

- (a) the terms and conditions of this Agreement;
- (b) any applicable laws and regulations (including obtaining and maintaining any Approval required for the Recipient to carry out the Services);
- (c) the standards of professional care and diligence of the industry to which the Recipient belongs;
- (d) any standards, ethics approvals or ethical codes relevant to carrying out the Services (if any); and
- (e) the State's reasonable requests, directions and requirements, to the State's satisfaction.

5.3 Notification and disclosure to State

- (a) The Recipient must communicate with, report and provide information to the State's Contact Officer as reasonably required by the State.
- (b) The Recipient must promptly notify the State of:
 - (i) any allegation against the Recipient, the Client or their Representatives in connection with the Financial Assistance or the Services which raises a reasonable suspicion of misconduct, dishonesty or unlawful or unethical behaviour of a serious nature;
 - (ii) any change in the effective control of the Recipient or other matters that would affect the Recipient's eligibility to receive the Financial Assistance in accordance with the Program Guidelines;
 - (iii) any matters that the Recipient reasonably considers may affect the Recipient's ability to carry out the Services in accordance with the Services Plan;
 - (iv) any matters that may affect the Recipient's ability to complete a Milestone by the relevant Milestone Date or the Services by the Completion Date;
 - (v) any material breach, variation or termination of the Services Contract;
 - (vi) any change in the Recipient's GST registration status;

- (vii) any matters that the Recipient reasonably considers may affect its ability to otherwise comply with the terms and obligations of this Agreement; or
- (viii) any change to its details in item 1 of Schedule 1.

6. Repayment of Financial Assistance

- 6.1** If, as at the Expiry Date or earlier termination of this Agreement, any part of the Actual Client Contribution Amount or Financial Assistance cannot, by reconciliation between the accounts and records maintained by the Recipient, be shown to the reasonable satisfaction of the State to have been received by the Recipient in accordance with this Agreement, the State may, by written notice to the Recipient, require the Recipient to repay that part of the Financial Assistance.
- 6.2** If, at any time, the State forms the reasonable opinion or otherwise becomes aware that the State has made payments of the Financial Assistance, or part of the Financial Assistance, which the Recipient is not, in whole or part entitled to, the State may, by written notice to the Recipient, require the Recipient to repay that part of the Financial Assistance.
- 6.3** Without limiting any of its rights under this Agreement or at law or in equity, if:
- (a) the Recipient has expended Financial Assistance on the purchase of Capital Items; and
 - (b) the State terminates the Agreement by written notice under clause 19.2,
- the State may, by written notice to the Recipient, require the Recipient to repay any amount of the Financial Assistance applied to the purchase of such Capital Items.
- 6.4** The Recipient must repay to the State the amount set out in a notice given under clauses 6.1, 6.2 or 6.3 within 20 Business Days after receipt of the notice and that amount will constitute a debt due and owing to the State.

7. Intellectual Property Rights

- 7.1** Nothing in this Agreement effects a change in ownership of Intellectual Property Rights in material that exists as at the Commencement Date and is supplied by a party to the other for the purpose of this Agreement.
- 7.2** Each party grants, and will ensure that relevant third parties grant, to the other party a paid up, non-exclusive, irrevocable licence to use and reproduce its existing material for the purpose of administering this Agreement.
- 7.3** Title to, and Intellectual Property Rights in, any new material that is created by the Recipient as a result of this Agreement will, upon its creation, vest in the Recipient. The Recipient grants the State a paid up, non-exclusive, irrevocable licence to use and reproduce that new material for the purpose of administering this Agreement.

8. Reporting

8.1 Reports

- (a) The Recipient must:
 - (i) submit all Reports to the State:
 - A. for the Completion Report and Financial Acquittal Report, at the times specified in Schedule 2;
 - B. for the Post Completion Monitoring Report, 6 months after the Completion Date;
 - (ii) complete each Report to the State's satisfaction; and
 - (iii) provide to the State any other information or material about the Recipient, the Services, implementation of the Services Plan, the Financial Assistance or any other matter in connection with this Agreement as requested in

writing by the State within a reasonable time specified by the State in its request.

- (b) If the State is not satisfied with any aspect of a Report, the Recipient must amend the Report to the State's reasonable satisfaction and resubmit the Report to the State within a reasonable time.
- (c) Upon written request, the Recipient must provide the State with:
 - (i) financial statements that the Recipient is required to lodge under its incorporating legislation;
 - (ii) a declaration from the Recipient's chief executive officer stating that the Financial Assistance has been used in the relevant financial year for carrying out the Services in accordance with this Agreement; or
 - (iii) an audited financial statement for each financial year, and a statement by the auditor that the audited financial statement is true and correct and whether in his/her opinion there are any receipts, outgoings and expenditures received or incurred by the Recipient that were not received or incurred in carrying out the Services.

