



Funding Agreement

Victorian WorkCover Authority (ABN 90 296 467 627) (**WorkSafe**)

And

[Insert] (Recipient)

Funding Agreement

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Details

Parties

Name	Victorian WorkCover Authority trading as WorkSafe Victoria
ABN	90 296 467 627
Short form name	WorkSafe
Notice details	1 Malop Street, Geelong VIC 3220 PO Box 279, Geelong VIC 3220 Email: [insert] Attention: [insert]

Name	[insert]
ABN	[insert]
Short form name	Recipient
Notice details	[insert] Email: [insert] Attention: [insert]

Background

- A. In accordance with its statutory powers and functions, WorkSafe may provide funding to external parties for the purpose of assisting WorkSafe in achieving its objectives or performing its functions.
- B. One such means of providing funding is the Return to Work (**RTW**) Innovation Trials (**the Trials**). The aim of the Trials is to drive systems-level change that transforms recovery and return to work outcomes for injured workers and employers. By testing and accelerating innovative approaches, the Trials will unlock new solutions to improve return to work systems such as processes, technology, workplace culture, and workforce capability.
- C. The parties have agreed that WorkSafe will provide funding to the Recipient to undertake the Activities on the terms and conditions of this agreement.

Agreed terms

1. Defined terms and interpretation

1.1 Defined terms

In this agreement:

Act means the *Occupational Health and Safety Act 2004* (Vic).

Activities means the activities set out in Item 1 of Schedule 1 and Schedule 2 and includes all activities necessary to ensure that each of the Milestones is achieved by the applicable Milestone Date.

Background IP means Intellectual Property Rights owned by the Recipient (or its licensors) that the Recipient can demonstrate existed prior to the Start Date and arose independently of this agreement.

Business Day means:

- (a) in relation to the performance of an act, the making of a payment or the receipt of a notice, a day that is not a Saturday, Sunday, public holiday or bank holiday in the place where the act is performed, payment is made or notice is received; and
- (b) for all other purposes, a day that is not a Saturday, Sunday, public holiday or bank holiday in Melbourne.

Business Hours means the hours from 9.00am to 5.00pm on a Business Day.

Claim means any claim, notice, demand, action, proceeding, litigation, investigation or judgment whether based in contract, tort, statute or otherwise.

Confidential Information means, in respect of a party (**Disclosing Party**), the following information, regardless of its form and whether the other party (**Receiving Party**) becomes aware of it before or after the date of this agreement:

- (a) the terms of this agreement;
- (b) any information that is by its nature confidential to the Disclosing Party (or any of its related bodies corporate, collaborators or licensors (other than the Receiving Party); and
- (c) any information provided by or on behalf of the Disclosing Party to the Receiving Party or any employee, agent, consultant or representative of the Receiving Party, which is designated confidential or which otherwise would be understood by a reasonable person in the position of the Receiving Party to be confidential in nature,

but excludes information that:

- (d) the Receiving Party creates (whether alone or jointly with any third person) independently of the Disclosing Party;
- (e) is in the public domain (otherwise than as a result of a breach of confidentiality by the Receiving Party or any of its permitted disclosees); or
- (f) is found by final and binding court judgement to either not constitute Confidential Information or not otherwise be subject to any obligations under this agreement.

Conflict of Interest means any perceived or actual conflict between:

- (a) the duties of the Recipient or any of the Personnel under this agreement; and
- (b) any:
 - (i) duties of the Recipient or any of the Personnel to any third party; or
 - (ii) any personal, business, financial or other interest that the Recipient or any of the Personnel may have in or in relation to the conduct of any part of the Activities.

Contract IP means all Intellectual Property Rights in:

- (a) each of the reports submitted by the Recipient to WorkSafe under this agreement; and

- (b) all other material prepared or created by or on behalf of the Recipient, including by any Partner or Subcontractor, in performing the Activities or otherwise for the purposes of this agreement,

but excludes Background IP.

Contract Material means any material prepared or created by or on behalf of the Recipient in performing the Activities or otherwise for the purposes of this agreement.

End Date means the date on which the final invoice of WorkSafe Funding is made by WorkSafe, which is expected to be the date specified in item 4 of Schedule 1.

Environment means:

- (a) the Recipient Systems; and
- (b) any part of WorkSafe's software or hardware environment or systems, including the WorkSafe Systems.

Establish and Design Phase means the period starting on the Start Date and continuing until all of the conditions for payment of the [insert] instalment of the WorkSafe Funding (as set out in Schedule 2) have been satisfied.

Fair Jobs Code means the Victorian Fair Jobs Code published on 10 August 2022 by the Victorian Government, as amended from time to time.

Force Majeure Event means war, terrorism, revolution, insurrection, riot or invasion, earthquake, aircraft damage, fire, cyclone, lightning, wind, other act of God, pandemic, epidemic, any Government Agency action or interference or general industrial relations problem or strike (**IR Issue**) affecting this agreement, other than an IR Issue which the Precluded Party has the capacity to resolve.

Governmental Agency means any government, public, statutory, governmental, semi-governmental, local government or judicial body, entity or authority and includes a Minister of Crown (in its own right).

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) as amended from time to time.

Harmful Code means any computer program viruses or other code that is harmful, destructive, disabling or which assists in or enables theft, alteration, denial of service, unauthorised disclosure or destruction or corruption of data.

Health Information has the meaning given in the *Health Records Act 2001* (Vic).

Intellectual Property Rights means all intellectual property rights, including the following rights:

- (a) patents, copyright, rights in circuit layouts, designs, trade and service marks (including goodwill in those marks), domain names and trade names and any right to have confidential information kept confidential (including trade secrets and know-how);
- (b) any application or right to apply for registration of any of the rights referred to in paragraph (a); and
- (c) all rights of a similar nature to any of the rights in paragraphs (a) and (b) that may subsist anywhere in the world (including Australia),

whether or not such rights are registered or capable of being registered.

Law means any statute, regulation, by-law, ordinance or subordinate legislation in force from time to time, the common law and equity as applicable from time to time and any applicable industry codes of conduct.

Local Jobs First Policy means the policy of the Victorian Government made under section 4 of the *Local Jobs First Act 2003* (Vic).

Loss means any cost (including legal costs on a solicitor and own client basis, whether incurred by or awarded against the relevant party), cost, expense, claim, action, loss, damage, charge or liability, including any cost, expense, claim, action, loss, damage, charge or liability that is directly incurred in connection with a Claim, including the defence or settlement of that Claim.

Liability includes any liability (whether actual, contingent or prospective), loss, damage, action, cost, expense, charge, fee (including legal costs on a full indemnity basis) and outgoing of whatever description.

Milestone means a milestone specified in Item 4 of Schedule 2.

Milestone Date means the date by which a Milestone is to be achieved, as specified in Item 4 of Schedule 2.

Moral Rights means each right defined as a moral right in Part IX of the *Copyright Act 1968* (Cth), and any similar rights capable of protection under the laws of any foreign jurisdiction.

Partners means the organisations identified by the Recipient as 'consortium partners' in its application to WorkSafe for funding to deliver the Activities, and the organisations nominated by the Recipient (subject to WorkSafe's approval under clause 8.7) as 'partners' throughout the term of this Agreement, whether or not those 'consortium partners' or 'partners' are Subcontractors.

Personal Information means information that is personal information as defined in the *Privacy and Data Protection Act 2014* (Vic) or that is information to which any other Privacy Laws apply.

Personnel means all employees, contractors and other personnel of the Recipient who are involved in the conduct of the Activities.

