

# **Model Memorandum of Understanding/Contract\*** **[insert name of document]**

Dated

[insert full name of party] [insert abbreviation of name]  
[insert full name of party] [insert abbreviation of name]

\*NOTE:

## **Memorandum of Understanding**

The usual purpose of a memorandum of understanding (sometimes referred to as a heads of agreement), is to provide a brief record of the terms of a transaction as agreed by the parties during the negotiation process. It can be binding or non-binding. A memorandum of understanding can be a useful way to verify the key terms of a transaction before entering into your final contract.

## **Contract**

A contract is a legally binding promise or agreement. If a contract is breached by a party the other parties to the contract are entitled to enforce the contract, or seek remedies under it.

## **Choosing between a Memorandum of Understanding and Contract**

Consider whether you want to enter into a binding agreement at this stage or, whether you do not wish to be contractually bound until a later stage in the negotiations.

If you do not wish to be bound by the document until a formal contract comes into force, then you should use a memorandum of understanding and include the sample paragraph at 2.2 or 2.3 in the document. If you wish for some clauses of the memorandum of understanding to be binding then you should include the sample paragraph at 19.2 in the document. If you wish to be bound by this document, we recommend that you enter into a contract.

If you are unsure or concerned about any of your rights or obligations under this agreement, you should seek independent legal advice (separate to the other parties in the Consortium).

# Details

**Interpretation** – definitions are at the end of the General terms

<b>Parties</b>	<b>[list party titles or abbreviated names here]</b>	
	Name	[ ]
	ABN/ACN/ARB N	[ ]
	Incorporated in	[ ]
	Address	[ ]
	Telephone	[ ]
	Fax	[ ]
	Attention	[ ]
	Name	[ ]
	ABN/ACN/ARB N	[ ]
	Incorporated in	[ ]
	Address	[ ]
	Telephone	[ ]
	Fax	[ ]
	Attention	[ ]
<b>Recitals</b>	<b>A</b>	The Department of Community Services (“ <b>DOCS</b> ”) called for tenders for the provision of Early Intervention Program services (“ <b>EIP Services</b> ”) in New South Wales.
	<b>B</b>	EIP Services are aimed at providing targeted support to vulnerable families and assisting them to care for their children.
	<b>C</b>	The Parties formed a consortium in order to tender for the EIP Services in [Insert Area].

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**D** As a consortium, the Parties have agreed to develop, deliver, operate, administer and manage EIP Services on the terms set out in this Memorandum of Understanding/Agreement.

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**Governing law** New South Wales

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**Date of agreement** See Signing page

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# Introduction

## 1 Purpose

The parties agree to work together for the development, delivery, operation, administration and management of EIP Services in the [insert area] (the “**Project**”).

The parties agree to work together in good faith on the Project.

[insert any additional purposes as required]

### 1.1 Key Principles to Collaborate

The parties acknowledge the following statement of principles to guide their collaboration under this agreement in relation to the Project:

- (a) Integrated service delivery will be client and outcome focussed;
- (b) Parties will demonstrate, through their action, a willingness to make the collaboration succeed;
- (c) All parties to the agreement share a common vision, values, and understanding of the scope of their individual obligations under the agreement; and
- (d) Integration initiatives will be delivered in a secure environment with acceptable levels of privacy and confidentiality protection.

## 2 Commencement and Operation

### 2.1 Commencement

This agreement commences and becomes binding on the parties when [insert party name] and [insert party name] enter into the Funding Agreement, and terminates at the conclusion of the Funding Agreement [or insert other date as needed] or in accordance with clause 17 (“**Termination**”).

<b>OPTION 1: INSERT THIS CLAUSE IF NONE OF THIS DOCUMENT IS BINDING.</b>
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### 2.2 Non binding Memorandum of Understanding

This Memorandum of Understanding merely constitutes a statement of the mutual intentions of the parties with respect to its contents and each party represents to the other that:

- (a) no reliance shall be placed on it;
- (b) it does not constitute an obligation binding on either side;
- (c) it does not contain all matters upon which agreement must be reached in order for the Agreement to be consummated;
- (d) it creates no rights in favour of either party; and
- (e) for the avoidance of doubt and without limiting the above in any way, this Memorandum of Understanding imposes no commitment on any person to proceed with the Agreement.

**OPTION 2: INSERT THIS CLAUSE IF SOME OF THE CLAUSES ARE BINDING**

### **2.3 Non binding Memorandum of Understanding**

With the exception of this paragraph and paragraphs [insert paragraphs that the parties wish to be binding], this Memorandum of Understanding merely constitutes a statement of the mutual intentions of the parties with respect to its contents and each party represents to the other that:

- (a) no reliance shall be placed on it;
- (b) it does not constitute an obligation binding on either side;
- (c) it does not contain all matters upon which agreement must be reached in order for the Agreement to be consummated;
- (d) it creates no rights in favour of either party; and
- (e) for the avoidance of doubt and without limiting the above in any way, this Memorandum of Understanding imposes no commitment on any person to proceed with the Agreement.