8.2 Completion Report

The Completion Report must include:

- (a) a summary of achievements from the Commencement Date to the Completion Date;
- (b) confirmation of the achievement of all Milestones;
- (c) a brief description of what has been completed;
- (d) details of any additional work performed for the Client;
- (e) details of opportunities for further product development in Queensland with the Client;
- (f) benefits of receiving funding support from the Program; and
- (g) any other information and material reasonably requested by the State and notified to the Recipient in writing from time to time,

and be signed by an authorised officer of the Recipient.

8.3 Financial Acquittal Report

The Financial Acquittal Report must:

- (a) include a statement of the fees received and any Capital Item purchased (if applicable) for the Services during the Term and, if required, evidence of the fees and costs of the Capital Item in the form of tax invoices, receipts or bank statements; and
- (b) be signed by an authorised officer of the Recipient.

8.4 Post Completion Monitoring Report

The Post Completion Monitoring Report must include;

- (a) details of any additional work performed for the Client;
- (b) details of opportunities for further product development in Queensland with the Client;
- (c) benefits of receiving funding support from the Program; and
- (d) any other information and material reasonably requested by the State and notified to the Recipient in writing from time to time,

and be signed by an authorised officer of the Recipient.

9. Records

The Recipient must:

- (a) keep a separate record of the Financial Assistance in the Recipient's ledger, and record all expenditure and income relating directly or indirectly to the Services separate from all other income and expenditure of the Recipient;
- (b) keep proper and adequate records, accounts and supporting documents in accordance with generally accepted accounting principles and as required by law, about:
 - (i) all aspects of the Services, including records about the performance of the Services and whether time frames and performance requirements for the Services are met; and
 - (ii) its affairs generally,in secure storage for at least 12 years after the Expiry Date; and
- (c) comply with any additional recordkeeping obligations specified in this Agreement.

10. Audit and access**10.1 Access to Recipient's premises and records**

- (a) The Recipient will give, and will ensure that all of its Representatives give, upon reasonable notice and during normal business hours, full and free access and reasonable assistance to the State, its Representatives and nominated auditors to:
 - (i) speak to the persons associated with the Services;
 - (ii) examine, inspect and copy any material, including any books and records, in the possession of the Recipient which is relevant to this Agreement, including providing all necessary facilities for that purpose;
 - (iii) examine and inspect the performance of the Services; and
 - (iv) locate and make copies of any of the Recipient's accounts, records, documents and other material that relate directly or indirectly to the receipt, expenditure, or payment of the Financial Assistance or the conduct of the Services.
- (b) The State's right of access under clause 10.1(a) may be exercised for any reasonable purpose relating to this Agreement, including for financial or compliance audits, or reviews of the Recipient's performance of this Agreement.
- (c) When accessing premises and/or records in accordance with clause 10.1(a), the State will use its reasonable endeavours to minimise interference to the Recipient's employees and the conduct of the Services.

10.2 Other information to be provided

The Recipient must promptly provide any information requested in writing by the State, its Representatives or its nominated auditors.

11. Agreement management

- (a) Each party must nominate a Contact Officer responsible for:
 - (i) receiving communications;
 - (ii) issuing and signing notices; and
 - (iii) responding to requests or directions,on behalf of that party.

- (b) A party may, from time to time, change the Contact Officer by written notice to the other party in accordance with clause 22.
- (c) The Contact Officers will meet to review the progress and performance of the Services and this Agreement upon reasonable written notice given by either party.
- (d) Each parties' Contact Officer shall have full authority to act on behalf of that party for all purposes in connection with this Agreement, except that the Contact Officers shall not have authority to amend or modify any of the provisions of this Agreement.

