

**WORKPLACE INJURY PREVENTION GRANT  
FUNDING AGREEMENT**

BETWEEN

**ACCIDENT COMPENSATION CORPORATION**

AND

**[RECIPIENT]**

**Recipient Reference  
Number:**

**Funding Round - November 2020**

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**FUNDING AGREEMENT  
FOR  
WORKPLACE INJURY PREVENTION GRANT**

**DATED** at                      **this**                      **day of**                      **2021**

**THE PARTIES**

**BETWEEN**    ACCIDENT COMPENSATION CORPORATION a statutory corporation continued by the Accident Compensation Act 2001 (ACC) Justice Centre, 19 Aitken Street, Wellington

**AND**                      **Applicant Name (“Recipient”)**

**BACKGROUND**

ACC Workplace Injury Prevention (WIP) Grants support innovation in health and safety and build the capability of the health and safety system to accelerate health and safety improvements.

The WIP Grant is an ACC programme that provides funding (in the form of co-investment) and support to eligible organisations for the delivery of initiatives that focus on sustainably improving the health and safety system of New Zealand.

The WIP Grants funding strives to:

- build strong partnerships with the New Zealand health and safety system agents of change;
- extend upon existing capacity and resources within the health and safety system; and
- foster collaboration for the achievement of health and safety outcomes.

The WIP Grant is organised around three funding streams that support the development of the health and safety system:

- workforce and system capability;
- innovation and improvement of health and safety solutions; and
- better research and generation of knowledge.

The WIP Grant will achieve this by:

- incentivising organisations to run research, innovation and system capability development initiatives with the objective of knowledge exchange across multiple organisations for impact at scale;
- promoting sector leadership and ownership of health and safety performance by investing in initiatives that focus effort, enhance collaboration and drive health and safety best practice; and

- supporting initiatives that have high potential to improve injury prevention and align to ACC strategic commitments (e.g. Harm Reduction Action Plan and Health and Safety Strategy).

## AGREEMENT

ACC will pay the Funding to the Recipient, and the Recipient accepts the Funding, on the terms and conditions set out in the General Terms, Schedule 1 (Specific Terms), Schedule 2 (Funding), and Schedule 3 (Reporting) and Appendix 1: Milestones and Activities Schedule.

This Agreement sets out the Parties' rights and obligations.

Signed by, **appropriate delegation holder- title**, the authorised delegate for the Chief Executive of Accident Compensation Corporation

\_\_\_\_\_  
Signature

Date: \_\_\_\_\_

Signed for and on behalf of [enter name of entity] by:

**[Note: trusts or incorporated societies may require a different execution block]**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Full Name

\_\_\_\_\_  
Print Title

Date: \_\_\_\_\_

## GENERAL TERMS

### 1. DEFINITIONS

1.1 In this Agreement, unless the context requires otherwise:

**Activities** means the activities performed or to be performed by the Recipient as described in this Agreement at Appendix 1.

**Agreement** means this Funding Agreement (including all Schedules, and any attachment referred to).

**Business Day** means any day not being a Saturday or Sunday, a public holiday observed in Wellington, or the period from 26 to 31 December each year.

**Co-Funding** has the meaning given in clause 2 (Co-Funding) of Schedule 2.

**Commencement Date** means the date this Agreement commences as set out in Schedule 1.

**Confidential Information** includes the terms of this Agreement and any information exchanged during the negotiation of this Agreement, and, in relation to each Party, means information provided by, obtained from, or relating to that Party, that becomes known to the other Party under or in connection with this Agreement, which:

- (a) is by its nature confidential;
- (b) is marked as 'confidential', 'in confidence', 'restricted', 'commercial in confidence' or with a similar designation;
- (c) is provided in confidence;
- (d) the other Party knows or ought to know is confidential; or
- (e) is commercially sensitive to that Party.

**Conflict of Interest** in relation to the Recipient means any conflict of the Recipient's interests or obligations with its responsibilities under this Agreement. A conflict of interest means that the Recipient's independence, objectivity or impartiality can be called into question. A conflict of interest may be:

- (a) actual: where the conflict currently exists;
- (b) potential: where the conflict is about to happen, or could happen; or
- (c) perceived: where other people may reasonably think that a Recipient or any of their personnel is compromised.

**Contract Manager** means the Recipient's contract manager or ACC's contract manager, as the case may be, identified as such in Schedule 1.

**Control** means the power to directly or indirectly manage the operation of the Recipient's business or control the composition of the Recipient's board of directors or board of management.

**Control measures** has the same meaning as in regulation 3 of the Health and Safety at Work (General Risk and Workplace Management) Regulations 2016;

**End Date** means the earlier of the end date set out in Schedule 1, or if applicable the date of effective termination of this Agreement.

**Extraordinary Event** means an event beyond the reasonable control of the Party immediately affected by the event, including:

- (a) acts of God, lightning strikes, earthquakes, tsunamis, volcanic eruptions, floods, storms, explosions, fires, pandemics and any natural disaster;

- (b) acts of war (whether declared or not), invasion, actions of foreign enemies, military mobilisation, requisition or embargo;
- (c) acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage, rebellion, insurrection, revolution or military usurped power or civil war; and
- (d) contamination by radio-activity from nuclear substances or germ warfare or any other such hazardous properties.

**Funding** means the amounts paid or to be paid to the Recipient under this Agreement as specified in Schedule 2.

**Government Procurement Rules** means the document of that name issued by the Ministry of Business, Innovation, and Employment (fourth edition, effective from 1 October 2019), and any associated guidance issued from time to time.

**GST** means goods and services tax payable at the applicable rate pursuant to the Goods and Services Tax Act 1985.

**HSW Act** means the Health and Safety at Work Act 2015.

**HSW Legislation** means the HSW Act and includes all regulations made under that Act and any other health and safety-related legislation relevant to the Recipient performance of the Activities.

**Intellectual Property Rights** includes copyright and all rights conferred under statute, common law or equity in relation to inventions (including patents), registered or unregistered trademarks and designs, circuit layouts, data and databases, confidential information, know-how, and all other rights resulting from intellectual activity.

**Key Personnel** means the people identified as such in Schedule 1.

**Licensed Material** means all or any of the New Material; and

- (a) Pre-existing Material; and
- (b) Third Party Material,

in each case included in, embodied in, attached to, or necessary for the use of, the New Material.

**Material** means:

- (a) property, information, documentation or other material in any form; and
- (b) the subject matter of any category of Intellectual Property Rights.

**Milestone** means the milestones which the Recipient is obliged to complete by a specified date or within a specified period.

**Milestone Report** means the report described as such in Schedule 3.

**New Material** means any Material created:

- (c) by, for or on behalf of the Recipient;
- (d) during the Term of this Agreement; and
- (e) that is delivered, presented or otherwise communicated to ACC by or on behalf of the Recipient as a part, or result, of the Activities.

**Parties** means ACC and the Recipient.

**Personnel** of any person, means all individuals directly or indirectly engaged by that person. Examples include directors, employees, contract staff, agents, consultants, specialists, support staff and co-opted or seconded staff.