Privacy Laws means all laws relating to privacy, confidentiality or use of any information about individuals, including:

- (a) the *Privacy Act 1988* (Cth) and the Australian Privacy Principles contained in schedule 1 to that Act or any approved privacy code that applies to either of the parties;
- (b) the *Privacy and Data Protection Act 2014* (Vic) and the Information Privacy Principles contained in schedule 1 to that Act; and
- (c) the *Health Records Act 2001* (Vic) and the Health Privacy Principles contained in schedule 1 to that Act.

Project Data means all data, information and other materials (including, without limitations Personal Information, Health Information and Confidential Information) in whatever format:

- (a) of, or made available by, WorkSafe and to which the Recipient has access in performing its obligations under this Agreement, and/or
 - (b) Which is collected by the Recipient in performing its obligations under this Agreement,
- and includes any subsequent data, information and other material derived, generated, stored or processed from, or utilising, the foregoing data, information and other materials.

Recipient Systems means software, hardware, systems, servers and data bases used by the Recipient or its Personnel to conduct the Activities.

Resources means, but is not limited to, any materials, assets, tools and products.

Security Incident means any of the following circumstances:

- (a) the Recipient or any of its officers, employees, contractors or agents is using or disclosing, or has used or disclosed (or may be using or disclosing or may have used or disclosed) Project Data otherwise than in accordance with this Agreement;
- (b) there has (or may have) been misuse, unauthorised access to, or unauthorised disclosure of any Project Data;
- (c) Project Data has been lost in circumstances where unauthorised access to, or unauthorised disclosure of, the Project Data may occur; or
- (d) an incident has occurred that has (or may have) compromised or had an adverse impact on the confidentiality, security, integrity or availability of Project Data.

Subcontractor means a subcontractor to whom the Recipient has subcontracted any of its obligations or the performance of the Activities or any part of them (regardless of whether or not that subcontractor has been approved by WorkSafe in accordance with clause 7). For the avoidance of doubt a Partner is not a Subcontractor unless specified otherwise.

Start Date means the date on which this agreement is executed by the last of the parties to execute it.

Tax Invoice means a document that complies with the requirements of a tax invoice as specified in the GST Act.

Term means the term of this agreement as set out in clause 2.

Victorian Public Entity means:

- (a) a public sector body as defined in section 4 of the *Public Administration Act 2004* (Vic);
- (b) a statutory corporation, a State owned company, a State body or a State business corporation as those terms are defined in the *State Owned Enterprises Act 1992* (Vic); or
- (c) an entity which receives the majority of its funding from any of the entities listed in paragraphs (a) or (b) or any entity under the control of any of the entities listed in paragraphs (a) or (b).

WorkSafe Systems means those systems and software of WorkSafe to which the Recipient will require access from time to time in order to fulfil its obligations under this Agreement.

WorkSafe Victoria Intellectual Property means all Intellectual Property Rights owned by or licensed to WorkSafe Victoria.

WorkSafe Funding means any funding amount paid, or payable, by WorkSafe to the Recipient under clause 3 of this agreement.

1.2 Interpretation

In this agreement, unless the contrary intention appears:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this agreement, and a reference to this agreement includes any schedule or annexure;
- (d) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (e) a reference to 'A\$', '\$A', 'dollar' or '\$' is to Australian currency;
- (f) a reference to a party is to a party to this agreement, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assignees and substitutes;
- (g) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (h) a reference to a statute, ordinance, code or other Law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (i) the meaning of general words is not limited by specific examples introduced by 'including', 'for example', 'such as' or similar expressions; and
- (j) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this agreement or any part of it.

1.3 Headings

Headings in this agreement are for ease of reference only and do not affect interpretation.

2. Term

This agreement starts on the Start Date and continues until the End Date, unless it is terminated earlier in accordance with its terms.

3. WorkSafe Funding

3.1 Payment of WorkSafe Funding

Subject to clauses 3.2 and 3.3, WorkSafe will pay to the Recipient the WorkSafe Funding at the times and in the instalments specified in Item 5 of Schedule 2.

3.2 Conditions on payment of WorkSafe Funding

WorkSafe is not obliged to pay any WorkSafe Funding to the Recipient unless and until it is satisfied that:

- (a) the Activities have been conducted in accordance with, and in compliance in all material respects with:
 - (i) this agreement;
 - (ii) all applicable Laws, regulatory requirements of any governmental or other authorities, licences, authorisations, permits, consents and ethical guidelines; and
 - (iii) best standards as set out in relevant codes of practice;
- (b) the Activities have been conducted materially in accordance with the description, and for the purpose of facilitating the achievement of the goals, set out in Schedule 2.
- (c) all of the Milestones that are required to have been achieved on or before the date on which the relevant WorkSafe Funding would otherwise be due for payment have been achieved to the satisfaction of WorkSafe;
- (d) without limiting paragraph (c), all of the reports that are required to have been provided under clause 10, on or before the date on which the relevant WorkSafe Funding would otherwise be due for payment have been provided to WorkSafe in accordance with this agreement;
- (e) the Recipient has made all of its contributions to the conduct of the Activities required under clause 5; and
- (f) the WorkSafe Funding paid to date has been applied towards the conduct of the Activities.
- (g) The WorkSafe Funding is not in a surplus of greater than 25% of the total WorkSafe Funding paid to date (**Significant Surplus**). Where the Recipient's reporting indicates a significant surplus and predicted budget forecast continues to leave a project in significant surplus, WorkSafe reserves the right to withhold progress payment(s) until funds are drawn-down to below Significant Surplus.

3.3 Establish and Design Phase

- (a) WorkSafe may provide feedback to the Recipient during the Establish and Design Phase on the development of the project design, as to its adequacy and appropriateness.
- (b) WorkSafe is not obliged to pay to the Recipient the (x) instalment or any subsequent instalments of the WorkSafe Funding until WorkSafe is satisfied the Recipient has successfully completed the Establish and Design phase in accordance with Schedule 2.
- (c) WorkSafe may terminate this agreement at any time during the Establish and Design Phase with immediate effect by giving notice to the Recipient.

3.4 Invoicing

WorkSafe will provide a purchase order number to the Recipient for instalments of the WorkSafe Funding. After which the Recipient will submit a Tax Invoice quoting the purchase order number to WorkSafe.

3.5 Timing of payments

- (a) Except to the extent that a Tax Invoice is in dispute or WorkSafe exercises its right to withhold WorkSafe Funding under clause 3.2 or 3.3, WorkSafe must pay to the Recipient

the amount of the WorkSafe Funding invoiced in each Tax Invoice under clause 3.4 by the later to occur of:

- (b) the expiry of 20 Business Days after receipt of the Tax Invoice; and
- (c) the date that the instalment of the WorkSafe Funding is payable, as set out in Item 4 of Schedule 2.

3.6 Use of WorkSafe Funding

- (a) The Recipient must only use the WorkSafe Funding for the Activities (and not for any other purpose).
- (b) The Recipient must only expend the WorkSafe Funding on the conduct of the Activities to the extent that the Activities are conducted so as to impact on, and for the benefit of, Victorian workers.
- (c) The Recipient must not expend any of the WorkSafe Funding on procuring alcohol to be supplied at events (including to be provided as a gift to contributors to the events).
- (d) The Recipient must:
 - (i) deposit all WorkSafe Funding paid to it under this agreement into an interest-bearing bank account controlled solely by the Recipient; and
 - (ii) ensure that all interest earned on the WorkSafe Funding is applied in accordance with paragraph (a), (b) and (c).

3.7 Other funding

Nothing in this agreement implies that WorkSafe will contribute any money or in-kind contributions to the conduct of the Activities other than the contributions of WorkSafe Funding.

3.8 Set off

WorkSafe is entitled to set off any amount it owes to the Recipient under this agreement against any amount payable by the Recipient to WorkSafe under this agreement.