12. Public announcements

- (a) Subject to clause 12(b):
 - (i) the Recipient must not, and must ensure that its Representatives do not, make any public statement (including contacting or responding to the media) in relation to this Agreement, the Financial Assistance or the Services without the prior written consent of the State;
 - (ii) the Recipient must acknowledge the provision of the Financial Assistance in any public statement (which without limitation includes any media release or promotional material) made by the Recipient about the Agreement or the Services (whether during or after the Term of this Agreement).
- (b) Before the Recipient makes any public statement referred to in clause 12(a), the Recipient must:
 - (i) at least twenty-five (25) Business Days before the proposed public statement, provide to the State notice of the intention to make a public statement;
 - (ii) at least ten (10) Business Days before the intended date of the proposed public statement, provide to the State a copy of the proposed public statement;
 - (iii) comply with all requests, amendments or conditions that the State may reasonably require.
- (c) The Recipient must:
 - (i) in any Services Contract, require the Client to:
 - A. seek consent from the Recipient before making any public statement (including contacting or responding to the media) in connection with the Financial Assistance or the Services;
 - B. otherwise comply with the timeframes for seeking consent set out in clause 12(b);
 - (ii) refer any request from the Client for consent to make a public statement to the State and require the Client to comply with all requests, amendments or conditions that the State may reasonably require in connection with any public statement proposed to be made by the Client.
- (d) The Recipient acknowledges and agrees that the State may publicly disclose the Recipient's name, details of the Financial Assistance (including the amount), general details of the Services (including reference to the Client) and details about the anticipated economic outcomes and benefits to the State associated with the Agreement.

13. Conflict of interest

- (a) The Recipient warrants that, to the best of its knowledge and belief, after making diligent inquiries as at the date of signing this Agreement, its Representatives do not have an interest (whether personal, financial or otherwise) with the State or any of the State's Representatives connected with this Agreement, which conflicts with or which may reasonably be perceived as conflicting with the Recipient's obligations under this Agreement (**Conflict of Interest**).
- (b) The Recipient must not have, and must take all reasonable measures to ensure its Representatives do not have, a Conflict of Interest during the Term.
- (c) If, during the Term, a Conflict of Interest arises, or appears likely to arise, the Recipient will notify the State immediately in writing and take such steps to resolve or otherwise deal with the conflict to the State's satisfaction.
- (d) If the State is given notice of a Conflict of Interest pursuant to clause 13(c) or if the State otherwise identifies that a Conflict of Interest exists, the State may:
 - (i) direct the Recipient as to how to manage the Conflict of Interest, in which case the Recipient must comply with any reasonable direction so given by the State; or
 - (ii) terminate this Agreement in accordance with clause 19.
- (e) The Recipient must keep a record of each Conflict of Interest that arises and how it was managed.

14. Confidentiality**14.1 Confidential Information**

Subject to clause 14.2, a party (**Information Recipient**) must not:

- (a) disclose the other party's (**Discloser**) Confidential Information to a third party; or
- (b) use the Discloser's Confidential Information other than for the purpose of performing this Agreement.

14.2 Exceptions

The Information Recipient may disclose the other party's Confidential Information:

- (a) with the Discloser's prior written consent (including any consent specified in this Agreement);
- (b) to a professional adviser, financial adviser, banker, financier or auditor if that person is obliged to keep the information disclosed confidential;
- (c) to any of its Representatives who are bound to keep the information confidential and to whom it is necessary to disclose the information;
- (d) to comply with the law, or a requirement of a regulatory body (including any relevant stock exchange);
- (e) to the extent necessary to enforce its rights or defend a claim or action under this Agreement; and
- (f) where the Information Recipient is the State:
 - (i) to the responsible Minister administering the Department and their personal and departmental advisers;

- (ii) in response to a request by the Parliament or a Committee of the Parliament of the State of Queensland;
 - (iii) to any Commonwealth department, Queensland Government department, agency, Authority or Minister; or
 - (iv) where disclosure is required to be made in accordance with established governmental policies, procedures or for public accountability reasons.
- (g) where the Information Recipient is the Recipient, to the Client, provided that the Client is under an obligation of confidentiality in respect of that information and the disclosure of information by the Recipient is only to the extent necessary in the circumstances.

14.3 Breach of confidentiality

- (a) If a party becomes aware of a suspected or actual breach of this clause 14, the party will immediately notify the other party and take reasonable steps required to prevent or stop the suspected or actual breach.
- (b) The parties acknowledge and accept that damages solely will be an inadequate remedy for a breach of this clause 14.

14.4 Return of Confidential Information

The Information Recipient will return or destroy (at the Discloser's discretion) material containing Confidential Information when it is no longer required by the Information Recipient, or when otherwise directed by the Discloser (unless otherwise required by law or, in the case of the State, established governmental policies, procedures or protocols).