**Pre-Existing Material** means Material in existence prior to the Commencement Date.

**Tax Invoice** means a tax invoice as defined in the Goods and Services Tax Act 1985.

**Term** has the meaning given in clause 4.

**Third Party Material** means Material owned by a third party.

## 2. INTERPRETATION

2.1 In this Agreement, unless the context requires otherwise:

- (a) if there is any conflict or difference between the documents forming this Agreement, then the order of precedence is:
  - (i) Variation made in accordance with this Agreement;
  - (ii) Schedules
  - (iii) General Terms
  - (iv) Original application
- (b) headings are for guidance only and do not affect interpretation;
- (c) the singular includes the plural and vice versa;
- (d) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (e) any references:
  - (i) to this Agreement, means this Agreement as amended from time to time and includes all attachments to this Agreement and any document incorporated into this Agreement by reference;
  - (ii) to a clause or Appendix, is a reference to a clause or Appendix of the Schedule in which the reference is contained; and
  - (iii) to a Schedule or attachment, are references to a Schedule or attachment of this Agreement;
- (f) subject to clause 27 (Notices), anything that this Agreement requires to be done in writing, may be done by email;
- (g) references to Dollars or \$ are references to New Zealand dollars;
- (h) references to monetary amounts are exclusive of GST (if any);
- (i) a reference to any statute, regulation, or expression of government policy includes any amendments, re-enactments or replacements of that statute, regulation, or expression of government policy from time to time;
- (j) reference to a person includes:
  - (i) a company, body of persons (corporate or unincorporate) or any state, regional or local government body or agency; and
  - (ii) that person's representatives, successors and assigns;
- (k) "including", "includes", "in particular", "for example" or similar words do not imply any limitations;
- (l) no rule of construction applies to the disadvantage of ACC on the basis that ACC put forward this Agreement or any part of it; and
- (m) references to time mean New Zealand standard time.

## 3. ENTERING THIS AGREEMENT

3.1 Each Party represents and warrants that it is authorised to enter into and perform its obligations under this Agreement.

3.2 The Recipient warrants on its execution of this Agreement that:

- (a) it is not insolvent or bankrupt and no action has been taken to initiate any form of insolvency or administration in relation to the Recipient;
- (b) all information relating to the Activities that was provided by the Recipient to ACC prior to ACC's execution of this Agreement, including in any proposal or presentation by the Recipient, is accurate, complete and true. The Recipient acknowledges that ACC is entering into this Agreement in reliance on such information; and
- (c) it is not aware of any information that has not been disclosed to ACC which may, if disclosed, materially adversely affect the decision of ACC whether to provide the Funding.

#### **4. TERM**

4.1 This Agreement commences on the Commencement Date and, unless terminated or extended in accordance with this Agreement, will remain in force until the close of the End Date at which time it shall automatically expire, provided that:

- (a) if the Activities have not been performed to the satisfaction of ACC by that date; and acting reasonably, by that date; and;
- (b) ACC requests the continuation of this Agreement, such that the Activities can be performed to the satisfaction of ACC, acting reasonably'

then this Agreement will continue, at no charge to ACC, until the Activities have been performed to the satisfaction of ACC, acting reasonably ("**Term**").

#### **5. RELATIONSHIP**

5.1 The Parties agree to:

- (a) act in good faith in all matters relating to this Agreement and, without abandoning their own interests, to demonstrate honesty, integrity, openness, reasonableness, and accountability in their dealings with each other; and
- (b) discuss matters affecting this Agreement or the delivery of the Activities, whenever necessary and in a timely manner.

5.2 The Recipient must comply with ACC's usual policies and procedures (including those relating to health and safety, and security requirements) as provided to you from time to time, and with the Supplier Code of Conduct issued by the Ministry of Business, Innovation, and Employment.

#### **6. PAYMENT**

6.1 The Recipient may issue a Tax Invoice to ACC for each payment of Funding once the Milestone relating to that payment has been met to ACC's reasonable satisfaction. The Tax Invoice is to be submitted at the same time as the Milestone Report or Final Report to which it applies.

6.2 If the Recipient fails to provide ACC with a Tax Invoice within 3 months of the agreed date for invoicing, then the Recipient is deemed to have waived any right to that payment by ACC.

6.3 In applying for a payment of Funding, the Recipient will submit to ACC:

- (a) a Milestone Report;
- (b) a Tax Invoice which includes:
  - (i) sufficient details to enable ACC to identify:
    - a. the Agreement;
    - b. the particular Milestone which is the subject of the invoice; and
    - c. the amount of Funding payable; and
  - (ii) any other details requested by ACC.

6.4 Subject to clauses 6.5 to 6.8 (inclusive), ACC will pay each correctly rendered invoice received by ACC



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by 5th Business Day of the month will be payable on or before the 20th day that month if the invoice is dated the preceding month in which ACC receives the Recipient's application under clause 6.3, which is satisfactory to ACC in all respects. Payment of Funding by ACC is not evidence that the Milestone or Activities to which the invoice relates have been provided in accordance with this Agreement.

- 6.5 ACC will only make the payment due under clause 6.4 if ACC is reasonably satisfied that the Milestone to which the payment relates has been completed by the due date.
- 6.6 Each payment of Funding will be in the amount specified which corresponds to the relevant Milestone completed.
- 6.7 Despite this clause 6, ACC's obligation to pay the Funding is subject to:
- (a) there being no un-remedied breach of this Agreement by the Recipient; and
  - (b) ACC being satisfied on reasonable grounds that the Funding is being appropriately expended on the Activities in accordance with this Agreement.
- 6.8 If ACC has a bona fide dispute in relation to all or any portion of any Tax Invoice, whether in relation to the Milestones invoiced, the accuracy of the Tax Invoice, Milestone Report or otherwise, ACC may withhold payment of the amount subject to the dispute, provided that:
- (a) ACC will pay any undisputed amount when it becomes due and payable; and
  - (b) the Recipient will continue to perform its obligations under this Agreement while the dispute is resolved.
- 6.9 The Recipient should pay any subcontractors promptly, and offer them payment terms no less favourable than in this Agreement. If ACC becomes aware that the Recipient has not paid its subcontractors without reasonable justification, then ACC may choose to pay those subcontractors directly, and deduct those amounts from the Funding that would otherwise have been due to the Recipient.

## 7. ACTIVITIES

### *Performance Standards*

- 7.1 The Recipient will perform the Activities in accordance with the terms of this Agreement.
- 7.2 The Recipient will ensure that the Activities are performed:
- (a) promptly with due diligence, care and skill;
  - (b) by appropriately trained, qualified, experienced and supervised persons; and
  - (c) to ACC's satisfaction as reasonably specified by ACC in writing from time to time.

### *Publicity*

- 7.3 The Recipient will acknowledge ACC as a source of funding in all publications and publicity regarding the Activities. This acknowledgement will take the form of 'Legal Entity acknowledges the co-funding of this project by the ACC's Workplace Injury Prevention programme'.

*Information*

- 7.4 The Recipient will:
- (a) promptly provide ACC with all information relating to the Activities as requested by ACC from time to time, and provide that information as soon as possible if requested by ACC to comply with its statutory, parliamentary or other reporting obligations (including any reporting obligation, publication, or information disclosure anticipated by the Government Procurement Rules); and
  - (b) ensure that all information it provides under this Agreement is factually correct and contains no material omissions.