4. Rights to require refund of WorkSafe Funding

4.1 Refund of amounts

If WorkSafe:

- (a) pays any WorkSafe Funding to the Recipient; and
- (b) subsequently becomes aware of any fact which would, if known at the time at which it paid that amount of WorkSafe Funding, have provided WorkSafe with grounds not to pay that WorkSafe Funding under clause 3.2.

WorkSafe may notify the Recipient that it requires repayment of that amount of the WorkSafe Funding and that amount becomes a debt due to WorkSafe which the Recipient must reimburse to WorkSafe within 10 Business Days of receiving notice from WorkSafe requiring reimbursement.

4.2 Repayment of WorkSafe Funding

- (a) If WorkSafe has a right to terminate this agreement under any of clauses 3.3, 5.2, 5.3, 22.1 and 22.2 (regardless of whether or not it elects to exercise that right), WorkSafe may notify the Recipient that it requires repayment of such an amount of the WorkSafe Funding that WorkSafe reasonably considers appropriate in the circumstances of the event giving rise to that right, and that amount becomes a debt due to WorkSafe which the Recipient must reimburse to WorkSafe within 10 Business Days of receiving notice from WorkSafe requiring reimbursement.
- (b) Unless otherwise agreed, all WorkSafe Funding not used by the Recipient during the Term must be refunded to WorkSafe within 15 Business Days after the termination or expiry of this agreement.

5. Conduct of Activities

5.1 Manner of conduct of Activities

- (a) The Recipient must use its reasonable endeavours to ensure that the Activities are conducted:
 - (i) to a high standard with due professional care and skill;
 - (ii) in accordance with all applicable Laws and standards, relevant ethics codes and guidelines, and any ethics approvals obtained or imposed in relation to any part of the Activities;
 - (iii) in a manner that facilitates achievement of the activities set out in Schedule 1 and Schedule 2; and
 - (iv) in a manner that facilitates achievement of each of the Milestones by the applicable Milestone Dates.
- (b) If Recipient intends to use and/or develop any artificial intelligence systems or tools in performance of the Activities it is to be done so at the Recipient's own discretion and risk and in accordance with the Agreement. The Recipient acknowledges it should adopt good industry standard practices, with particular regard to privacy and data protection, when using and/or developing artificial intelligence systems or tools.

5.2 Inadequate performance or risk to completion of the Activities

- (a) If WorkSafe reasonably considers that:
 - (i) the progress of the Activities against the requirements in this agreement, including the Milestones, is inadequate; or
 - (ii) there is a material risk that the Recipient will fail to complete the Activities in accordance with the requirements of this agreement (including by reason of a deterioration in the Recipient's financial viability, or any other concerns raised by any information provided by the Recipient under clause 5.3),

WorkSafe will notify the Recipient of its concerns and the parties will use reasonable efforts to agree how the performance deficiencies will be remedied or the risks will be addressed (as the case may be).

- (b) If one month has elapsed since WorkSafe notified the Recipient of any concerns under paragraph (a) and WorkSafe is not satisfied that:
 - (i) the parties have agreed an appropriate plan to remedy its concerns; or
 - (ii) reasonable progress has been made to remedy its concerns against any plan agreed between the parties,

WorkSafe may terminate this agreement by giving three months' notice in writing to the Recipient.

5.3 Changes to the Activities

- (a) If there are any proposed changes to the way in which the Activities are conducted as compared to the description in Schedule 1 and Schedule 2 (as previously amended in accordance with this clause 5.3) or the other provisions of this agreement, including any changes to the Milestones set out in Schedule 2, the Recipient must promptly notify WorkSafe of the proposed change via the established Return to Work Innovations (RTWI) Change Request process and a formal submission of a RTWI Change Request Form. Any changes to pre-defined and agreed scope, budget, schedule or outcomes must be approved by WorkSafe prior to the enactment of any changes to formal project documentation.
- (b) If WorkSafe reasonably considers that any proposed changes to the way in which the Activities are conducted will have a material adverse effect on:
 - (i) the achievement of the objectives of the Activities as set out in Schedule 1 and Schedule 2; or

- (ii) the capacity of the Recipient to achieve the Milestones by the applicable Milestone Dates,

WorkSafe will notify the Recipient of its concerns and the parties will use reasonable efforts to agree how the Activities will be conducted.

- (c) If one month has elapsed since WorkSafe notified the Recipient of any concerns under paragraph (b) and WorkSafe is not satisfied that those concerns have been adequately addressed, WorkSafe may terminate this agreement by giving three months' notice in writing to the Recipient.
- (d) To avoid doubt, any changes to the way in which the Activities are conducted as compared to the description in Schedule 1 and Schedule 2 or the other provisions of this agreement must be approved by WorkSafe in writing.

6. Commercial activities

6.1 No charge for Activities

The Recipient must not charge any person to attend or participate in any programs or events conducted as part of the Activities during the Term.

6.2 Prohibition of commercialisation of Contract IP

Except as permitted under clause 6.3, the Recipient must not:

- (a) charge any person to attend or participate in any programs or events:
 - (i) that are similar to those conducted as part of the Activities; and
 - (ii) the conduct of which uses or relies on any of the Contract Material (or any material that is an adaptation of otherwise based on any of the Contract Material); or
- (b) grant rights to any third party to use any of the Contract Material (or any material that is an adaptation of otherwise based on any of the Contract Material), including by way of assigning or licensing any of the Contract IP, on terms that either:
 - (i) allow the third party to charge persons to:
 - (A) attend or participate in any programs or events the conduct of which uses or relies on any of that material; or
 - (B) otherwise receive the benefit of any of that material; or
 - (ii) provide the Recipient with any monetary benefit from the grant of the rights or the third party's use of that material.

6.3 Permitted commercialisation

The Recipient may only do a thing referred to in clause 6.2(a) or clause 6.2(b) if it supplements, updates or otherwise varies the Contract Material in a manner that:

- (a) involves the Recipient expending material additional effort, resources or money on producing the materials, in addition to that covered by the WorkSafe Funding or otherwise expended by the Recipient in the conduct of the Activities; and
- (b) makes the material that is to be used in a manner set out in clause 6.2(a) or clause 6.2(b) recognisably different from the Contract Material used in the conduct of the programs or events that are to be, or have been, conducted as part of the Activities.

6.4 Ongoing notifications of commercialisation

The Recipient must notify WorkSafe if it does a thing referred to in clause 6.2(a) or clause 6.2(b).

7. Subcontracting

7.1 Approval of subcontractors

The Recipient may only subcontract its obligations or the performance of the Activities or any part of them with the prior written approval of WorkSafe, which approval must not be unreasonably withheld.

7.2 Notice and approval

If the Recipient proposes to subcontract any of its obligations under this agreement, the Recipient must give WorkSafe reasonable prior written notice (with sufficient details of the proposed subcontract to enable WorkSafe to determine whether to provide its approval).

7.3 Access to subcontractors and subcontracts

The Recipient must:

- (a) ensure that each Subcontractor meets with WorkSafe, as and when reasonably required by WorkSafe, for the purposes of discussing those parts of this agreement being provided by the Subcontractor (and WorkSafe may, in its absolute discretion, invite the recipient to participate in the discussions with the Subcontractor or alternatively meet with the Subcontractor by themselves); and
- (b) if requested by WorkSafe, provide a copy of the subcontract between the Recipient and the Subcontractor to WorkSafe.

7.4 Compliance

The Recipient must ensure that each Subcontractor engaged by the Recipient complies with the terms of this agreement to the extent that the terms are relevant to the Activities provided by and obligations of that Subcontractor.