14.5 Information Recipient's undertaking

- (a) The Information Recipient must make every reasonable effort to ensure that its Representatives and volunteers are aware of and comply with the obligations of confidentiality in this clause 14.
- (b) The State may, at any time, require the Information Recipient to arrange for its Representatives and volunteers engaged in the performance of the Services, to give written undertakings in a form reasonably required by the State relating to the non-disclosure of Confidential Information under this clause 14.

15. Privacy and Personal Information

- (a) This clause 15 applies where this Agreement amounts to a "service arrangement" under the *Information Privacy Act 2009* (Qld).
- (b) If the Recipient collects or has access to Personal Information in order to undertake the Services, the Recipient must:
 - (i) comply with Parts 1 and 3 of Chapter 2 of the *Information Privacy Act 2009* (Qld) in relation to the discharge of its obligations under this Agreement (including its obligations regarding Reports), as if the Recipient was the State;
 - (ii) ensure that Personal Information is protected against loss and against unauthorised access, use, modification, disclosure or other misuse;
 - (iii) not use Personal Information other than for the purposes of undertaking the Services, unless required or authorised by law;
 - (iv) not disclose Personal Information without the consent of the State, unless required or authorised by law;

- (v) not transfer Personal Information outside of Australia without the consent of the State;
 - (vi) fully co-operate with the State to enable the State to respond to applications for access to, or amendment of a document containing an individual's Personal Information and to privacy complaints; and
 - (vii) comply with such other privacy and security measures as the State reasonably advises the Recipient in writing from time to time.
- (c) The Recipient must immediately notify the State on becoming aware of any breach of clause 15(b).
- (d) On request by the State, the Recipient must obtain from its Representatives engaged for the purposes of this Agreement, an executed agreement of privacy in a form acceptable to the State.

16. Insurance

- (a) The Recipient must take out and maintain for the term of this Agreement:
- (i) workers' compensation insurance in accordance with the *Workers' Compensation and Rehabilitation Act 2003*;
 - (ii) public liability insurance for a minimum of \$20,000,000 for any one event in respect of accidental death of or accidental bodily injury to persons, or accidental damage to property, arising in connection with the performance of the Services or its obligations under this Agreement; and
 - (iii) any other insurance appropriate for the Services and the Recipient's activities covering (to the extent permitted by law) all contractors, sub-contractors and employees.
- (b) The insurances required under clause 16(a) must be effected with a reputable insurer that is authorised to operate in Australia and is acceptable to the State.
- (c) Upon reasonable request, the Recipient must provide the State with evidence in a form acceptable to the State of the terms and currency of the insurance required under clause 16(a) including copies of insurance policies and any endorsements or amendment to such policies.

17. Liability and Indemnity

- (a) The Recipient releases to the full extent permitted by law, the State and its Representatives from all actions, claims, proceedings or demands and in respect of any loss, death, injury, illness or damage (whether personal or property, and whether special, direct, indirect or consequential, including consequential financial loss) arising from or in connection with the Services, the Financial Assistance, or this Agreement.
- (b) The liability of the State under or in connection with this Agreement (howsoever arising including for negligence) is limited in aggregate to the amount of the Financial Assistance.
- (c) Without limiting clause 17(a), the State and its Representatives will not in any circumstances (including for negligence) be liable for any loss of revenue, loss of profit, loss of anticipated savings or business, loss of opportunity (including opportunity to enter into or complete arrangements with third parties), loss of data or goodwill, loss of reputation or any indirect or consequential loss whether arising in contract, tort (including negligence) or otherwise, in connection with this Agreement.

- (d) The Recipient is liable for and indemnifies the State and its Representatives against all liability, loss, costs and expenses (including any actions, claims, proceedings or demand brought by any third party, and any legal fees, costs and disbursements on a solicitor and own client basis) arising from or incurred in connection with:
- (i) conduct of the Services;
 - (ii) any advice or claim by a third party (including the Client) in connection with the Services;
 - (iii) any default by the Recipient or the Recipient's Representatives under this Agreement;
 - (iv) any unlawful, wilful or negligent act or omission of the Recipient, the Recipient's Representatives or any person for whose conduct the Recipient is liable;
 - (v) personal injury (including sickness and death) or property damage or loss in connection with the performance (or attempted or purported performance or non-performance) of this Agreement or a breach of this Agreement by the Recipient; or
 - (vi) any infringement or alleged infringement of any Intellectual Property Rights or Moral Rights.
- (e) The Recipient's liability to indemnify the State under clause 17(d) will be reduced proportionally to the extent that any grossly negligent act or omission or breach of this Agreement by the State caused the loss or liability.
- (f) The indemnity granted in clause 17(d) is in addition to and not exclusive of any other remedies the State may have against the Recipient at law or in equity.
- (g) It is not necessary for the State to incur expense or to make a payment before enforcing a right of indemnity conferred by this Agreement.