*Issues*

- 7.5 The Recipient will promptly notify ACC in writing of any:
- (a) actual or anticipated matter relating to the Activities or the Funding that could:
    - (i) materially impact on the Activities or the Funding; or
    - (ii) in relation to the Activities or the Funding, receive media attention; or
  - (b) change in the Recipient's status.

## **8. MILESTONES**

- 8.1 The Recipient will use all reasonable endeavours to complete the Milestones, unless it is:
- (a) unable to do so due to an Extraordinary Event or ACC's breach of this Agreement; or
  - (b) expressly instructed to do otherwise in writing by ACC.
- 8.2 If the Recipient anticipates any delay (for any reason) in the completion of any Milestone, it will give written notice to ACC of the anticipated delay as soon as is reasonably practicable.
- 8.3 If ACC reasonably believes that the progress of the Recipient has slipped significantly from the timetable required to complete any Milestone, ACC may give written notice to that effect to the Recipient.
- 8.4 If:
- (a) the completion of any Milestone is delayed; or
  - (b) a notice is served under clauses 8.2 or 8.3;
- then the Parties will, as soon as reasonably practicable, discuss and seek to agree the changes necessary to achieve an expeditious return to meeting the Milestone (including changes to the timetable or any Personnel or other resources provided by either Party under this Agreement). Any failure to agree the matters discussed will be a dispute for the purposes of clause 21 (Dispute Resolution).
- 8.5 Despite clause 8.4, if the completion of any Milestone is delayed other than as permitted under clause 8.1, then (without prejudice to any other right of or remedy available to ACC):
- (a) ACC may withhold any payment due on completion of that Milestone until such time as the Recipient has completed that Milestone; and
  - (b) the provisions of clause 22 (Termination) will apply.

- 8.6 Any changes to the Activities or Agreement agreed under clause 8.4 will be documented as a Variation under clause 13 (Variations).

## **9. PERSONNEL**

- 9.1 The Recipient must ensure that the "Key Personnel", if any, listed in Schedule 1 undertake such roles in respect of the Activities as may be specified in that Schedule.
- 9.2 Where any Key Personnel are unable to perform their specified roles, the Recipient must notify ACC immediately. The Recipient must, if requested by ACC, provide replacement Personnel acceptable to ACC without additional payment and at the earliest opportunity.
- 9.3 ACC may give notice, on reasonable grounds related to the performance of the Activities, requiring the Recipient to remove one or more Personnel (including any "Key Personnel" specified in Schedule 1) from involvement in the Activities. The Recipient must, at its own cost, promptly arrange for such removal and the provision of replacement Personnel reasonably acceptable to ACC.
- 9.4 "The Recipient's Personnel are not employees, contractors, subcontractors or agents of ACC, or workers in relation to ACC's undertakings. The Recipient will ensure it complies in full with its duties and obligations under the Health and Safety at Work Act 2015 and any associated regulations, including the duties set out in Part 2 of that Act to the extent that they apply to the Activities under this Agreement".

## **10. SUBCONTRACTORS**

- 10.1 The Recipient may not subcontract any of its obligations under this Agreement, other than:
- (a) to those subcontractors listed in Schedule 1, or
  - (b) where it has ACC's prior written approval (ACC will not unreasonably withhold its approval for the use of subcontractors); or
  - (c) where the subcontracting occurs in the ordinary course of the Recipient's business, and the subcontracted service is not substantially dedicated to the performance of this Agreement.
- 10.2 The Recipient must ensure that:
- (a) each subcontractor is fully aware of the Recipient's obligations under this Agreement to the extent necessary for the subcontractor to properly perform its obligations;
  - (b) each subcontract it enters into is either approved by ACC in writing or is on terms that are consistent with this Agreement, to the extent relevant and material for the performance of the subcontractor's obligations, and that it contains any provisions which ACC, acting reasonably, advises is necessary in order to ensure compliance with Rule 25 of the Government Procurement Rules; and
  - (c) each subcontract restricts the ability of the subcontractor to further subcontract its obligations without first obtaining ACC's consent.
- 10.3 The Recipient will not be relieved of any of its liabilities or obligations under this Agreement by entering into any subcontract.
- 10.4 If a subcontractor has failed to deliver any aspect of the Activities being subcontracted as approved under this Agreement and the failure cannot be remedied, ACC may, by notice to the Recipient, require the Recipient to terminate that subcontract immediately. ACC will not be liable for any losses or costs of the Recipient associated with such termination.
- 10.5 The Recipient will ensure that its contract with each approved subcontractor will contain the same rights as found in clause 26 (Recordkeeping and Audit), and that those rights are directly enforceable by ACC against the subcontractor pursuant to subpart 1 of part 2 of the Contract and Commercial Law Act 2017.

## **11. CONFLICT OF INTEREST**

- 11.1 The Recipient:
- (a) warrants that as at the Commencement Date, it has no Conflict of Interest; and
  - (b) must do its best to avoid situations that may lead to any Conflict of Interest arising during the Term.

- 11.2 The Recipient must immediately notify ACC in writing of any matter, event or circumstance that gives rise to any Conflict of Interest. If a Conflict of Interest does arise the Parties must discuss, agree and record in writing how it will be managed.
- 11.3 The Recipient will use reasonable endeavours to minimise the impact on ACC of any Conflict of Interest. Each Party must pay their own costs in relation to managing a Conflict of Interest.
- 11.4 If the Recipient fails to notify ACC of a Conflict of Interest, or is unable or unwilling to resolve or deal with the Conflict of Interest as required, ACC may terminate this Agreement in accordance with clause 22 (Termination).

## **12. COMPLIANCE WITH LAWS**

- 12.1 The Recipient will ensure that in performing its obligations under this Agreement it complies with all relevant laws, regulations, and codes and standards of practice in New Zealand and any other relevant jurisdiction.
- 12.2 Except as specified in Schedule 1 or agreed in writing by ACC, the Recipient is responsible for ensuring that every necessary and prudent authorisation (including consents, permits and licences) is obtained to allow the Recipient to perform its obligations under this Agreement, including in relation to performance carried out on ACC premises.

## **13. VARIATIONS**

- 13.1 No variation to this Agreement (each a "Variation") is effective unless:
  - (a) it is agreed in writing and signed by a duly authorised representative of both Parties; or
  - (b) it is made pursuant to clause 13.2
- 13.2 Where a change in legislation or regulations, or a ministerial direction under the Accident Compensation Act 2001 is stated by Notice given to the Supplier by ACC to have the effect of requiring this Agreement to be varied in any respect, this Agreement shall thereupon be deemed to be varied in that respect, and ACC shall not be liable for any loss or additional costs suffered or incurred by the Supplier as a result unless ACC agrees otherwise.
- 13.3 Unless expressly agreed in writing to the contrary, it will be an implied term in every Variation that the Variation will not prejudice any rights or obligations under this Agreement except to the extent those rights or obligations are expressly amended by the Variation.