7.5 Replacement

If WorkSafe has concerns about a Subcontractor's performance, WorkSafe will notify the Recipient and the Recipient must discuss those concerns with WorkSafe. If, after those discussions, the Recipient cannot demonstrate to WorkSafe's satisfaction that it is able to address those concerns in a reasonable timeframe:

- (a) WorkSafe may request that the Recipient replace that Subcontractor; and
- (b) the Recipient must comply with that direction and continue to perform its obligations and the Activities, notwithstanding the removal of the Subcontractor.

7.6 Termination of subcontracts

If the Recipient proposes to terminate a subcontract with a Subcontractor, the Recipient must give WorkSafe reasonable prior written notice (with sufficient details of the subcontract and the way in which the Supplier intends to perform the affected obligations) to enable WorkSafe to determine, acting reasonably, whether WorkSafe approves the termination.

7.7 Recipient remains liable

- (a) The Recipient remains responsible for all obligations, services and functions performed by any Subcontractors to the same extent as if those obligations, services and functions were performed by the Recipient.
- (b) The Recipient will be fully responsible, and liable to WorkSafe, for all damages suffered or incurred by WorkSafe relating to the acts, omissions, defaults or negligence of an Subcontractor, or any other personnel, as if they were the acts, omissions, defaults or negligence of the Recipient.
- (c) The Recipient must ensure that an adequate escalation process is established to deal with any performance or relationship issues that arise in relation to the Subcontractors.

8. Partners

8.1 Engagement of Partners

- (a) The Recipient may engage Partners to assist with the design, development, support or delivery of the Activities provided that:
 - (i) the engagement of a Partner does not relieve the Recipient of any obligation under this Agreement;
 - (ii) the Partner is not engaged in a manner that creates a Subcontractor relationship unless approved in accordance with clause 7; and
 - (iii) the Recipient remains the primary entity responsible for the conduct, management and delivery of the Activities.
- (b) Nothing in this Agreement creates a contractual relationship between WorkSafe and any Partner unless agreed by both parties in writing.

8.2 Responsibility for Partners

The Recipient is responsible for all acts, omissions, conduct, representations and failures of a Partner in connection with the Activities as though they were the acts, omissions, conduct, representations and failures of the Recipient.

8.3 Flow down obligations

- (a) The Recipient must ensure that each Partner is bound by a written agreement containing obligations no less onerous than those imposed on the Recipient under this Agreement to the extent relevant to the Partner's involvement in the Activities, including obligations relating to:
 - (i) Confidentiality;
 - (ii) Privacy, information security and management of Project Data;
 - (iii) Intellectual property and moral rights;
 - (iv) Reputational protection;
 - (v) Conflicts of interest;
 - (vi) Audit, record keeping and information sharing;
 - (vii) Compliance with applicable laws; and
 - (viii) Insurance requirements appropriate to the Partner's role.
- (b) The Recipient must, upon request by WorkSafe, provide evidence satisfactory to WorkSafe that it has complied with clause 8.3(a).

8.4 Intellectual Property

- (a) The Recipient must ensure that all Contract IP created, developed or contributed to by a Partner vests in, or is irrevocably assigned to, the Recipient immediately upon creation.
- (b) If any Contract IP created, developed or contributed to by a Partner does not vest in or is not assigned to the Recipient, the Recipient must ensure that the Partner grants, and the Recipient holds the benefit of, all licences, consents and rights necessary to enable the Recipient to comply with clause 13 and to enable WorkSafe to fully exercise the rights granted under clause 13.
- (c) The Recipient must ensure that each Partner:
 - (i) obtains from its personnel all consents, assignments and moral rights consents necessary to give full effect to this clause and clause 13; and
 - (ii) waives, and irrevocably consents to any act or omission that would otherwise infringe, any Moral Rights in the Contract IP, to the extent reasonably necessary for WorkSafe to exercise its rights under this Agreement.

8.5 Access and cooperation

The Recipient must ensure that each Partner:

- (a) cooperates with any reasonable request of WorkSafe relating to the Activities;
- (b) provides information reasonably requested by WorkSafe through the Recipient;
- (c) permits the Recipient to comply with its reporting, audit and record keeping obligations under this Agreement; and
- (d) participates in meetings concerning the Activities if reasonably requested by WorkSafe.

8.6 Replacement of Partners

If WorkSafe reasonably considers that the involvement of a Partner:

- (a) creates a material risk to the Activities;
- (b) results in a Conflict of Interest;
- (c) gives risk to legal, regulatory, probity, reputational, privacy or security concerns; or
- (d) may adversely affect WorkSafe's rights under this Agreement,

WorkSafe may require the Recipient to take reasonable steps to address those concerns, including replacing the Partner, and the Recipient must comply with any such reasonable direction.

8.7 Changes to Partners

- (a) The Recipient must promptly notify WorkSafe of any proposed:
 - (i) appointment of a new Partner;
 - (ii) withdrawal or replacement of a Partner; or
 - (iii) any material change to a Partner's role in the Activities.
- (b) Upon receipt of notice under 8.7(a), WorkSafe will, acting reasonably, consider the proposal and notify the Recipient within 10 Business Days whether the proposal is approved, approved subject to conditions, or not approved.
- (c) The Recipient must not implement or give effect to any proposal notified under 8.7(a) unless and until WorkSafe has approved the proposal in writing and the parties have entered into a variation to this Agreement.

9. Local Jobs First and Fair Jobs

9.1 Local Jobs First Policy

The Local Jobs First Policy does not apply to this Agreement.

9.2 Fair Jobs Code

The Fair Jobs Code does not apply this Agreement.

10. Reporting

10.1 Progress reports

- (a) The Recipient must provide to WorkSafe progress reports as set out in Items 2, 3 and 4 of Schedule 2.
- (b) The Recipient must provide to WorkSafe, on the date set out in Item 2 of Schedule 2 or at least 10 Business Days after any early termination of this agreement takes effect (whichever date comes sooner), a final progress report which satisfies the requirements set by WorkSafe in accordance with Items 2, 3 and 4 of Schedule 2.

10.2 Evaluation

- (a) The Recipient must conduct an evaluation of the project as set out in Item 2 of Schedule 2.
- (b) The Recipient must engage an external evaluator to monitor and evaluate project activities in Schedule 2.

10.3 Information sharing

- (a) The Recipient must ensure that information relating to the Activities and the use of the WorkSafe Funding is made available to WorkSafe as reasonably requested by WorkSafe from time to time, including by responding promptly to reasonable requests by WorkSafe to provide written or verbal reports concerning the progress of the Activities.
- (b) Without limiting paragraph (a), the Recipient must provide to WorkSafe:
 - (i) updates to any of the information about its financial history that was required to be provided in the course of any tender or application process through which it was awarded the WorkSafe Funding; and
 - (ii) any other information reasonably requested by WorkSafe that bears on the Recipient's financial viability, within any timeframe reasonably specified by WorkSafe in requesting such information.

11. Records and audit

11.1 Records

The Recipient must:

- (a) Maintain, in a secure area reasonably protected from fire, theft and destruction, complete and accurate records (including accounts and computerised records and files):
 - (i) of its use of the WorkSafe Funding and conduct of the Activities; and
 - (ii) that reasonably evidence its ongoing capability and capacity (including financial viability) to complete the Activities in accordance with this agreement; and
- (b) retain all records required under paragraph (a) for a period of seven years after the termination or expiry of this agreement.

11.2 Audits by WorkSafe

The Recipient must (during, and up to seven years after the termination or expiry of, the Term):

- (a) within 10 Business Days after receiving a written notice from WorkSafe requesting an audit, give WorkSafe (or any person appointed by WorkSafe) access to the records maintained under clause 11.1, in order to enable WorkSafe to conduct an audit of the use of the WorkSafe Funding, to assess the Recipient's compliance with its obligations under this agreement, and to assess the Recipient's ongoing capability and capacity (including financial viability) to complete the Activities in accordance with this agreement; and
- (b) permit WorkSafe (or its appointee) to take copies of any of the records accessed under paragraph (a).