18. GST

- (a) Words defined in the GST Law have the same meaning in this clause 18.
- (b) If a party is required under this Agreement to reimburse or pay to another party an amount calculated by reference to a cost, expense, or an amount paid or incurred by that party, the amount of the reimbursement or payment will be reduced by the amount of any input tax credits to which that party (or an entity on whose behalf the party is acting) is entitled in respect of any acquisition relating to that cost, expense or other amount.
- (c) If GST is payable by an entity (**Supplier**) in relation to any supply that it makes under or in connection with this Agreement, the parties agree that:
- (i) any consideration (including the value of any non-monetary consideration) provided for that supply under or in connection with this Agreement other than under this clause 18(c) (**Agreed Amount**) is exclusive of GST;
 - (ii) an additional amount will be payable by the party providing consideration for that supply (**Receiver**) equal to the amount of GST payable by the Supplier on that supply;
 - (iii) the additional amount is payable at the same time as any part of the Agreed Amount is to be first provided for that supply and the Supplier will provide a tax invoice to the Receiver in respect of that supply, no later than that time; and

- (iv) to the extent, if any, that any consideration (or part thereof) is specified in this Agreement to be inclusive of GST, that consideration (or the relevant part) will be excluded from the Agreed Amount for the purposes of calculating the additional amount under clause 18(c)(ii).
- (d) If the Recipient is not registered for GST and does not have an Australian Business Number, the Recipient must complete the Australian Taxation Office's Statement by a Supplier if it is eligible to do so, and return the completed and signed statement (satisfactory to the Australian Taxation Office) to the State on or before the Commencement Date.

19. Termination

19.1 Termination or reduction in Term or Financial Assistance for convenience

The State may, at any time, by reasonable written notice, terminate this Agreement or reduce the Term or the Financial Assistance for convenience, including for a Machinery of Government Change.

19.2 Termination for breach

- (a) The State may terminate this Agreement by written notice with immediate effect if the Recipient:
 - (i) breaches a term of this Agreement which is not capable of being remedied;
 - (ii) any information the Recipient gives the State is false or misleading in any material respect;
 - (iii) otherwise breaches a term of this Agreement (including, but not limited to, the provision of Reports) which is capable of being remedied and fails to remedy that breach within 20 Business Days after receiving notice requiring it to do so;
 - (iv) is or admits in writing that it is, or is declared to be, or is taken under any applicable law to be (for any purpose), insolvent or unable to pay its debts;
 - (v) amends its constitution or operations in a way that means the Recipient is no longer eligible for the Financial Assistance or is no longer able to comply with this Agreement;
 - (vi) becomes subject to any form of external administration;
 - (vii) enters into an arrangement with the Recipient's creditors or otherwise takes advantage of any laws in force in connection with insolvent debtors; or
 - (viii) is wound up, voluntarily or involuntarily.
- (b) For the avoidance of doubt, clause 17(c) applies to any termination of this Agreement under clause 19.2.

19.3 Effect of termination or reduction of Term or Financial Assistance

- (a) On receipt of a notice of termination or reduction of the Term or the Financial Assistance under clause 19.1:
 - (i) each party must take all available steps to minimise any costs or loss resulting from the termination or reduction of the Term or the Financial Assistance (as the case may be); and
 - (ii) the Recipient must provide written evidence to the State's satisfaction of the amounts (if any) claimed as reasonable costs under clause 19.3(b).

- (b) If the State terminates this Agreement or reduces the Term or the Financial Assistance under clause 19.1, the State will pay to the Recipient the reasonable costs (if any) that have been or will be incurred by the Recipient as a direct result of the termination of the Agreement or reduction of the Term or the Financial Assistance and which the Recipient cannot recoup or avoid and which would not otherwise have been incurred by the Recipient if the Financial Assistance had continued unaltered until the expiry of the Term.
- (c) For the avoidance of doubt, clauses 17(b) and 17(c) apply to any termination of or change to this Agreement under clause 19.