## **14. CONFIDENTIALITY**

- 14.1 Each Party will keep confidential and secure and not use or disclose to any third party any of the other Party's Confidential Information except:
  - (a) to its professional advisers or Personnel directly concerned with the implementation or operation of this Agreement and to the extent necessary for performing its obligations under this Agreement;
  - (b) if the use or disclosure is required or anticipated by the Government Procurement Rules, or as required by law, court order, other legal obligation, or parliamentary rules or convention;
  - (c) under the Official Information Act 1982, provided that in the event of a request under such Act, ACC will endeavour (if practicable in the circumstances) to notify the Recipient and provide an opportunity for the Recipient to comment on the information proposed to be released by ACC;
  - (d) to the extent necessary to subcontract to parties as approved by ACC in accordance with this Agreement;
  - (e) where the information subsequently becomes part of the public domain through no fault of the Party receiving the information; or
  - (f) with the prior written consent of the other Party.
- 14.2 Should a request be made to either Party for information that is confidential to the other Party in accordance with clause 14.1(c), the Party to whom the request is made will notify the other Party as soon as practicable. Such notice will outline the information subject to the request, and allow the Party being notified a reasonable opportunity to provide comment on whether, in its opinion, there are good (or conclusive) reasons for withholding any or all of the information sought.

- 14.3 Subject to clause 14.1, the Recipient must not disclose any data, results, research papers, conference papers, reports, promotional material, pamphlets or other documentation relating to the Activities without the prior written consent of ACC.
- 14.4 Each Party acknowledges that a breach of any obligation of confidence under this Agreement may cause the other Party irreparable damage for which monetary damages would not be an adequate remedy. Accordingly, in addition to any claim for damages and any other remedies available at law or equity, the non-breaching Party may seek specific performance or injunctive relief against any breach or threatened breach by the other Party, its Personnel, agents or contractors of this clause 14. Each Party undertakes to provide the other Party with any assistance possible in any such action against any of that first Party's Personnel, agents or contractors.

## 15. PROTECTION OF PERSONAL INFORMATION

- 15.1 Without limiting any specific privacy obligations specified in Schedule 1 the Recipient will comply with the Health Information Privacy Code 1994 (where the Recipient is a health agency) and the Privacy Act 1993 including:
- (a) ensuring that any personal or health information a Recipient holds about an ACC client is protected by reasonable security safeguards against loss or unauthorised access, use modification or disclosure;
  - (b) appointing a privacy officer; and
  - (c) having a privacy policy that:
    - (i) includes what to do if there is a privacy breach (including procedures to promptly advise ACC); and
    - (ii) complies with any reasonable ACC policy provided by ACC to the Recipient.
- 15.2 The Recipient agrees that ACC may assess the Recipient's privacy policy and practices. The Recipient will cooperate with any privacy assessment, including completing self-assessments on request.
- 15.3 Without limiting clause 15.1, the Recipient shall escalate a privacy breach concerning information that relates to Services in this Agreement to ACC under the following procedure:
- (a) Any breach will be notified to ACC's Key Personnel by phone and email as soon the Recipient is aware of the breach situation.
  - (b) The Recipient and ACC will then work together to manage consequences and implications of the breach, including in accordance with ACC's issues management procedures.
  - (c) The Recipient will not comment publicly, including to the media, about the breach without written permission of one of ACC's Key Personnel.

## 16. MEDIA RELATIONS

- 16.1 Each party may publicise and report on the awarding of the Funding, including the Recipient's and any of its subcontractor's names, the amount of the Funding and a brief description of the Activities on websites and in media releases, general announcements and annual reports. Recipients must provide ACC with prior written notice of any such public announcement.
- 16.2 The Recipient may not make any public announcement beyond the scope of clause 16.1 without the prior written approval of one of ACC's Key Personnel; such approval shall not unreasonably be withheld.
- 16.3 Neither Party may post on websites, social networking sites or publicly display objectionable or derogatory comments about the Activities, this Agreement, each other, or any of their Personnel.
- 16.4 The Recipient will refer any enquiries from the media or any other person about the terms or performance of this Agreement to ACC.

## 17. EVALUATION

- 17.1 It is a condition of this Grant that the Recipient has in place a monitoring and review programme in support of the Activities. The Recipient is required to provide periodic reports to ACC in accordance with the requirements of Schedule 3 (Reporting)
- 17.2 ACC may at any time during the Term, or within seven years after the End Date, undertake, or engage an

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expert to undertake, a review or evaluation of the Activities, including any progress reports provided by the Recipient in accordance with Schedule 3 (Reporting).

- 17.3 In relation to any review or evaluation of the Activities, the Recipient must at its cost within 15 Business Days after a request by ACC or the expert:
- (a) provide all reasonable assistance to ACC and the expert;
  - (b) respond to all reasonable requests from ACC or the expert; and
  - (c) provide any information reasonably required by ACC or the expert.

## 18. INTELLECTUAL PROPERTY

- 18.1 This clause 18 does not affect the ownership of the Intellectual Property Rights in any Pre-existing Material or Third Party Material.
- 18.2 Subject to clause 18.3, all Intellectual Property Rights in the New Material vest in the Recipient on creation.
- 18.3 The Recipient grants to ACC and New Zealand's state sector (as defined in the Cabinet Manual 2008) a perpetual, irrevocable, world-wide, royalty-free, non-exclusive licence (including the right to sublicense, but not for commercial gain) to use, reproduce, adapt, modify, communicate, broadcast, distribute and publish (i) the New Material and (ii) any Pre-Existing Material and/or Third Party Material necessary to enable ACC to do those things with the New Material.
- 18.4 The Recipient undertakes, at its own expense, to execute and deliver any documents in respect of matters within its control, so ACC can obtain the full benefit of clause 18.3 according to its true intent, including obtaining any third-party consents, registering itself as proprietor of any registerable Intellectual Property Rights in the New Material and to perfect its title to any such Intellectual Property Rights as appropriate.
- 18.5 The Recipient warrants that no rights, including Intellectual Property Rights, of any third party will be infringed by:
- (a) the Recipient's performance of the Activities; or
  - (b) use of the Licensed Materials in accordance with this Agreement.
- 18.6 If any third-party claims that any Activities or the use of the Licensed Materials by ACC in accordance with this Agreement infringe its Intellectual Property Rights, the Recipient must, in addition to any other right or remedy of ACC, promptly at the Recipient's expense:
- (a) use its best efforts to secure the rights for the continued provision of the Activities or the use of the Licensed Materials free of any claim or liability for infringement; or
  - (b) replace or modify the Activities or Licensed Materials, without any degradation in their functionality, performance or quality, so that use of them in accordance with this Agreement does not infringe the Intellectual Property Rights of any third party.
- 18.7 The Recipient waives, and will use its best endeavours to ensure its Personnel and subcontractors have waived, all moral rights in any New Material prior to its creation.