12. Reputational protection

12.1 Damage to reputation

A Party must not do or omit to do anything in relation to the Activities or this agreement which may:

- (a) damage, bring into disrepute or ridicule the other party's name, messages or reputation; or
- (b) attract public or media attention which may be prejudicial or otherwise detrimental to the other party's name, messages or reputation.

12.2 Notification obligations

- (a) A party must notify the other party immediately if it becomes aware of any information, matter or event relating to the Activities or this agreement which may:
 - (i) damage, bring into disrepute or ridicule to the other party's name, messages or reputation;
 - (ii) attract public or media attention which may be prejudicial or otherwise detrimental to the other party's name, messages or reputation; or
 - (iii) result in the other party being in breach of any laws, regulatory requirements or any governmental or other authorities, licenses, authorisations, permits, consents and/or ethical guidelines.
- (b) The Recipient must notify WorkSafe immediately in the event that it is subject to any investigation of, or impending legal action or active prosecution for, an offence under the Act, the *Dangerous Goods Act 1985* (Vic), or the *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic).
- (c) To avoid doubt, notification provided pursuant to paragraph 12.2(a) and (b) above must comply with the requirements set out at clause 26.

12.3 Advertising

- (a) The Recipient must not include in its Resources, publicity, other advertising material or media for any purpose associated with its promotion, any description of or reference to WorkSafe whatsoever, whether by name or inference, without WorkSafe's prior written approval.
- (b) WorkSafe must not include in its publicity, other advertising material or media for any purpose associated with its promotion, any description of or reference to the Recipient whatsoever, whether by name or inference, without the Recipient's prior written approval.
- (c) The Recipient will acknowledge the support of WorkSafe and WorkSafe will acknowledge the support of the Recipient on any published or display materials related to the Activities with the prior written approval of both parties.

12.4 Announcement

- (a) The Recipient consents to WorkSafe (or its nominee) publicly announcing the Recipient as a recipient of the WorkSafe Funding, including (but not limited to) referencing the Recipient's name and a description of the Activities.
- (b) The parties agree that paragraph 12.4(a) is for, and in accordance with, the purposes of WorkSafe's functions and objects under the Act.

13. Intellectual property

13.1 Ownership

This agreement does not affect ownership of any Contract IP or Background IP which, as between WorkSafe and the Recipient, vests in (or remains vested in) the Recipient.

13.2 Licences of Contract IP and Background IP

The Recipient grants WorkSafe a perpetual, irrevocable, non-exclusive, royalty free license (including the right to sub-license) to use, alter, reproduce and publish:

- (a) the Contract IP for the purposes of carrying out its statutory functions and objects (including those under the Act) from time to time; and
- (b) any and all Background IP which is necessary or desirable to enable WorkSafe to fully exercise its rights as licensee of the Contract IP under paragraph 13.2(a).

13.3 WorkSafe Intellectual Property

- (a) Subject to clauses 13.3(b) and 13.3(c) all WorkSafe Intellectual Property vests in and remains the property of WorkSafe or any relevant third party licensor and the Recipient

acknowledges that nothing in this agreement confers or gives rise to any rights in or ownership of WorkSafe Intellectual Property on or in favour of the Recipient.

- (b) For the term of this agreement WorkSafe grants to the Recipient a non-exclusive, non-transferable and royalty-free licence to use WorkSafe Intellectual Property for the sole purpose of enabling the Recipient to meet its obligations under this agreement.
- (c) The Recipient agrees that it will only use WorkSafe Intellectual Property to meet its obligations under this agreement, and will immediately return all copies of WorkSafe Intellectual Property and cease to use WorkSafe Intellectual Property on and from the termination or expiry of this agreement.
- (d) The Recipient must promptly notify WorkSafe of particulars that come to its notice of any use by another person of WorkSafe Intellectual Property which might reasonably amount to an infringement or breach of WorkSafe Intellectual Property. If it comes to the Recipient's attention that any person alleges that any Intellectual Property Rights in respect of WorkSafe Intellectual Property infringes the rights of that person or that such Intellectual Property Rights are open to any other form of question or attack, the Recipient must promptly report the matter to WorkSafe and must not make any admission in relation to that allegation.

13.4 Recipient branding

- (a) The Recipient grants to WorkSafe a non-exclusive, non-transferable and royalty-free license to use the Recipient's branding, logo or other intellectual property that WorkSafe deems appropriate (in its discretion and acting reasonably) in connection with the Activities or subject matter of this agreement.
- (b) The Recipient must seek approval from any sub-contractors it engages for the purposes of this agreement to ensure that WorkSafe can use their branding and logo in connection with /the Activities or subject matter of this agreement.

13.5 Warranty

The Recipient warrants that in conducting the Activities and producing the Contract IP, the Recipient has not infringed and will not infringe the Intellectual Property Rights or Moral Rights of any person.

13.6 Indemnity

The Recipient indemnifies WorkSafe against any loss, damage, liability, claim, action, cost or expense (including legal expense) which may be suffered or incurred by WorkSafe directly or indirectly in connection with:

- (a) a claim made by a third party against WorkSafe for infringement of Intellectual Property Rights or Moral Rights arising from the Recipient's preparation of the Contract IP; and/or
- (b) the use, reproduction, modification, publication or other dealing with the Contract IP or the Background IP by WorkSafe in accordance with clause 13.2,

except to the extent that such loss, damage, liability, claim, action, cost or expense is a direct result of WorkSafe's negligent act or omission, fraud, wilful misconduct or breach of this agreement.

13.7 Delivery of licensed intellectual property

- (a) On request or on expiry or termination of this agreement, the Recipient must promptly provide WorkSafe with a complete copy of all Contract Material.
- (b) This requirement in clause (a) above is in addition to the requirement to provide Contract Material at each Project Phase as specified at item 2.2 of Schedule 2, via a WorkSafe platform.

14. Indemnity

- (a) The Recipient indemnifies and will keep indemnified WorkSafe and its officers, employees and agents against all Losses of any kind that WorkSafe may sustain or incur as a direct result of:

- (i) any breach by the Recipient of clauses 12, 13, 18 or 20 of this agreement;
 - (ii) any negligent, unlawful or fraudulent act or omission of the Recipient in connection with this agreement; or
 - (iii) any act giving rise to a civil or criminal liability of the Recipient.
- (b) The Recipient will not be liable under paragraph (a) to the extent that any Loss is a direct result of WorkSafe's negligent act or omission, fraud, wilful misconduct or breach of this agreement.
 - (c) The indemnity in paragraph (a) is a continuing obligation, separate and independent from the other obligations of the Recipient under this agreement.
 - (d) WorkSafe holds the benefit of all indemnities in this agreement on its own behalf and on trust for its officers, employees and agents. If an indemnity payment is made by the Recipient under this agreement, the Recipient must also pay WorkSafe an additional amount equal to any tax which is payable by the Recipient in respect of that payment.

15. Exclusions and limitations of liability

15.1 Release and discharge

To the extent permitted by law, including any obligations that cannot be excluded, the Recipient acknowledges and agrees that it unconditionally and irrevocably releases and forever discharges WorkSafe from all Claims which the Recipient has or at any time in the future may have or which but for this clause 15.1 the Recipient would or at any time in the future might have had, against WorkSafe, arising out of or related to (whether directly or indirectly) any activities undertaken by the Recipient under or in relation to this agreement.

15.2 No implied conditions and warranties

WorkSafe excludes all implied conditions and warranties, except any implied condition or warranty the exclusion of which would contravene any statute or cause this clause 15.2 to be void.