19.4 Obligations after termination or expiration

Within 10 Business Days of the termination or expiry of this Agreement, the Recipient must deliver to the State:

- (a) all Reports and documents due under this Agreement as at the date of termination or expiration;
- (b) a cheque or transfer for the amount of any unspent Financial Assistance and any accrued interest on the Financial Assistance as at the date of termination or expiry of this Agreement, less any costs agreed under clause 19.3(a)(ii) (if applicable), which will be a debt due and owing to the State; and
- (c) a Completion Report in accordance with any requirements specified in with clause 8.2 and detailing the present status of the Services, the extent of achievement of the Services against the Services Plan, and any incidental results and benefits of the Services.

19.5 Pre-existing rights and survival

- (a) Termination in accordance with this clause 19 is without prejudice to any rights of either party under this Agreement existing at the date of termination.
- (b) Clauses 6, 7, 9, 10, 12, 13, 14, 15, 17, 19.3, 19.4 and 19.5 survive expiration or termination of this Agreement for any reason.

20. Force Majeure

- (a) Neither party will be liable for, or in breach of this Agreement as a result of any delay or failure to perform its obligations under this Agreement if such delay or failure is due to a Force Majeure Event.
- (b) Either party may terminate this Agreement if the other party's performance of its obligations under this Agreement is materially affected by a Force Majeure Event lasting more than 60 days.

21. Dispute Resolution

21.1 Dispute Notice

If a Party considers that a dispute has arisen, the Party may send the other Party a notice setting out a full description of the matters in dispute (**Dispute Notice**).

21.2 Negotiation

The Contact Officers of each Party must meet (whether in person, by videoconference or by teleconference) within 5 Business Days of receipt of a Dispute Notice and attempt to resolve the dispute.

21.3 Referral of Dispute

- (a) Any dispute that cannot be resolved between the Parties within 10 Business Days of receipt of a Dispute Notice shall be referred to the immediate supervisor of each Contact Officer for resolution.

- (b) If the dispute is not resolved within 10 Business Days after its referral to the representatives of each of the Parties listed in clause 21.3(a), the dispute shall be referred to:
- (i) for the Recipient, the person holding the position of Chief Executive Officer (or equivalent); and
 - (ii) for the State, the Director General of the Department or their authorised delegate,
- for resolution.
- (c) If the dispute is not resolved within 20 Business Days after its referral to the representatives of each of the Parties listed in clause 21.3(b), clause 21.4 will apply.

21.4 Mediation

- (a) If a dispute is not resolved by negotiation or in accordance with clause 21.3, a Party may refer the dispute to a mediator agreed between the Parties.
- (b) If the Parties cannot agree on a mediator, either Party may request the President of the Queensland Law Society to nominate a person to act as mediator, and the Parties must appoint the person nominated by the President as mediator.
- (c) Mediation between the Parties must occur within 20 Business Days from the date the mediator is appointed and the Parties must co-operate with the mediator in an effort to resolve the dispute. Any costs incurred by the mediator in conducting the mediation are to be met equally by the Parties.
- (d) If the dispute is resolved, the Parties must execute terms of settlement.
- (e) If the dispute is not resolved within 20 Business Days of commencement of the mediation or within any extended time agreed to by the Parties in writing, the mediation may cease and either Party may commence legal proceedings.

21.5 Urgent interlocutory relief

Nothing in this clause 21 prevents either party from commencing court proceedings relating to any dispute arising from this Agreement at any time where that party seeks urgent interlocutory relief.

21.6 Continuing Performance

Each Party must continue to perform its obligations under this Agreement, notwithstanding the existence of a dispute.

22. Notices

Each communication (including each notice, consent, approval, request and demand) in connection with this Agreement to be given by either party to the other:

- (a) must be in writing;
- (b) must be signed by the party making it (or by a person duly authorised by that party);
- (c) must be delivered by hand, or posted by pre-paid post, or sent by email to the addressee, in accordance with the contact details provided in item 1 of Schedule 1 or as otherwise notified from time to time (including an alternate email address as notified from time to time where an automated "out of office" reply is notified to the sender in respect of an email sent to an email address provided in the contact details);
- (d) is taken to have been received by the addressee:
 - (i) where sent by pre-paid post – on the fifth day after the date of posting;
 - (ii) where hand delivered – on delivery;
 - (iii) where sent by email:

- A. at the time of email provided that no delivery failure is notified to the sender; or
- B. if an automated "out of office" response is notified to the sender, at the time of email to the alternative email address identified in the automated out of office response, provided that no delivery failure is notified to the sender,

but if the communication is taken to have been received on a day that is not a Business Day or later than 5.00 pm on a Business Day, the communication is taken to have been received at 9.00 am on the next Business Day.