## 19. LIABILITY

- 19.1 The Recipient will be liable to ACC for the acts, defaults and omissions of its Personnel, agents and subcontractors, as fully as if they were the acts, defaults or omissions of the Recipient.
- 19.2 Neither Party will be liable to the other Party for any loss of profit, loss of revenue or other indirect, consequential or incidental loss or damage arising under or in connection with this Agreement.
- 19.3 The maximum liability of ACC under or in connection with this Agreement, whether arising in contract, tort (including negligence) or otherwise, is limited to the total amount of Funding payable under this Agreement, less any Funding paid by ACC under this Agreement.
- 19.4 The maximum liability of the Recipient under or in connection with any event under this Agreement, whether arising in contract, tort (including negligence) or otherwise, is the amount specified under Insurance in Schedule 1, or if no Insurance amount is specified, \$1 million dollars.
- 19.5 Subject to the amounts at clause 19.4, the Recipient indemnifies ACC against:

Commercial in Confidence

- (a) any taxes, levies, penalties, damages or compensation which ACC may be liable to deduct, withhold or pay by reason of the Recipient, or any person used by the Recipient to carry out the Activities, being held to be an employee of ACC; and
- (b) any claim, liability, loss or expense (including legal fees on a solicitor and client basis) brought or threatened against, or incurred by ACC, arising from or in connection with a breach of this Agreement by the Recipient, or from the negligence or misconduct of the Recipient.

## 20. INSURANCE

- 20.1 It is the Recipient's responsibility to ensure its risks of doing business are adequately covered, whether by insurance or otherwise.
- 20.2 Insurance Policies: The Recipient must effect and maintain with a reputable insurer for the term of this Contract, and for 3 years following termination or expiry, the following types of insurance:
- (a) public liability insurance;
  - (b) professional indemnity insurance; and
  - (c) other insurance reasonably required by the Buyer,
- 20.3 the amount and terms of such insurance cover to be adequate to protect ACC from non-performance of the Recipient's obligations under this Contract, having regard to any liability clause.
- 20.4 Evidence of Insurance: The Recipient may be required to provide the Buyer with evidence of its current insurances as a condition precedent to the commencement of this Contract.
- 20.5 Prompt information: The Recipient must promptly inform the Buyer of:
- (a) any claims relating to this Contract against the insurance policies referred to in this clause; and
  - (b) any material change to, cancellation or non-renewal of, such policies.
- 20.6 Currency of insurance: The Recipient must, upon request by the Buyer, provide the Buyer with evidence that all insurance cover required by clause 20.1 and described under the Insurance Policies is current and meets the other requirements of this Contract.

## 21. DISPUTE RESOLUTION

- 21.1 Except where a Party seeks urgent interlocutory relief, injunction, or specific performance, or has terminated this Agreement, neither Party may commence court proceedings against the other without the relevant Party using reasonable endeavours to comply with clauses 21.2 to 21.6 inclusive.
- 21.2 Where any dispute, disagreement, question or difference ("**Dispute**") arises between the Parties on any matter arising out of this Agreement, either Party ("**Initiator**") may notify the other Party ("**Other Party**") in writing of the Dispute ("**Dispute Notice**"). The Dispute Notice must specify the Initiator's:
- (a) view of the facts of the Dispute;
  - (b) legal position on the Dispute;
  - (c) its suggestion for resolving the Dispute; and
  - (d) representative authorised to resolve the Dispute.
- 21.3 The Other Party must respond to the Dispute Notice within five Business Days of receiving it. The Other Party's response must specify its:
- (a) view of the facts of the Dispute;
  - (b) legal position on the Dispute;
  - (c) its suggestion for resolving the Dispute; and
  - (d) representative authorised to resolve the Dispute.
- 21.4 The Parties will enter into negotiations to resolve the Dispute within five Business Days of the Initiator receiving the Other Party's response.

- 21.5 Where the Parties are unable to negotiate a resolution to the Dispute within 20 Business Days of the Other Party's receipt of the Dispute Notice (or such other time as the Parties agree in writing), then clause 21.6 will apply.
- 21.6 The Parties will use best efforts to agree on a mediator and a fee for that mediator. However, if the Parties cannot agree within five Business Days of the expiry of the timeframe referred to in clause 21.5, the mediator will be selected, and the mediator's fee determined, by the Chair for the time being of the organisation known as Resolution Institute (or his/her nominee). Mediation will be conducted in all respects in accordance with the Resolution Institute standard mediation agreement, and the Parties will use their best efforts to ensure that mediation is commenced and conducted expeditiously.
- 21.7 Where mediation does not resolve the Dispute within 10 Business Days of mediation commencing then without prejudice to each Party's right to commence court proceedings the Parties may agree to commence arbitration proceedings in accordance with the provisions of the Arbitration Act 1996.
- 21.8 The Parties agree that any mediation or arbitration which the Parties are required to attend shall be conducted in Wellington, New Zealand.
- 21.9 Pending settlement of the Dispute, the Parties will continue to perform their obligations under this Agreement as far as is practicable as if the Dispute had not arisen. This does not limit either Party's right to terminate this Agreement.

## **22. TERMINATION**

- 22.1 Either Party may terminate this Agreement, immediately on written notice to the other Party, where the other Party commits a breach of this Agreement that:
- (a) is not capable of being remedied and has a material adverse effect on the terminating Party (in the reasonable opinion of the terminating Party); or
  - (b) is capable of being remedied, but has not been remedied to the terminating Party's reasonable satisfaction within 20 Business Days (or such longer period as the terminating Party may allow in writing) of the non-defaulting Party giving the defaulting Party written notice:
    - (i) stating the nature of the breach, what is required to remedy it and the time and date by which it must be remedied; and
    - (ii) which must be given within three months after the non-defaulting Party became aware of the breach.
- 22.2 ACC may terminate this agreement by giving the Recipient 20 days notice
- 22.3 ACC may terminate this Agreement immediately by giving written notice to the Recipient, if the Recipient:
- (a) fails to complete a Milestone within 10 Business Days after the relevant due date, other than as permitted under clause 8.1 (Milestones);
  - (b) is no longer able to complete the proposals or project to ACC's satisfaction;
  - (c) becomes insolvent or bankrupt;
  - (d) has an administrator, receiver, liquidator, statutory manager, mortgagee's or charge's agent appointed;
  - (e) becomes subject to any form of external administration;



- (f) becomes unable to pay its debts as they become due or is presumed to be unable to pay its debts under section 287 of the Companies Act 1993;
- (g) is unable to perform its obligations under this Agreement for more than 20 Business Days due to an Extraordinary Event;
- (h) ceases to carry on business of the type or within the scope of which the Activities fall, or if ACC is not satisfied that the Recipient's business or any aspect of it remains compatible with performance of the Activities;
- (i) fails or is unable to rectify any deficiency in the Activities uncovered by ACC as a result of an audit conducted under clause 26 (Recordkeeping and Audit);
- (j) does not secure or use Co-Funding in accordance with this Agreement;
- (k) does something, or fails to do something, that, in ACC's opinion, results in damage to ACC's reputation or business, or the reputation or business of the New Zealand Government;
- (l) has any Conflict of Interest that:
  - (i) in ACC's opinion is so material as to impact adversely on the delivery of the Activities, ACC or the New Zealand Government;
  - (ii) the Recipient failed to notify ACC of; or
  - (iii) in ACC's opinion, the Recipient is unable or unwilling to resolve or deal with as required by ACC acting reasonably;
- (m) fails or is unable to provide acceptable replacement Personnel within 20 Business Days of being requested to do so by ACC under clause 9 (Personnel);
- (n) assigns this Agreement other than in accordance with clause 29.7 (Assignment); or
- (o) has provided or provides information to ACC that is misleading or inaccurate in any material respect.