15.3 Disclaimer

To the extent permitted by law, including any obligations that cannot be excluded, WorkSafe disclaims any responsibility or Liability to the Recipient or any third party for the consequences of any act or omission of the Recipient in the performance of its obligations under this agreement, including:

- (a) any breach by the Recipient of this agreement;
- (b) any false, misleading or deceptive statement or conduct of the Recipient;
- (c) any breach by the Recipient of any statute; and
- (d) any act of the Recipient giving rise to a civil or criminal liability.

16. Warranties and representations

The Recipient represents and warrants for the Term that:

- (a) the execution, delivery and performance by it of this agreement does not and will not violate:
 - (i) any Law, regulation, authorisation, ruling, consent, judgement, order or decree of any Governmental Agency;
 - (ii) its constitution or other constituent documents; or
 - (iii) any encumbrance or document which is binding upon it or any assets of it;
- (b) as at the date of this agreement:
 - (i) it is duly incorporated or registered, as the case may be, and existing under the laws of its state of incorporation or registration and has full power to enter into and

- perform all of its obligations under this agreement without the consent of any other person; and
- (ii) this agreement is a valid and binding agreement on the Recipient, enforceable in accordance with its terms;
- (c) the Activities and all other activities performed by the Recipient under this agreement will be:
 - (i) performed in a proper, professional and businesslike manner; and
 - (ii) fit for the purpose for which they are performed; and
- (d) it has the technical skill, expertise and experience to perform the Activities and otherwise discharge its obligations under this agreement.

17. Insurance

17.1 Appropriate insurances

The Recipient must take out and maintain until:

- (a) in the case of insurances issued on a claims made basis, seven years after the end of the Term; or
- (b) otherwise, the end of the Term,

all appropriate insurances at an adequate level to cover risks that may arise in the conduct of the Activities, including but not limited to insurance covering all public liability and professional indemnity in accordance with the minimum requirements set out at Schedule 1, and insurance for property loss and damage.

17.2 Evidence of insurance

If WorkSafe requests, the Recipient must promptly provide certificates of currency certifying that it has the insurance required under this clause 17.

18. Confidential information

18.1 Use and disclosure of Confidential Information by the Receiving Party

The Receiving Party:

- (a) may only use Confidential Information of the Disclosing Party for the purposes of this agreement;
- (b) must keep confidential all Confidential Information of the Disclosing Party except:
 - (i) for disclosure permitted under clause 18.2; and
 - (ii) to the extent (if any) the Receiving Party is required by Law to disclose any Confidential Information; and
- (c) without limiting its obligations under paragraphs (a) and (b), must use commercially reasonable efforts to keep all Confidential Information of the Disclosing Party safe and secure, including all notes and other records prepared by the Receiving Party or its disclosees based on or incorporating any Confidential Information and all copies of those notes and records.

18.2 Permitted disclosure

The Receiving Party may disclose Confidential Information of the Disclosing Party to persons who:

- (a) have a need to know for the purposes of this agreement (and only to the extent that each has a need to know); and

- (b) before disclosure:
 - (i) in the case of the Receiving Party's officers and employees, have been directed by the Receiving Party to keep confidential all Confidential Information; and
 - (ii) in the case of other persons, have agreed in writing with the Receiving Party to comply with substantially the same obligations in respect of Confidential Information as those imposed on the Receiving Party under this agreement,
 (each a **Direction**).

18.3 Receiving Party's obligations

The Receiving Party must:

- (a) ensure that each person to whom it discloses Confidential Information under clause 18.2 complies with its Direction; and
- (b) immediately notify WorkSafe of, and take all steps to prevent or stop, any suspected or actual breach of a Direction or any improper or unauthorised use of the Confidential Information of the Disclosing Party.

18.4 Disclosure required by Law

If a Receiving Party is required by Law to disclose any Confidential Information to a third person (including government), the Receiving Party must, to the extent permitted to do so by Law:

- (a) before doing so:
 - (i) notify the Disclosing Party; and
 - (ii) give the Disclosing Party a reasonable opportunity to take any steps that the Disclosing Party considers necessary to protect the confidentiality of that information; and
- (b) notify the third person that the information is confidential to the Disclosing Party.

18.5 Compliance with the Act

- (a) The Recipient must comply with the confidentiality and secrecy provisions of the Act and the *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic).
- (b) A breach of paragraph (a) is a breach of a material provision of this agreement that is not capable of being remedied and entitles WorkSafe to terminate the agreement without notice, and in any event may render the Recipient liable to prosecution and penalty under the Act or the *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic).

18.6 Disclosure of Confidential Information by WorkSafe

For the avoidance of doubt, WorkSafe is entitled to disclose any Confidential Information, information that it obtains from the Recipient or Contract IP for the purposes of its functions and objects under the Act, which may (to the extent reasonably necessary) include enforcement of the provisions of the Act as against relevant duty holders.

18.7 Injunctive relief

The Receiving Party acknowledges that damages are not a sufficient remedy for the Disclosing Party where the Receiving Party has breached or threatens to breach this clause 18. The Disclosing Party is entitled to specific performance and injunctive relief (as appropriate) as a remedy for any breach or threatened breach by the Receiving Party, in addition to any other remedies available to the Disclosing Party at law or in equity.

19. Conflict of interest

- (a) The Recipient must immediately notify WorkSafe if an actual or potential Conflict of Interest arises relating to the conduct of the Activities by the Recipient under this agreement.
- (b) On WorkSafe receiving a notice under paragraph (a) or WorkSafe notifying the Recipient that it is aware of any such actual or potential Conflict of Interest, the Recipient must, and

must ensure that the relevant Personnel, cooperate with WorkSafe to resolve the Conflict of Interest in a professional and efficient manner so as to minimise any potential harm to WorkSafe and the Activities, including by taking such reasonable further steps as WorkSafe considers necessary to resolve the Conflict of Interest.

20. Privacy, security and virus protection

- (a) If WorkSafe provides the Recipient with Health Information or other Personal Information, the Recipient agrees that:
 - (i) in relation to that Health Information or Personal Information, it must comply, with all applicable Privacy Laws, and in particular health privacy principles and information privacy principles in the Privacy Laws, in the same manner and to the same extent as WorkSafe is bound;
 - (ii) in particular, it will not, collect, use or disclose Health Information or Personal Information in connection with or as a result of this agreement except to the extent that such collection, use or disclosure is reasonably necessary for performance of Recipient's obligations under this agreement; and
 - (iii) it will only collect, and will only use, disclose, transfer or otherwise handle Health Information or Personal Information it collects, in connection with or as a result of this agreement in accordance with any Privacy Laws that apply to the Recipient, and such reasonable policies or directions relating to collection, use, disclosure, storage, transfer or handling of Health Information or Personal Information as are notified by WorkSafe to the Recipient from time to time; and
 - (iv) it must comply with the confidentiality and secrecy provisions of all applicable legislation, including the *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic) and the Act.
- (b) The Recipient must ensure that access to Health Information and Personal Information that is provided by WorkSafe is restricted to those of its employees and contractors who need to know the information for the purposes of the Recipient fulfilling its obligations under this agreement, and that those employees and contractors are aware of and agree to fulfil the Recipient's obligations under this clause 20.
- (c) If requested by WorkSafe, the Recipient will provide a Privacy Compliance Plan that details the Recipient's compliance with its obligations under paragraphs (a) and (b).
- (d) The Recipient must immediately provide written notice to WorkSafe where it becomes aware or suspects that there is, or has been, a Security Incident.
- (e) The Recipient must minimise, as far as is practicable, the threat of Harmful Code from being installed, released or otherwise introduced into or sent from the Environment, including by:
 - (i) use of the most appropriate and up to date virus detection software and intrusion detection systems for preventing and detecting Harmful Code;
 - (ii) implementing practices and procedures that are consistent with good industry practice; and
 - (iii) pro-actively monitoring known threats of Harmful Code.
- (f) If the Recipient becomes aware that any Harmful Code is found to have been introduced into the Environment, the Recipient must notify WorkSafe immediately. The Recipient must:
 - (i) provide all information reasonably requested by WorkSafe in relation to the Harmful Code, its manner of introduction and the effect the Harmful Code has had or is likely to have;
 - (ii) take all necessary remedial action to eliminate the Harmful Code and provide re-occurrence and rectify any consequences (to the extent that they are capable of rectification), including developing and implementing an action plan;
 - (iii) if the Harmful Code causes a loss of Project Data or loss of operational efficiency, assist WorkSafe to mitigate the losses and restore the efficiency and/or Project Data; and

- (iv) ensure that sufficient Recipient resources and technology are available to meet its obligations under this clause 20.

