

MULTICULTURAL NSW GRANTS PROGRAM TERMS & CONDITIONS

1. GRANT

Multicultural NSW makes the Grant under the Program to the Grantee for the Purpose and the achievement of the Outcomes of the Project, on the terms and conditions of this agreement.

2. GRANTEE'S ACKNOWLEDGMENT REPRESENTATIONS AND WARRANTIES

(a) The Grantee acknowledges that:

- (1) subject to the terms of this agreement, the Grantee is solely responsible for the Project and controlling the manner in which the Grantee uses the Grant; and
- (2) Multicultural NSW is making the Grant in reliance on the representations made by the Grantee in the Application Documents and this agreement.

(b) The Grantee represents and warrants on a continuing basis for the Term that:

- (1) all information supplied by the Grantee in the Application Documents is true and correct at the Effective Date;
- (2) the Grantee has full power and authority to enter in this agreement; and
- (3) the Grantee is not aware of any circumstances which adversely affect or might adversely affect the Grantee's ability to fulfil its obligations under this agreement.

3 GRANTEE'S OBLIGATIONS

The Grantee must:

(a) use the Grant to carry out the Project in accordance with:

- (1) the terms and conditions of this agreement;
- (2) the Application Documents (including any project plan, budget and performance measures) and the Program Documents;
- (3) multicultural principles set out in Multicultural NSW's governing legislation from time to time,

- and not use the Grant for any other purpose without obtaining the prior written consent of Multicultural NSW;
- (b) use or commit the grant to a purpose in line with the intent of the funding;
 - (c) achieve the Purpose and Outcomes within the Term;
 - (d) meet the performance measures stated in the Application Documents;
 - (e) provide the Reports at the end of each Reporting Period;
 - (f) provide any information or supporting documents reasonably requested by Multicultural NSW concerning the use of the Grant;
 - (g) comply with any reasonable directions made from time to time by Multicultural NSW concerning this agreement;
 - (h) *except as provided in this agreement*, make no public statements about the Grant or Multicultural NSW without obtaining Multicultural NSW's prior written consent;
 - (i) acknowledge the Grant in any public statements or publications concerning the Project using the following words: "Funding for this [insert the name of the Project in the Agreement Details] has been provided by the NSW Government through Multicultural NSW".
 - (j) *not*, without the prior written consent of Multicultural NSW, use Multicultural NSW's trademarks or logos;
 - (k) maintain for the Term the currency of any insurance, certifications, accreditations, authorisations and approvals specified in the Application Documents as being required to be held by the Grantee to carry out the Project;
 - (l) notify Multicultural NSW of any change in the status or circumstances of the Grantee that would have a significant effect on its ability to comply with its obligations under this agreement;
 - (m) participate in meetings and reviews required on reasonable notice from time to time by Multicultural NSW;
 - (n) generate and maintain in good order, for a period of 7 years from the date of their creation, accurate and auditable financial, operational and technical records (**Records**) relating to the use of the Grant in accordance with this agreement;
 - (o) on provision of reasonable notice by Multicultural NSW, permit Multicultural NSW or its authorised representative including the Auditor General of NSW to:
 - (1) inspect and make copies of the Records; and
 - (2) enter and inspect any premises from which the Project is being carried out, for the purposes of assessing the performance of this agreement;and

- (p) comply with all laws, regulations, codes and standards and the requirements of any lawful authority that apply to the Project and the use of the Grant.

4 MULTICULTURAL NSW'S RIGHTS

- (a) Multicultural NSW may exercise the rights of Multicultural NSW implicit in the obligations of the Grantee in clause 3.
- (b) If:
- (1) the Grantee breaches the warranty in clause 2(b); or
 - (2) no part of the Grant has been acquitted in the first Reporting Period, the Grant lapses and Multicultural NSW is entitled at any time to recover from the Grantee an amount equal to the Grant.
- (c) After the end of the Term, Multicultural NSW is entitled to recover from the Grantee:
- (1) an amount equal to any part of the Grant which has not been spent, or is not legally committed and payable by the Grantee in relation to the Project as a current liability. If the Grantee claims that funds are legally committed, written evidence of this must be provided to Multicultural NSW;
 - (2) an amount equal to any part of the Grant which, in Multicultural NSW's reasonable opinion, has been spent other than in accordance with this agreement; and
 - (3) an amount equal to any part of the Grant which, in Multicultural NSW's reasonable opinion reflects an underperformance against the performance measures stated in the Application Documents.
- (d) Without limiting any other right or remedy of Multicultural NSW, Multicultural NSW may give the Grantee a notice requiring the Grantee to repay to Multicultural NSW an amount which Multicultural NSW is entitled to recover under this clause 4.
- (e) If Multicultural NSW gives a notice under clause 4(d), the Grantee must repay the amount specified in the notice in full within 30 days of the date of the notice. If the amount is not paid by that date then Multicultural NSW may commence legal proceedings for recovery of the debt due without further notice to the Grantee.