23. Representations and warranties

- (a) The Recipient represents and warrants to the State that:
 - (i) the information contained in Schedule 1 and any other information provided by the Recipient to the State, whether prior to the Commencement Date or during the course of this Agreement, including, but not limited to, the Application, and the Reports and information notified and disclosed by the Recipient, is accurate and up to date; and
 - (ii) it has made full disclosure to the State of all matters that relate to, or may be expected to adversely affect, the good reputation, character and standing of the Recipient and any Group Entity, any director, senior officer or office holders of the Recipient, or Group Entity which may be involved in the Services, including any matters relating to their acting in breach of their obligations under any law in the conduct of business or in any role as an officer of a company, including (without limitation) their obligations pursuant to the *Corporations Act 2001* (Cth).
- (b) Each representation and warranty in clause 23(a) is taken to be repeated on each day of the Term with reference to the then facts and circumstances, as if made on that day.

24. General

24.1 Entire agreement

To the full extent permitted by law, in relation to its subject matter, this Agreement:

- (a) embodies the entire understanding of the parties and constitutes the entire terms agreed by the parties; and
- (b) supersedes any prior written or other agreement of the parties.

24.2 No relationship

- (a) Nothing contained in this Agreement will be taken as giving rise to any employment, agency, partnership or joint venture relationship between the parties.
- (b) The Recipient (including its Representatives):
 - (i) has no authority or power, and must not purport to have the authority or power, to bind the State or make representations on behalf of the State;
 - (ii) must not hold itself out or engage in any conduct or make any representation which may suggest to any person that the Recipient is for any purpose an employee, agent, partner or joint venturer with the State; and
 - (iii) must not represent to any person that the State is a party to the Services other than as a contributor of the Financial Assistance or has guaranteed the performance or fulfilment of the objectives of the Services.

24.3 No representation or reliance

- (a) Each party acknowledges that no party (nor any person acting on a party's behalf) has made any representation or other inducement to it to enter into this Agreement except for representations or inducements expressly set out in this Agreement.
- (b) Each party acknowledges and confirms that it does not enter into this Agreement in reliance on any representation or other inducement by or on behalf of any other party, except for representations or inducements expressly set out in this Agreement.

24.4 Assignment

The Recipient must not assign, novate or subcontract the whole or any part of this Agreement without the prior written consent of the State.

24.5 Amendments

This Agreement may only be varied by a document signed by or on behalf of each party.

24.6 Further acts and documents

Each party must promptly do all acts and deliver all documents (in form and content reasonably satisfactory to that party) required by law or reasonably requested by the other party to give effect to this Agreement.

24.7 Waiver

- (a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by law or under this Agreement by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under this Agreement.
- (b) A waiver or consent given by a party under this Agreement is only effective and binding on that party if it is given or confirmed in writing by that party.
- (c) No waiver of a breach of a term of this Agreement operates as a waiver of another breach of that term or any other term of this Agreement.

24.8 Consents

A consent required under this Agreement from a party may be given or withheld, or may be given subject to any conditions, as that party (in its absolute discretion) thinks fit, unless this Agreement expressly provides otherwise.

24.9 Severance

If at any time a provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, that will not affect or impair:

- (a) the legality, validity or enforceability in that jurisdiction of any other provision of this Agreement; or
- (b) the legality, validity or enforceability under the law of any other jurisdiction of that or any provision of this Agreement.

24.10 Counterparts

This Agreement may be signed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes the agreement of each party who has executed and delivered that counterpart.

24.11 Expenses

Except as otherwise provided in this Agreement, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this Agreement.

24.12 Continuing obligation

Each indemnity in this Agreement is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of this Agreement.

24.13 Governing law

This Agreement is governed by and will be construed according to the law applying in Queensland.

24.14 Jurisdiction

Each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of Queensland, and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this Agreement; and
- (b) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 24.14(a)

24.15 Special Conditions

The parties agree to be bound by any Special Conditions.

24.16 Order of precedence

If there is any direct inconsistency between:

- (a) the Special Conditions;
- (b) these clauses 1 to 24 of this Agreement;
- (c) Schedule 1 of this Agreement (except the Special Conditions);
- (d) Schedule 2 of this Agreement;
- (e) Schedule 3 to this Agreement;
- (f) Schedule 4 to this Agreement;

the provisions will take precedence in that order to the extent necessary to resolve the inconsistency.

24.17 No fetter

Nothing in this Agreement will fetter the exercise by the State or any other relevant Authority of any discretion whether to grant, grant subject to conditions, or refuse any Approval, or fetter the exercise by the State or any Authority of any resumption, planning or other regulatory or statutory powers.