21. Force Majeure

- (a) If a Force Majeure Event affecting a party precludes that party (**Precluded Party**) from complying with its obligations under this agreement, the Precluded Party must promptly give the other party (**Affected Party**) notice detailing:
 - (i) the Force Majeure Event;
 - (ii) which obligations the Precluded Party is precluded from performing (**Affected Obligations**);
 - (iii) the extent to which the Force Majeure Event directly precludes the Precluded Party from performing the Affected Obligations (**Precluded Extent**); and
 - (iv) the expected duration of the delay directly caused by the Force Majeure Event.
- (b) The Precluded Party must:
 - (i) use its best endeavours to overcome the effects of the Force Majeure Event; and
 - (ii) resume compliance with this agreement as soon as practicable after the Force Majeure Event no longer affects the Precluded Party.

22. Termination

22.1 Termination by either party

A party may terminate this agreement for cause with immediate effect by giving notice to the other party if:

- (a) the other party breaches any provision of this agreement and fails to remedy the breach within 20 Business Days after receiving notice requiring it to do so;
- (b) the other party breaches a material provision of this agreement where that breach is not capable of remedy; or
- (c) in so far as permitted under the *Corporations Act 2001* (Cth), any event referred to in clause 22.4 happens to the other party.

22.2 Termination by WorkSafe

WorkSafe may terminate this agreement for cause with immediate effect by giving notice to the Recipient if:

- (a) the Recipient breaches clause 18.5;
- (b) WorkSafe considers that any conduct of the Recipient or any of the Personnel may harm or diminish the name, messages or reputation of WorkSafe or bring WorkSafe into disrepute, contempt, scandal or ridicule, including due to WorkSafe's support of and association with the Recipient the Activities;
- (c) there has been any fraud relating to the WorkSafe Funding, misappropriation of WorkSafe Funding by the Recipient or there has otherwise been any misleading or deceptive conduct or other misconduct on the part of the Recipient in connection with this agreement, the Activities or the provision or use of the WorkSafe Funding;
- (d) for any reason (including the cessation of any of the Funding for the Activities other than the WorkSafe Funding) WorkSafe reasonably considers that the Recipient will not, or will be unable to, establish and continue to deliver the Activities; or

22.3 Termination without cause

WorkSafe may terminate this agreement without cause by giving the Recipient 20 Business Days' written notice of such termination.

22.4 Notification of events

A party must notify the other party immediately if:

- (a) it disposes of the whole or part of its assets, operations or business other than in the ordinary course of business;
- (b) it ceases to carry on business;
- (c) it ceases to be able to pay its debts as they become due;
- (d) any step is taken by a mortgagee to take possession or dispose of the whole or part of its assets, operations or business;
- (e) any step is taken to enter into any arrangement between it and its creditors;
- (f) any step is taken to appoint a receiver, a receiver and manager, a trustee in bankruptcy, a provisional liquidator, a liquidator, an administrator or other like person of the whole or part of its assets, operations or business; or
- (g) having regard to its legal structure, any event analogous to an event in paragraphs (a) to (f) happens to it.

23. Effect of termination or expiry

23.1 Payment on termination

In the event that this agreement is terminated by the Recipient under clause 22.1 or by WorkSafe under clause 22.3, WorkSafe will pay the Recipient all accrued WorkSafe Funding, in respect of all work in progress (work completed but not billed) as at the date of termination of the agreement.

23.2 Actions on termination or expiry

- (a) On expiry or termination of this agreement for any reason:
 - (i) unless otherwise agreed in writing between the parties, all amounts of the WorkSafe Funding not used or committed by the Recipient at the termination or expiry of this agreement must be returned by the Recipient to WorkSafe within 20 Business Days after the termination or expiry; and
 - (ii) subject to paragraph (b), each Recipient must, immediately upon being so requested in writing by WorkSafe, at WorkSafe's option:
 - (A) deliver to WorkSafe;
 - (B) destroy and certify in writing to WorkSafe the destruction of; or
 - (C) destroy and permit WorkSafe to witness the destruction of,all Confidential Information that is either in the possession of the Recipient or that the Recipient has provided to any other person, including all notes, memoranda, correspondence, reports, summaries, and all other materials or things brought into existence by the Recipient or any of its disclosees from which any part of the Confidential Information can be understood.
- (b) Without limiting the Recipient's ongoing obligations under clause 18, a Recipient may retain Confidential Information to the extent that:
 - (i) such retention is required by Law or the Recipient's bona fide internal record-keeping policies, provided that no attempt is made to use such Confidential Information except for legal or compliance purposes; or
 - (ii) that Confidential Information is held as a backup in electronic form in backup tapes, servers or other sources as a result of Recipient's normal backup procedures for electronic data, provided that no attempt is made to recover such Confidential Information from the back-up tapes, servers or other sources (except as permitted under paragraph (i)).

23.3 Accrued rights and remedies

The expiry or termination of this agreement for any reason does not affect any accrued rights or remedies of either party.

23.4 Survival

Any indemnity or obligation of confidence under this agreement is independent of, and survives termination of, this agreement. Any other term by its nature intended to survive termination of this agreement survives termination of this agreement, including clauses 1,3.6, 4, 6, 10.3, 11, 12, 13, 14, 17, 18, 20, 24, 25, 26 and this clause 23.

24. Goods and services tax

24.1 Defined terms

In this clause 24, a word or expression defined in the GST Act has the meaning given to it in the GST Act.

24.2 Consideration GST exclusive

Any consideration to be paid or provided for a supply made under or in connection with this agreement, unless specifically described in this agreement as 'GST inclusive', does not include an amount on account of GST.

24.3 Gross up of consideration

Despite any other provision in this agreement, if a party (**Supplier**) makes a supply under or in connection with this agreement on which GST is imposed (not being a supply the consideration for which is specifically described in this agreement as GST inclusive):

- (a) the consideration payable or to be provided for that supply under this agreement but for the application of this clause (**GST exclusive consideration**) is increased by, and the recipient of the supply (**Receiving Party**) must also pay to the Supplier, an amount equal to the GST payable by the Supplier on that supply; and
- (b) the amount by which the GST exclusive consideration is increased must be paid to the Supplier by the Receiving Party without set off, deduction or requirement for demand, at the same time as the GST exclusive consideration is payable or to be provided.

24.4 Reimbursements (net down)

If a payment to a party under this agreement is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that party, then the payment will be reduced by the amount of any input tax credit to which that party is entitled for that loss, cost or expense.

24.5 Tax invoices

- (a) WorkSafe will provide a purchase order number to the Recipient after which the Recipient will submit a Tax Invoice, in accordance with the milestone payments set out in Schedule 2, quoting the purchase order number to WorkSafe.
- (b) The Recipient:
 - (i) represents that it is registered for GST as at the Start Date, and will remain registered for GST at all times throughout the Term; and
 - (ii) must notify WorkSafe if it ceases to be registered for GST at any time during the Term.