22.4 Either party may terminate this Agreement immediately by giving 10 Business Days' written notice to the Recipient if ACC has confirmed in writing to the Recipient that it has insufficient funding within its budget for the Activities.

## **23. EFFECT OF EXPIRY OR TERMINATION**

23.1 On expiry or termination of this Agreement:

- (a) ACC may require the Recipient to provide evidence of how the Funding has been spent; and
- (b) any Funding that has not yet been paid by ACC will not be paid, except in respect of Activities performed prior to expiry or termination.

23.2 Expiry or termination of this Agreement will not:

- (a) prejudice any other rights and remedies of the Parties under this Agreement or otherwise provided by law; or
- (b) affect any part of this Agreement which expressly, or by its nature, survives termination or expiry, including clauses 14 (Confidentiality), 16 (Media Relations), 17 (Evaluation), 18 (Intellectual Property), 19 (Liability), 21 (Dispute Resolution), 23 (Effect of Expiry or Termination), 24 (Contact Persons), 25 (Inspection), 26 (Recordkeeping and Audit), 27 (Notices), 28 (Extraordinary Events) and 29 (Miscellaneous).

## **24. CONTACT PERSONS**

- 24.1 All matters relating to this Agreement (including but not limited to matters concerning interpretation of this Agreement) will be directed to ACC's Contract Manager or the Recipient's Contract Manager.
- 24.2 If a reasonable attempt to contact ACC's Contract Manager in accordance with clause 24.1 is unsuccessful, enquiries can be directed to the person for the time being holding the office of ACC Grants' Coordinator.
- 24.3 If a reasonable attempt to contact the Recipient's Contract Manager in accordance with clause 24.1 is unsuccessful, enquiries can be directed to the chief executive or a director of the Recipient.
- 24.4 Each Party may from time to time change the person designated as its Contract Manager on 10 Business Days' written notice to the other Party.

## **25. INSPECTION**

- 25.1 The Recipient will ensure that ACC Personnel, agents and contractors, have access, at any reasonable time and for any reasonable purpose in connection with the Activities, free of charge, to any of the Recipient's property or premises relevant to this Agreement, and will ensure that any subcontracts confer on ACC an equivalent right of access for inspection.

## **26. RECORDKEEPING AND AUDIT**

- 26.1 The Recipient must keep and maintain full, accurate and up to date records, including financial records, in relation to the provision of Activities, the Co-Funding and all money paid and payable by ACC under or in relation to this Agreement sufficient to enable ACC to:

- (a) meet its obligations under the Public Finance Act 1989;
- (b) carry out an audit for the purposes specified in clause 26.2; and
- (c) carry out a review or evaluation in accordance with clause 17 (Evaluation).

The Recipient must retain such records for at least seven years after termination or expiry of this Agreement.

- 26.2 At any time during the Term, or after the End Date where the Parties are in dispute, any Personnel or authorised agent of ACC may conduct an audit for the purpose of:

- (a) determining the Recipient's level of compliance with this Agreement (including whether there has been a breach of this Agreement);
- (b) determining whether Activities and Milestones invoiced for by the Recipient have been performed according to this Agreement; or
- (c) assisting in resolving a matter in Dispute between the Parties.

- 26.3 During an audit conducted under this clause 26, ACC may:

- (a) enter any premises of the Recipient or its subcontractors used in connection with provision of the Activities at any reasonable time during usual business hours;
- (b) inspect any records held under clause 26.1 in relation to the provision of Activities or any matter in dispute between the Parties; and
- (c) meet with and/or contact and speak to any or all Personnel involved with provision of the Activities, provided that this obligation shall be subject to such Personnel being employed by the Recipient at the time of the audit.

- 26.4 The Recipient will, at its expense, provide appropriately qualified staff to assist ACC to conduct the audit under this clause 26. ACC will pay all other reasonable costs incurred by the Recipient that are directly associated with the audit.
- 26.5 At least five Business Days prior to commencing an audit, ACC will notify the Recipient in writing of its intention to conduct an audit and of the intended scope and timing of the audit.
- 26.6 Where an audit conducted under this clause 26 identifies any serious concern or material non-compliance with the terms of this Agreement, ACC may require an additional audit or audits or other reasonable inquiries to be carried out at the Recipient's expense (such expenses including ACC Personnel costs at external charge-out rates).
- 26.7 ACC will advise the Recipient in writing of the scope and timing of any additional audit or inquiries required.
- 26.8 ACC will promptly notify the Recipient of the results of any audit conducted under this clause 26. Where any deficiencies are identified in such an audit, the Recipient will promptly take steps to remedy the deficiencies.

## **27. NOTICES**

- 27.1 Any notice or other communication under this Agreement will be deemed to be validly given if in writing and delivered by hand, registered mail, national post or international post, facsimile, or email (subject to the remainder of this clause 27) to the receiving Party's Contract Manager.
- 27.2 Unless the contrary is shown, any notice will be deemed to have been given on the date when actually delivered personally or by registered mail, on the second Business Day following posting to a national address, on the seventh Business Day following international posting, on the date sent by facsimile transmission if transmitted before 5:00 pm or on the next Business Day if transmitted after 5:00 pm, and on the date that receipt of an emailed notice is acknowledged by the Recipient personally (that is, not by any automatically generated system email).
- 27.3 The Parties agree that no notice required or permitted to be given pursuant to clause 21 (Dispute Resolution) or clause 22 (Termination) may be given by email.

## **28. EXTRAORDINARY EVENTS**

- 28.1 Neither Party will be liable to the other for any failure to perform its obligations under this Agreement by reason of an Extraordinary Event. The benefit of this clause does not extend to any Extraordinary Event if and to the extent that:
- (a) the effects of the event could have reasonably been prevented, avoided, overcome or mitigated by implementing reasonable precautions against the event;
  - (b) the affected Party is or was directly responsible for the event;
  - (c) the event is caused by:
    - (i) any failure of a contractor of the affected Party, except to the extent the contractor was itself affected by an event which, if it occurred in relation to a Party, would have been an Extraordinary Event;
    - (ii) a lack of funds for any reason;
    - (iii) the affected Party's own breach or negligence; or
    - (iv) strikes, lockouts, or any other form of labour dispute or delay caused by contractual or labour relations between either Party and any of its Personnel, agents, contractors or suppliers.
- 28.2 The Party affected by an Extraordinary Event must:
- (a) notify the other Party, as soon as practicable after the Extraordinary Event occurs, of:
    - (i) the nature of the circumstances giving rise to the Extraordinary Event;
    - (ii) the extent of the affected Party's inability to perform under this Agreement;

- (iii) the likely duration of that non-performance; and
  - (iv) the steps being taken to remedy, or reduce the impact of the Extraordinary Event;
- (b) use its best endeavours to avoid or remove the Extraordinary Event and to minimise and mitigate its effects on that Party's obligations; and
- (c) continue to perform its obligations under this Agreement as far as practicable.
- 28.3 ACC is not obliged to pay any Funding for so long as an Extraordinary Event prevents the Recipient from performing its obligations under this Agreement.