## **3 Structure of Consortium**

### **3.1 Management structure**

**NOTE: REFER TO PARAGRAPH 10**

The Project will be managed using a structure made up of the following features:

- (a) [Name the lead agency]
- (b) [Describe the other parties].

## **4 Roles of Consortium Members**

Within the management structure outlined in clause 3, the Parties will play different roles in the Project as follows:

#### **4.1 Role of the Lead Agency**

[Insert the roles and responsibilities of the Lead Agency]

#### **4.2 Role of [insert Party name]**

[Insert the roles and responsibilities of the Party]

#### **4.3 Role of [insert Party name]**

[Insert the roles and responsibilities of the Party]

#### **4.4 Joint Responsibilities**

[Insert any joint responsibilities that the Parties may share]

### **5 DOCS Funding Agreement**

#### **5.1 Authorisation**

The Parties authorise the Lead Agency to provide all relevant information to DOCS in connection with their entry into and performance of any Funding Agreement.\*

#### **5.2 Reporting**

Each Party agrees to assist the Lead Agency in the preparation of any financial and / or service reports (including annual audited financial reports) to be provided to DOCS in accordance with the Funding Agreement.

#### **5.3 Abiding by the Terms of the Funding Agreement**

Each Party agrees to abide by the terms of the Funding Agreement.

### **6 Financial Arrangements**

#### **6.1 Accounts**

[Insert details of account keeping arrangements]

#### **6.2 Budgets**

[Insert details or arrangements relating to budgets and budgeting]

#### **6.3 Auditing**

[Insert details of auditing arrangements]

#### **6.4 Payment for Services**

[Insert how each Party will be paid/compensated for their services/expenses]

## **6.5 Payment to Third Parties**

The Parties may make payments to a third party for services rendered or goods supplied in relation to the Project in the ordinary and usual course of business as contemplated by this agreement.

<b>NOTE: CONSIDER WHETHER SUCH PAYMENTS SHOULD REQUIRE APPROVAL BY THE CONSORTIUM OR THE LEAD AGENCY</b>
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## **7 Meetings and Reporting**

### **7.1 Reporting**

Parties are required to report to the Lead Agency on the performance of their obligations under the [Memorandum of Understand/Agreement], at [insert time] intervals.

### **7.2 Meetings**

Parties are required to participate in the following meetings:

- (a) [insert meeting details];
- (b) [insert meeting details];
- (c) [insert meeting details].

### **7.3 Failure to attend meetings**

If a Party fails to attend more than [two] meetings the Lead Agency will write to that Party:

- (a) seeking an explanation for the absences; or
- (b) requesting a meeting specially convened to address the absences and any other issues.

If the absent party fails to provide the explanation requested or to attend the convened meeting, the Party will be in breach of the [Memorandum of Understanding/Agreement].

## **8 Change in Members**

### **8.1 Adding Members**

The Consortium may be expanded to include other parties if:

- (a) [insert how Parties may resolve to add another party]; and
- (b) DOCS provides its written consent to the proposed addition of any parties to the Consortium.

## 8.2 Removing Members

The Parties to this agreement may remove a Party from the Consortium by:

- (a) [insert how Parties may resolve to remove a party];
- (b) DOCS provides its written consent to the proposed removal of any party to the Consortium.

## 9 Subcontracting

### 9.1 Arrangements with Third Parties

A Party may not subcontract any of its obligations under this agreement or enter into any other arrangement that would involve additional parties in the provision of the Services or performance of this agreement unless:

- (a) all of the Parties agree to the proposed subcontracting;
- (b) the proposed subcontracting complies with any requirements under the Funding Agreement; and
- (c) DOCS provides written consent to the proposed subcontracting.

[You can remove this clause if subcontracting will not occur].

### 9.2 Payment for Services

The Parties may make payments to a subcontractor for services rendered or goods supplied in relation to the Project in the ordinary course of business as contemplated by this agreement provided such payments comply with clause 6.5 (“**Payment to Third Parties**”).

## 10 Relationship between Consortium Members

Note: What sort of consortium are you?

**Incorporated alliances:** Members of an alliance incorporate to form a new legal identity according to Corporations Law, the Associations Incorporation Act, the Trustee Act, and other miscellaneous legislative provisions such as the Co-operatives Act or specific legislation that governs bodies such as the legislation applicable to Local Government or Universities.

**Formal Partnerships/Joint ventures:** More common to private business, joint ventures involve two or more “parent” companies agreeing to share capital, technology, human resources, risks and rewards in a formation of a new entity under shared control. Joint ventures are commonly undersigned by a memorandum of understanding and a joint venture agreement.