5 INDEMNITY

- (a) The Grantee indemnifies Multicultural NSW against all Liability Multicultural NSW may incur in

respect of any Claim arising in any manner out of a breach by the Grantee of its obligations under this agreement, any negligent or unlawful act or omission or willful misconduct of the Grantee or any personnel employed or retained by the Grantee in the course of performing the Project, including Claims in respect of:

- (1) personal injury or the death of any person;
 - (2) loss of or damage to any property;
 - (3) breach of a person's Intellectual Property; and
 - (4) breach of clause 9 (Confidentiality and Privacy).
- (b) The Grantee's Liability under clause 5(a) will be reduced to the extent that such Liability is caused or contributed to by the negligent or unlawful act or omission or willful misconduct of Multicultural NSW or its personnel.

6 DISPUTE RESOLUTION

- (a) Either party may give to the other a written notice providing details of a dispute.
- (b) Subject to paragraph (f) the parties must attempt to settle by negotiation any dispute concerning this agreement by referring the matter to the chief executive officer (or nominee) of each party before resorting to external dispute resolution mechanisms.
- (c) If a dispute is not settled by the parties within 14 days of one party sending to the other party written notice of the dispute, then the dispute must be referred to the Australian Commercial Disputes Centre ("ACDC") for mediation and conducted in accordance with mediation guidelines published from time to time by ACDC.
- (d) If the dispute is not settled by the parties within 30 days of submission to ACDC, either party may commence court proceedings in relation to the dispute.
- (e) Notwithstanding the existence of a dispute each party must continue to perform its obligations under the agreement, except where the performance of an obligation is the subject matter of the dispute.
- (f) A party may commence court proceedings relating to any dispute arising from this agreement at any time where that party seeks urgent interlocutory relief.
- (g) Each party must bear their own costs of participation in the dispute resolution process.

7 TERMINATION

Multicultural NSW may immediately terminate this agreement by notice to the Grantee if:

- (a) the Grantee is in breach of its obligations under this agreement, and does not rectify that breach within 14 days of being requested to do so;
- (b) the Grantee enters into any form of insolvency or external administration or bankruptcy; or
- (c) the Grantee engages in any conduct which brings the reputation of the Grantee into disrepute and as a consequence Multicultural NSW believes that its continued association with the Grantee will be detrimental to the interests of the Program, Multicultural NSW or the NSW Government.

8 GST

- (a) A reference in this clause 8 to a term defined or used in the *A New Tax System (Goods and Services Tax (GST)) Act 1999* (Cth) is, unless the context indicates otherwise, a reference to that term as defined or used in that Act.
- (b) Any amount referred to in this agreement which is relevant in determining a payment to be made by one of the parties to the other is exclusive of any GST unless indicated otherwise.
- (c) If GST is imposed on a supply made under or in connection with this agreement, the consideration provided for that supply is increased by the rate at which that GST is imposed. The additional consideration is payable at the same time as the consideration to which it relates.
- (d) If one of the parties is entitled to be reimbursed for an expense or outgoing incurred in connection with this agreement, the amount of the reimbursement will be net of any input tax credit which may be claimed by the party being reimbursed in relation to that expense or outgoing.
- (e) The parties agree that Multicultural NSW will issue recipient created tax invoices to the Grantee in relation to the payment of the Grant.

9 CONFIDENTIALITY AND PRIVACY

- (a) Each party must not disclose any Confidential Information of the other party without that party's prior written consent, except where disclosure is:

- (1) necessary for the performance of a party's obligations under this agreement;
 - (2) required by law; or
 - (3) required to be made by Multicultural NSW to other government agencies, reviewers and staff assisting with the administration or promotion of NSW Government funding programs administered by Multicultural NSW.
- (b) The parties must not use or disclose any Health Information or Personal Information for a purpose other than discharging their obligations under this agreement.
 - (c) The parties agree to collect, use, access, retain and disclose Health Information or Personal Information in connection with this agreement in accordance with the requirements of the Health Records and Information Privacy Act 2002 (NSW) and the Privacy and Personal Information Protection Act 1998 (NSW).
 - (d) The parties must take all necessary steps to protect Confidential Information, Health Information and Personal Information collected in connection with this agreement against misuse, loss or unauthorised disclosure and must return all such information to the owner of the information (or if requested by the owner, destroy or de-identify such information) upon termination or expiry of this agreement.

10 GENERAL

10.01 Additional Conditions

Additional Conditions agreed by the parties and included in item 14 of the Agreement Details will take precedence over any other provision of this agreement to the extent of any inconsistency.

10.02 Relationship

- (a) In performing this agreement, both parties must act reasonably and in good faith.
- (b) The Grantee's relationship Multicultural NSW is non-exclusive and nothing in this agreement constitutes the Grantee as an agent, employee, or partner of Multicultural NSW or engaged in a joint venture with Multicultural NSW.

10.03 Governing law and jurisdiction

- (a) This agreement is governed by the law in force in New South Wales.