25. Dispute resolution

25.1 Notice of Dispute

A party claiming that a dispute, difference or question arising out of this agreement has arisen (**Dispute**) must give the other party notice of the details of the Dispute (**Dispute Notice**).

25.2 No court proceeding unless procedure followed

A party must not start court proceedings (except proceedings seeking interlocutory relief) unless it has complied with this clause 25.

25.3 Negotiations

The parties must attempt to resolve any Dispute by negotiation using the following escalation procedure:

- (a) after a Dispute Notice is given, each party's respective representative must first attempt to resolve the Dispute by negotiation; and
- (b) if the parties' representatives cannot resolve the Dispute within five Business Days after the Dispute Notice is given (or any longer period agreed between those representatives), each party must refer the Dispute to:
 - (i) in the case of WorkSafe, its chief executive officer; or
 - (ii) in the case of the Recipient, its Secretary or equivalent,
(or his or her nominee) who must then attempt to resolve it by negotiation.

25.4 Court proceedings if procedure fails

If the chief executive officers (or their respective nominees) cannot resolve the Dispute under clause 25.3(b) within 30 days (or such longer period as agreed between the chief executive officers or their respective nominees) after the Dispute is referred to them, then a party may seek any relief it considers appropriate in a court of competent jurisdiction.

25.5 Release if other party breaches

If a party breaches this clause 25 in relation to a Dispute, the other party need not comply with this clause 25 in relation to that Dispute.

25.6 Obligations continue

The parties must continue to perform their respective obligations under this agreement pending the resolution of a Dispute.

25.7 Costs

Each party must pay its own costs of complying with this clause 25.

26. Notices and communications

26.1 Service of notices

A notice or notification under this agreement (**Notice**) must be:

- (a) in writing, in English and signed by a person duly authorised by the sender; and
- (b) hand delivered or sent by prepaid priority post or e-mail to the recipient's address for Notices specified in item 6 of Schedule 1, as varied by any Notice given by the recipient to the sender.

26.2 Effective on receipt

A Notice given in accordance with clause 26.1 takes effect when taken to be received (or at a later time specified in it), and is taken to be received:

- (a) if hand delivered, on delivery;
- (b) if sent by prepaid priority post, on the second Business Day after the date of posting (or on the seventh Business Day after the date of posting if posted to or from a place outside Australia); or
- (c) if sent by email, when the sender's email system generates a message confirming successful transmission of the entire Notice unless, within eight Business Hours after the transmission, the recipient informs the sender that it has not received the entire Notice.

26.3 Event giving rise to receipt

If the event giving rise to receipt occurs on a day that is not Business Day or after the end of Business Hours, the Notice is taken to be received at the start of Business Hours on the next Business Day.

27. General

27.1 Alterations

This agreement may be altered only in writing signed by each party.

27.2 Approvals and consents

Except where this agreement expressly states otherwise, a party may, in its discretion, give conditionally or unconditionally or withhold any approval or consent under this agreement.

27.3 Assignment

- (a) Subject to subclause (b), neither party may assign any of its rights or purport to novate any of its obligations under this agreement to a third party without the other party's prior written consent.
- (b) WorkSafe may assign or novate its rights or obligations under this Agreement to any Victorian Public Entity where required in the event of any State government restructure or other re-organisation or change in State government policy, without the consent of, but subject to providing written notice to, the Recipient.

27.4 Costs

Each party must pay its own costs of negotiating, preparing and executing this agreement.

27.5 Counterparts

This agreement may be executed in counterparts. All executed counterparts constitute one document.

27.6 No merger

The rights and obligations of the parties under this agreement do not merge on completion of any transaction contemplated by this agreement.

27.7 Further action

Each party must do, at its own expense, everything reasonably necessary (including executing documents) to give full effect to this agreement and any transaction contemplated by it.

27.8 Severability

A term or part of a term of this agreement that is illegal or unenforceable may be severed from this agreement and the remaining provisions or parts of the provisions of this agreement continue in force.

27.9 Waiver

A party does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power or remedy. A single or partial exercise of a right, power or remedy does not prevent another or further exercise of that or another right, power or remedy. A waiver of a right, power or remedy must be in writing and signed by the party giving the waiver.

27.10 Relationship

- (a) Except where this agreement expressly states otherwise, it does not create a relationship of employment, trust, agency or partnership between the parties or between WorkSafe and any of the Personnel.

- (b) The Recipient is an independent contractor and the personnel employed or engaged by it or its agents are not entitled to or eligible by or for any reason to participate in any benefits or privileges given or extended to WorkSafe or its officers, employees or agents.

27.11 Governing law and jurisdiction

This agreement is governed by the law of Victoria and each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of Victoria.

27.12 Execution by individual

Any individual executing this agreement on behalf of a party warrants in their personal capacity that they have been authorised to act on behalf of that party and that this agreement binds that party in accordance with its terms.

27.13 Entire agreement

This agreement constitutes the entire agreement between the parties in connection with its subject matter and supersedes all previous agreements, understandings, communications or warranties between the parties in connection with its subject matter. Nothing in this clause excludes a party's liability for prior false, misleading or deceptive statements or misrepresentations, whether oral or written.

Signing page

EXECUTED as an agreement.

DATED _____ 2026.

**Signed for Victorian WorkCover Authority
trading as WorkSafe** by an authorised officer:

Signature of officer

Name of officer (print)

Office held

Date

Signed for [insert] in accordance with section 127
of the *Corporations Act 2001* (Cth):

Signature of Director

Name of Director (print)

Date

Signature of Director/Secretary

Name of Director/Secretary (print)

Date

Schedule 1 – Further details

Agreement Details

Item	Description	Details		
1.	Activities	Completion of the Activities and Milestones described in Schedule 2.		
2.	Recipient	[Insert]		
3.	Start Date (clause 2)	[Insert]		
4.	End Date (clause 2)	[Insert]		
5.	Reimbursable expenses	[Insert]		
6.	Notices (clause 26)	WorkSafe	Address:	1 Malop St, Geelong VIC 3220
			Email:	[Insert]
			Telephone:	[Insert]
			Contact Person:	[Insert]
		Recipient	Address:	[Insert]
			Email:	[insert]
			Telephone:	[insert]
			Contact Person:	[Insert]
8.	Insurance (clause 17)	Public Liability Insurance		\$20,000,000 (twenty million)
		Professional Indemnity Insurance		\$20,000,000 (twenty million)
		Product Liability Insurance		\$10,000,000 (ten million)
		Cyber insurance		\$5,000,000 (five million)

Schedule 2 – Activities

1. Overview

1.1 Background

1.2 Objectives

2. Activities

2.1 Project

2.2 Project Phases

Phase 1 – [name]– [6 months] – [associated Milestone]
Phase 2 – [name]– [6 months] – [associated Milestone]
Phase 3 [name]– [6 months] – [associated Milestone]

3. Progress Reporting

Unless otherwise advised by WorkSafe in writing, the Recipient must adhere to the following reporting requirements.

Requirement	Description	Frequency
[insert]	[insert]	[insert]

4. Milestones

Milestone Number (M#)	Milestone Description	Milestone Due Date	Progress Reporting Due Date
M1			
M2			

5. Payments

WorkSafe shall pay the Recipient a fixed sum of [insert] (exclusive of GST) in WorkSafe Funding during the Term of this agreement, which fixed sum is payable in [x] instalments as follows:

Milestone #	Fee Instalment	Amount (ex. GST)	Anticipated Tax Invoice Date (Subject to change)
M1			

Annexure A – Grant Guidelines