## 29. MISCELLANEOUS

### *Health and Safety*

29.1 The Recipient will:

- (a) consult, cooperate and coordinate with ACC to ensure that the Parties comply with their respective obligations under HSW Legislation as they relate to this Agreement;
- (b) perform its, and ensure that its Personnel and subcontractors perform their, obligations under this Agreement in compliance with the HSW Legislation, including but not limited to (x) obligations of a PCBU under ss36–43 of the HSW Act; and (y) obligations relating to the identification of hazards and implementation of control measures under the Health and Safety at Work (General Risk and Workplace Management) Regulations 2016;
- (c) comply with all reasonable directions of ACC relating to health and safety from time to time;
- (d) maintain a general health and safety policy and practices that are appropriate to the nature of the Activities;
- (e) comply with its own health and safety policy and practices, and ensure its Personnel and subcontractors so comply; and
- (f) notify all notifiable events occurring during performance of the Activities to ACC to WorkSafe NZ (with a copy to ACC) within the timeframe and in accordance with the requirements of the HSW Act.

### *Broader outcomes*

29.2 The Recipient must:

- (a) perform the Activities in a manner that is culturally appropriate for Māori and other ethnic or indigenous groups, and will take Treaty of Waitangi principles into account when performing the Activities. The Recipient acknowledges that ACC is a crown entity and is therefore required to act consistently with the Treaty, and that ACC will have due regard to the Treaty when funding and monitoring Activities that impact on economic opportunities and social outcomes for Māori;
- (b) perform the Activities in a manner that gives appropriate regard to the protection of the natural environment, including by looking for opportunities to reduce emissions and waste impacts, such as by procuring and using low-waste and low emissions goods and services where practicable; and
- (c) comply, and ensure that its subcontractors and Personnel comply, with all relevant employment standards and laws (including obligations under the Employment Relations Act 2000, Minimum Wage Act 1983, Wages Protection Act 1983, and the Holidays Act 2003). The Recipient will report any instances where it, its subcontractors, or its Personnel are being investigated by the Labour Inspectorate, or where it identifies that it has breached any of the legislation referred to in this paragraph (c).

### *Entire agreement*

29.3 This Agreement constitutes the entire agreement between the Parties and supersedes all prior agreements, representations, understandings and negotiations, whether written or oral of the Parties. The Parties acknowledge that they are not relying on any term, condition, representation or agreement that is not set out in this Agreement, unless such term or condition is implied by law.

### *Costs*

- 29.4 Subject to any express provision in this Agreement to the contrary, each Party is to pay its own legal and other costs and expenses relating directly or indirectly to the negotiation and preparation of this Agreement.

*Privity*

- 29.5 Only a Party to this Agreement may enforce, and have any benefit of, this Agreement unless specifically provided otherwise in Schedule 1.

*Relationship*

- 29.6 Nothing in this Agreement creates an employment, fiduciary, partnership, agency or joint venture relationship between ACC and the Recipient. Neither Party has authority to bind or represent the other Party in any way

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or for any purpose. This Agreement is not an exclusive arrangement between the Parties, and ACC may enter into contracts with third parties in respect of the same or similar Activities.

*Waivers*

- 29.7 No waiver of any rights or benefits arising under this Agreement is effective unless it is in writing and signed by the Party waiving. A waiver of a breach does not prejudice the waiving Party's rights in respect of any other breach. No delay, failure or forbearance by the Parties to exercise (in whole or in part) any right, power or remedy under this Agreement will operate as a waiver.

*Assignment*

- 29.8 The Recipient may not assign, transfer or otherwise deal with any of its rights or obligations under this Agreement without ACC's prior written approval. ACC may withhold its approval in its sole discretion.

*Change of Control*

- 29.9 The Recipient will notify ACC as soon as reasonably practicable of any expected change of Control of the Recipient, and notify promptly of any actual change of Control of the Recipient. Any change in Control of the Recipient is deemed to be an assignment of this Agreement and the provisions of clause 29.7 will apply.

*Severability*

- 29.10 If any provision of this Agreement is held to be invalid, illegal or unenforceable, such provision will be severed and the remainder of this Agreement will remain in full force and effect.

*Counterparts*

- 29.11 This Agreement may be executed in counterparts, meaning that execution will be complete when each Party holds a copy (which can be a faxed or emailed copy) of this Agreement signed by the other Party, even though the signatures of both Parties do not appear on the same copy.

*Joint and several liability*

- 29.12 Any provision of this Agreement to be performed or observed by two or more persons binds those persons jointly and severally.

*Governing law*

- 29.13 This Agreement and its formation are governed by New Zealand law. Both Parties submit to the non-exclusive jurisdiction of the New Zealand courts.

## SCHEDULE 1: SPECIFIC TERMS

### 1 PROJECT DESCRIPTION

Project summary

Project Objectives

Expected Outcomes and Benefits

Outcomes	Benefits

### 2 TERM

Commencement Date: [insert – day month year]

End Date: [insert – day month year]

### 3 CONTACT DETAILS

The initial contact persons for each Party are below. If a Party's contact persons or their details change, it must notify the other Party in writing in advance in accordance with clause 24.4 (Contact Persons) of the General Terms.

Party	Contract Manager
ACC	[first, last name] PO Box 242, Wellington 6011 Phone: Email:
Recipient	Name: [insert] Postal address: [insert] Title: [insert] Phone: [insert] Email: [insert]

### 4 KEY PERSONNEL

Name	Title	Role or Specialisation
		Project Manager
		Project Chair
		Finance Manager

### 5 REQUIRED INSURANCE

Policy Type	Minimum Cover	Maximum Excess
Professional Indemnity		
Public Liability		

### 6 APPROVED SUBCONTRACTORS

Subcontractor	Work to be performed	Conditions (if any)
[Full Legal Name]	[insert]	[TBC]
[Full Legal Name]	[insert]	[TBC]

**7 INTELLECTUAL PROPERTY**

Include any special conditions relating to Intellectual Property in particular licensing conditions.

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## SCHEDULE 2: FUNDING

### 1 ACC Funding

The total funding available under this Agreement is \$[insert] plus GST if any.

### 2 Co-Funding

- (a) The Recipient must secure and use at least the following financial contributions (“**Co-Funding**”) solely and specifically to undertake and meet the costs of the Activities. The Recipient’s financial contribution includes in-kind contributions (including internal staff time) spent on undertaking the Activities, provided that the in-kind contribution is valued in accordance with this Agreement.

Co-Funding Entity	Amount
[insert]	\$(insert) [optional: (In-kind) (cash)]
[insert]	\$(insert) [optional: (In-kind) (cash)]
[insert]	\$(insert) [optional: (In-kind) (cash)]
<b>Total</b>	<b>\$(insert)</b>

- (b) The Recipient must provide ACC with written evidence:
- (i) that the Recipient has secured the Co-Funding; and
  - (ii) of the terms of the Co-Funding, including:
    - a. the amounts to be provided;
    - b. the due date for payment of the amounts; and
    - c. any other terms and conditions of the provision of the Co-Funding,
 which must be satisfactory to ACC, acting reasonably.
- (c) The Recipient must notify ACC in writing within 14 days:
- (i) after entering into any arrangement under which it is entitled to receive any financial or in-kind contributions to the Activities which are not specified above; and
  - (ii) of the Recipient becoming aware of any circumstances that may result in any Co-Funding not being provided.