Schedule 1 - Agreement Details

1.	Party details	<p>State:</p> <p>Party Name: State of Queensland acting through the Department of State Development, Manufacturing, Infrastructure and Planning</p> <p>ABN: ABN 29 230 178 530</p> <p>Street Address: Level 25, 1 William Street, Brisbane, Queensland, 4000</p> <p>Contact Officer Name & Office: [Insert contact officer]</p> <p>Contact Officer Postal Address: PO Box 15009, Brisbane, Queensland 4002</p> <p>Contact Officer Telephone:</p> <p>Contact Officer Email:</p> <p>Recipient:</p> <p>Party Name:</p> <p>ABN/ACN:</p> <p>Street Address:</p> <p>Contact Officer Name & Office:</p> <p>Contact Officer Postal Address:</p> <p>Contact Officer Telephone:</p> <p>Contact Officer Email:</p>
2.	Client	[INSERT FULL LEGAL NAME OF CLIENT AND ABN]
3.	Key Dates	<p>Commencement Date: The date on which the Condition is satisfied, or is waived by the State, under this Agreement.</p> <p>Completion Date: 18 months from the Commencement Date.</p> <p>Expiry Date: The date of receipt of the Post Completion Monitoring Report.</p>
4.	Maximum Financial Assistance Amount	[INSERT TOTAL MAXIMUM AMOUNT OF THE FINANCIAL ASSISTANCE]
5.	Recipient Bank Account	[INSERT RECIPIENT BANK ACCOUNT DETAILS]
6.	Special Conditions	[DSDMIP to insert any special conditions.]

Schedule 2 - Instalments

Instalment Number	Instalment Requirements	Instalment Date	Expected Client Contribution Amount (GST exclusive)	Expected Instalment Amount (GST exclusive)	Actual Instalment Amount (GST exclusive)
1.	(a) Provision of Financial Assistance Claim evidencing achievement of Milestone [INSERT]	[INSERT]	[INSERT]	[INSERT]	The lesser of: (a) Expected Instalment Amount; and (b) the Actual Client Contribution Amount for Milestone [INSERT].
2.	(a) Provision of Financial Assistance Claim evidencing achievement of Milestone [INSERT]	[INSERT]	[INSERT]	[INSERT]	The lesser of: (a) Expected Instalment Amount; and (b) the Actual Client Contribution Amount for Milestone [INSERT].
3.	(a) Provision of a Financial Assistance Claim; (b) Provision of a Completion Report demonstrating achievement of all remaining Milestones set out in the Services Plan; (c) Provision of a Financial Acquittal Report.	Within 10 Business Days after the Completion Date	[INSERT]	[INSERT]	The lesser of: (a) Expected Instalment Amount; and (b) the Actual Client Contribution Amount for Milestone [INSERT].
TOTALS			\$ [Insert total amount]	\$ [Insert total amount]	N/A

Schedule 3 - Information and Material for Financial Assistance Claims

1. The Recipient must provide a valid Tax Invoice for the Instalment Amount as set out in Schedule 2.
2. The Recipient must provide a statement signed by an authorised officer of the Recipient setting out:
 - (a) a description of the Milestone and relevant services that have been completed;
 - (b) the relevant Instalment number;
 - (c) confirmation that the Services the subject of the claim were provided on or after the Commencement Date;
 - (d) confirmation that the Services completed and fees charged by the Recipient for the relevant Instalment align with the Services Contract for the relevant Milestone and Instalment;
 - (e) the Expected Instalment Amount for the Instalment;
 - (f) the Expected Client Contribution Amount for the Instalment;
 - (g) the Actual Client Contribution Amount for the Instalment; and
 - (h) the Recipient's calculation of the Actual Instalment Amount in accordance with Schedule 2.
3. The Recipient must provide supporting evidence of payment of the Actual Client Contribution Amount and total fees for the relevant Milestone for the relevant Instalment satisfactory to the State including copies of receipts for payment for the Services by the Client;
4. The Recipient must provide any other information or material reasonably requested by the State, including information to demonstrate the progress, or completion of the Services or a Milestone.

Schedule 4 - Description of Services and Services Plan

Milestone #	Milestone Description	Milestone Date
Milestone 1 - [INSERT NAME]		
Service 1		
Service 2		
Service 3		
Milestone 2 - [INSERT NAME]		
Service 1		
Service 2		
Service 3		