- (b) Each party irrevocably submits to the non exclusive jurisdiction of courts exercising jurisdiction in New South Wales and courts of appeal from them in respect of any proceedings arising out of or in connection with this agreement.

10.04 Invalidity and enforceability

If any provision of this agreement is invalid under the law of any jurisdiction the provision is enforceable in that jurisdiction to the extent that it is not invalid, whether it is in severable terms or not.

10.05 Waiver

A failure or delay in exercise or partial exercise of a right arising from a breach of any provision of this agreement is not to be regarded as a waiver of that right and cannot be relied upon as a waiver of that right.

10.06 Variation

A variation of any term of this agreement must be in writing and signed by the parties.

10.07 Further action

Each party must, at its own expense, do all things and execute all documents necessary to give full effect to this agreement and the transactions contemplated by it.

10.08 Service of notices

Any notice or communication including any request, demand, consent, approval or confirmation to or by a party to this agreement must be in legible writing and in English and delivered by hand or sent by pre-paid post, electronic mail or facsimile addressed to a party at the addresses set out at the beginning of this agreement or such other address for notices as notified by a party to the other parties from time to time.

10.09 Receipt of notices

- (a) A notice delivered by hand is regarded as given and received upon delivery.
(b) A notice sent by post is regarded as given and received on the second Business Day following the date of postage.
(c) Electronic mail is regarded as given and received when

the sender receives an electronic acknowledgement receipt from the recipient's electronic email address.

- (d) A facsimile is regarded as given and received when successfully transmitted unless the addressee informs the sender that the notice is illegible or incomplete within 4 hours of it being received or regarded as received.
(e) A notice delivered or received other than on a Business Day or after 5.00pm is regarded as received at 9.00am the following Business Day and a notice delivered or received before 9.00am is regarded as received at 9.00am.

10.10 Assignment or novation

The Grantee may only assign its rights or novate its rights and obligations under this agreement with the prior written consent of Multicultural NSW.

10.11 Survival of obligations

Any provisions, including clauses 4, 5, 8 and 9, that would reasonably be expected to be performed after the termination or expiration of this agreement will survive and be enforceable after such termination or expiration.

10.12 Entire agreement

This agreement states all the express terms of the agreement between the parties in respect of its subject matter. It supersedes all prior discussions, negotiations, understandings and agreements in respect of its subject matter.

10.13 Counterparts

This agreement may be executed in any number of counterparts.

11 DEFINITIONS AND INTERPRETATION

11.01 Definition

- (a) In this agreement, terms described in the Agreement Details when used in this agreement have the meanings given to them in those details.
(b) Meanings of other terms used in this document are set out in the table below:

Term	Meaning
Business Day	a day on which banks are open for business in Sydney Australia excluding a Saturday, Sunday or public holiday.
Claim	includes all demands, rights, actions, suits or proceedings of any kind.
Confidential Information	of a party means any information or data, including Personal Information, whether or not in material form, which is confidential to the party, including confidential information created, acquired, collected or developed for the purpose of the Project or obtained during the Term, but not information in the public domain other than as a result of a breach of this agreement.
Health Information	has the meaning given in Health Records and Information Privacy Act 2002 (NSW).
Intellectual Property	all industrial and intellectual property rights, both in Australia and throughout the world, and includes any copyright, trade or service marks, patents, registered and unregistered trademarks, registered designs, trade secrets, knowhow moral rights, rights in relation to semiconductors and circuit layouts, trade, business or company name, indication or source or appellation of origin, or other proprietary right, or right to registration of such rights.
Liability	includes all damage, costs, expenses or loss.
Personal Information	has the meaning given in the <i>Privacy and Personal Information Protection Act 1998 (NSW)</i> .

11.02 INTERPRETATION

In this agreement, headings and bold type are for convenience only and do not affect the interpretation of this agreement and, unless the context otherwise requires:

- (a) words importing the singular include the plural and vice versa;
- (b) other parts of speech and grammatical forms of a word or phrase defined in this agreement have a corresponding meaning;
- (c) an expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate and any government agency;
- (d) a reference to a statute, regulation, proclamation, ordinance or by law includes all statutes, regulations,

proclamations, ordinances or by laws amending, consolidating or replacing it, whether passed by the same or another government agency with legal power to do so, and a reference to a statute includes all regulations, proclamations, ordinances and by laws issued under that statute;

- (e) a reference to a document includes all amendments or supplements to, or replacements or novations of, that document;
- (f) a reference to a party to a document includes that party's successors and permitted assigns;
- (g) a reference to an agreement other than this agreement includes an undertaking, deed, agreement or legally enforceable arrangement or understanding whether or not in writing;
- (h) no provision of this agreement will be construed adversely to a party solely on the ground that the party was responsible for the preparation of this agreement or that provision.

11.03 BUSINESS DAY

Where the day on or by which anything is to be done is not a Business Day, that thing must be done on or by the next succeeding Business Day.