### 3 USE OF FUNDING

#### 3.1 Eligible Expenditure

The Recipient must apply the Funding only to the following expenditure (together “**Eligible Expenditure**”):

- (a) expenditure that:
- (i) was incurred by the Recipient for the purpose of the Activities;
  - (ii) was incurred in delivering Milestones due after the Commencement Date;
  - (iii) in ACC’s sole discretion, is not to an unreasonable extent for the benefit of an individual;
  - (iv) meets the following eligibility criteria:

- is not lost opportunity costs (that is, expenditure related to foregone production and downtime arising from the allocation of resources to the Activities); and
  - goods provided and services performed by parties not at "arm's length" must be assessed at reasonable market value and contain no unreasonable overhead and no element of "in group profit"; and
- (b) overhead and operating expenses of the Recipient that have increased as a direct result of the Activities are Eligible Expenditure, up to a maximum of 10% of the Funding. For the sake of clarity, the Recipient's usual overheads or operating costs, as they existed immediately prior to the Commencement Date, are not Eligible Expenditure.
- (c) expenditure that ACC otherwise approves in writing (in its absolute discretion) as Eligible Expenditure for the purposes of this Agreement.

### 3.2 Financial Management

The Recipient must:

- (b) ensure that any payments of Funding made to third parties in connection with this Agreement (including to subcontractors) are correctly made and properly authorised and that the Recipient maintains proper and diligent control over the incurring of all liabilities;
- (c) maintain an appropriate financial management system to ensure that the Funding is separately identified and managed within its accounts;
- (d) not use the Funding for the purposes of guaranteeing, or as security for, any loan, credit, payment or other interest, or in the context of any litigation, except with ACC's prior written approval.

### 3.3 STOP / GO Points for Funding

The Activities may identify STOP / GO points where further Funding is dependent on specified criteria being met or Milestones being completed. Where any such criteria are not met or Milestones not completed, ACC is not obliged to provide the further Funding dependent on those criteria or Milestones.

### 3.4 Repayment

Without limiting any other right or remedy, ACC may recover Funding from the Recipient as follows:

- (i) **Misspent Funding.** At any time ACC may recover the amount of any Funding that has been spent or used other than in accordance with this Agreement, together with interest on all such amounts calculated at the Default Interest Rate from the date of the misspending to the date the money is repaid.
- (ii) **Activities Abandoned.** If the Recipient has abandoned the Activities or stated an intention to abandon the Activities, and does not within 10 Business Days of being requested to do so by ACC demonstrate to ACC's satisfaction that the Recipient will proceed with the Activities, ACC may recover an amount up to the total value of the Funding. ACC may not recover under this sub-clause if the Recipient satisfies ACC that it acted on reasonable grounds in deciding to abandon the Activities.
- (d) **Repayment notice.** ACC may give the Recipient a notice requiring the Recipient to pay to ACC an amount which ACC is entitled to recover under this clause 3.4. If ACC gives a notice under this clause, the Recipient must pay the amount specified in the notice in full within one month after the date of the notice.
- (e) **Interest.** If the Recipient fails to make payment as required by this clause, the Recipient must pay ACC interest calculated at the Default Interest Rate from the date payment is due until the date the money is repaid.

The Recipient will use the Funding to perform the Activities as necessary to complete the Milestones.

## SCHEDULE 3: REPORTING

### 1. REPORTS

The Recipient will report to ACC as set out in the table below. Subject to the specification below, each report will be consistent with relevant industry standards and best practice for the relevant type of report and be provided in any format reasonably required by ACC. Each report submitted to ACC must be duly authorised by the Recipient, **and must be provided at no cost to ACC.**

Report Specification
<p><b>MILESTONE REPORT</b></p> <p>A report must be submitted to ACC on completion of each Milestone through and must include:</p> <ul style="list-style-type: none"> <li>• a description of the Milestone(s) to which the report relates;</li> <li>• evidence that the Milestone has been completed;</li> <li>• a copy of any physical output/deliverable required for the completion of the Milestone;</li> <li>• any other information reasonably requested by ACC concerning the Milestone or the Activities;</li> <li>• the Tax Invoice for the applicable portion of Funding for completion of the Milestone; and</li> <li>• when relevant to the Milestone, details of target audience reached by the intervention</li> </ul>
<p><b>MID-PROJECT EVALUATION</b></p> <p>The Recipient is required to complete a mid-point evaluation survey at approximately the half way point of the project. This survey is a self-evaluation of the project, its performance and progress made at the half way point towards its intended goals and objectives. This evaluation helps ACC track and assess whether the project is on-track against the original objectives, milestones and project timelines.</p>
<p><b>MAJOR PROGRESS REPORT</b></p> <p>ACC may require from time to time that the Recipient submit a report regarding its overall progress in relation to the Activities, this Agreement, and any other matters advised by ACC.</p>
<p><b>FINAL MILESTONE REPORT AND EVALUATION REPORT</b></p> <ol style="list-style-type: none"> <li>1. On completion of the Activities and the final Milestone, the Recipient must submit a Final Milestone Report that includes in addition to the standard Milestone Report: <ul style="list-style-type: none"> <li>• a Fact Sheet for the project in the form specified by ACC; and</li> <li>• to the extent not already delivered to ACC, the Final Milestone Report must include copies of any reports, promotional material, media publicity, pamphlets or other documentation relevant to the Activities.</li> <li>• a completed financial summary template (template provided by ACC)</li> <li>• a completed project completion template (template provided by ACC)</li> <li>• any other information reasonably requested by ACC concerning the completion of the project and the final milestone</li> <li>• a description of the status of all the benefits and outcomes described in Schedule 1</li> </ul> </li> <li>2. The Recipient is required to commission an evaluation of the project, its performance and achievement of goals, objectives and outcomes. This evaluation helps ACC to determine the efficacy of the projects and the level of performance improvement in the health and safety system. The terms of reference are to be signed off by ACC contract manager, prior to the evaluation commencing.</li> </ol>
<p><b>POST PROJECT EFFECTIVENESS MEASURE REPORT</b></p> <p>Following the final milestone report and evaluation report for a period of up to seven years following the End Date, ACC may periodically request additional information to support its need to measure the ongoing effectiveness of the project including but not limited to the status of all the outcomes and benefits described in Schedule 1.</p>

ACC may request documentary evidence from the Recipient in relation to any item reported against.

### 2. ACTIVITIES

The Parties acknowledge that certain matters (such as Activities and Milestones) are recorded in Appendix

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**Appendix 1 – Milestones and Activities Schedule**

	Milestone Description	Activities	Performance Standard	Milestone Payment Date	ACC Amount \$	Non ACC Cash Amount \$	Non ACC In-Kind Amount \$	Total \$
1								
2								
3								
4								
5								
6								
7								
8								
9								
10								
11								
12								
13								
14								
15								