**Unincorporated Alliances:** Each of the members in the alliance signs a Service Agreement in their own right and a lead agency is nominated to undertake all dealings with the funding body.

**Recognition of a service partnership through a memorandum of understanding:** Agencies are individually funded for their contribution to the partnership through individual service agreements that reflect both the agency outcomes and the partnership outcomes to be delivered. A memorandum of understanding articulates the partnership arrangements in the context of service delivery outcomes.

**Subcontracting:** an agency with funding responsibilities to deliver particular outcomes enters into a service agreement with the Department and then subcontracts aspects of service delivery to another provider.

**Mentoring:** Where services work collaboratively and one agency provides an advisory role to another agency.

[Depending on which model you choose to use for your consortium the following may need to be included]

#### **10.1 Liability**

Each party will be responsible to the other Party for the Services that it performs in respect of the EIP. This reflects that each Party is separately liable under the Funding Agreement.

#### **10.2 Relationship between parties [omit this clause if your consortium is a formal partnership]**

This agreement does not create a relationship of employment, trust, agency or partnership between the Parties. Each Party is responsible for its own obligations arising under this agreement and the Funding Agreement and is not liable for any other Party's obligations.

#### **10.3 Expenses**

Subject to clause 6 ("Financial Arrangements"), a party may not commit the other to any cost, expense or obligation without the written consent of that Party.

#### **10.4 Relationship with Funding Agreement**

Nothing in this agreement will reduce or otherwise affect the obligations of either party under the Funding Agreement. This Agreement shall not be construed in any way that would prevent either Party from performing its obligations under the Funding Agreement. No Party is, by virtue of this Agreement, to be construed as a subcontractor of any other Party for the purposes of the Funding Agreement.

## **11 No conflict of interest**

Each Party warrants that no conflict of interest exists or is anticipated relevant to its role in this agreement or the EIP Project.

If a conflict of interest arises, the Party affected will notify the other Parties immediately and the Parties will seek to resolve the conflict to ensure that the successful performance of the EIP Project is not jeopardised.

## **12 Confidentiality**

### **12.1 Disclosure of Confidential Information**

No Confidential Information may be disclosed by either Party to any person except:

- (a) Representatives of the recipient of the Confidential Information or its Related Entities requiring the information for the purposes of this agreement; or
- (b) with the consent of the Party who supplied the information which consent may be given or withheld in its absolute discretion; or
- (c) if either Party is required to do so by law or by a stock exchange; or
- (d) if either Party is required to do so in connection with legal proceedings relating to this agreement.

### **12.2 Use of Confidential Information**

A Party who has received Confidential Information from another under this agreement must not use it except for the purpose of exercising its rights or performing its obligations under this agreement.

### **12.3 Return of Confidential Information**

A Party who has received Confidential Information from another under this agreement must, on the request of the other Party, immediately deliver to that Party all documents or other materials containing or referring to that information which are in its possession, power or control or in the possession, power or control of persons who have received Confidential Information from it under clause 12.1(a) or (b) ("Disclosure of Confidential Information").

### **12.4 Termination**

This clause 12 ("Confidentiality") will survive termination (for whatever reason) of this agreement.

## 13 [Consortium] Intellectual Property

Intellectual property developed as part of this Project will be jointly owned by all members of the Consortium.

All reports and material produced will be copyrighted jointly to the Parties.

**NOTE: IF THE FUNDING AGREEMENT SPECIFIES THAT THE INTELLECTUAL PROPERTY DEVELOPED AS PART OF THE PROJECT BELONGS TO DOCS OR ANY OTHER PERSON OR DEPARTMENT YOU MAY NEED TO AMEND CLAUSE 13.**

**NOTE: IF PARTIES TO THE CONSORTIUM WILL HAVE ACCESS TO EACH OTHER'S TM LICENCE AND OLD MATERIAL WHICH YOU WISH TO PROTECT AND KEEP SEPARATE FROM CONSORTIUM INTELLECTUAL PROPERTY THEN YOU SHOULD INSERT THE FOLLOWING CLAUSE:**

## 14 [Individual Members' Intellectual Property

### 14.1 Permission to use an Individual Members' Intellectual Property

In some circumstances, in the course of performing its obligations under this agreement, a Party may need to use intellectual property belonging to another Party (“**Owner**”).

Before using the Owner's intellectual property, a Party must first obtain written consent to such use.

### 14.2 Non-exclusive licence

The Party using the Owner's intellectual property (“**Licensee**”) acknowledges that the rights granted to it in clause 14.1 (“Permission to use an Individual Members' Intellectual Property”) are non-exclusive and that the Owner may use or permit any other person to use any of its intellectual property in relation to any goods or services.

### 14.3 Sub-licensing

A Party permitted to use intellectual property under this clause 14 (“Individual Members' Intellectual Property”) may not sub-license any of its rights in respect of the intellectual property to any person.

### 14.4 Permitted use

Where a Party uses the Owner's intellectual property, it must comply with all reasonable directions, instructions and specifications given by the Owner from time to time regarding the representation of the intellectual property and the manner of its use.

## 14.5 Intellectual Property Infringement

The Owner indemnifies any Licensee using its intellectual property against liability under any final judgment or settlement agreed by the Owner in proceedings brought by a third party in respect of any claim for intellectual property infringement. This indemnity is conditional on the Licensee:

- (a) notifying the Owner immediately of any suspected or actual Infringement Claim;
- (b) giving the Owner the option to conduct the defence of the Infringement Claim, including full authority in respect of any settlement or compromise negotiations;
- (c) giving the Owner all necessary assistance relating to the Infringement Claim; and
- (d) authorising the Owner to procure the right for the Licensee to continue using the Trade Marks the subject of the Infringement Claim.]

## 15 Privacy

The parties agree, in respect of any personal information held or collected in connection with this agreement:

- (a) to comply with the National Privacy Principles in the Privacy Act 1988 (Cth) and any other applicable law regarding privacy;
- (b) to use that information only for the purposes of this agreement and the Project.

## 16 Dispute resolution

### 16.1 Injunctive or interim relief

Nothing in this clause prevents a party seeking urgent injunctive or similar interim relief from a court.

### 16.2 Negotiation

Any Party (“**Initiating Party**”) claiming that a Dispute has arisen must give the other Party (“**Recipient Party**”) a notice setting out brief details of the Dispute (“**Dispute Notice**”). Within 5 Business Days of service of a Dispute Notice, the Recipient Party must give the Initiating Party a notice setting out brief details of the Recipient Party’s position on the Dispute (“**Reply Notice**”).

If Dispute and Reply Notices are given, the Parties must make representatives with authority to settle the Dispute available for the purpose of meeting in an effort to resolve the Dispute. At least one

meeting of the authorised representatives must take place within [21] Business Days of service of a Reply Notice.

If the event the Recipient Party does not give a Reply Notice or make its authorised representatives available for a meeting within the time periods contained in this clause 16.2, the Initiating Party will be entitled to proceed immediately with resolving the Dispute in accordance with the remainder of this clause.

### **16.3 Mediation**

If the Dispute is not resolved in accordance with clause 16.2 above, the Parties must refer the Dispute to [Lawyers Engaged in Alternative Dispute Resolution or Community Justice Centres] for mediation.

### **16.4 Appointment of mediator**

The Parties will agree on the appointment of mediator. If the Parties do not agree on the mediator to be appointed within 10 Business Days of any Party referring the Dispute to mediation, then the mediator is to be appointed by to [Lawyers Engaged in Alternative Dispute Resolution or Community Justice Centres].

### **16.5 Location of Mediation**

Any mediation is to be conducted in [insert city name].

### **16.6 Termination of mediation**

The mediation process will terminate within [30] days of the appointment of the mediator, upon which any Party will be entitled commence court proceedings in relation to the Dispute.

## **17 Termination**

### **17.1 Right to terminate**

Any Party has the right to terminate this agreement by notice in writing to the other parties if:

- (a) any of the other parties become Insolvent;
- (b) any of the other parties commit a breach of this agreement;  
and
  - (i) the breach is material and not capable of being cured;  
or
  - (ii) the breach is capable of being cured and the defaulting party fails to cure the breach within 20 Business Days of being notified in writing of the breach by the party giving the notice; [or

(iii) insert other events if relevant].

## **17.2 Notice**

A notice given under clause 17.1 (“Right to terminate”) must specify the event or events in relation to which the notice is given.

## **17.3 Damages**

In addition to the right of termination under clause 17.1 (“Right to terminate”), where there is no appropriate remedy for the breach in the agreement (other than termination), the non-defaulting Party is entitled to damages for losses suffered by it and expenses incurred by it as a result of the breach of the terms of this agreement.

## **17.4 Termination by Consent**

This agreement, and the Consortium created by it, can be terminated at any time [if agreed to by 75% of the Consortium members/insert other means for termination by consent here].

<p><b>NOTE: CONSIDER WHETHER YOUR CONSORTIUM SHOULD REQUIRE THE APPROVAL OF DOCS TO TERMINATE YOUR CONSORTIUM BY CONSENT</b></p>
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## **17.5 Survival of Obligations**

The termination of this agreement with respect to any party does not affect:

- (a) any obligation of that party which accrued prior to that termination and which remain unsatisfied; and
- (b) clauses [4, 7, 10, 12, 13, 14 and 15] [and insert any other clauses that your consortium wishes to survive the termination of this agreement] and any provision of this agreement which is expressed to come into effect on, or continue in effect after, that termination.

## **18 General**

### **18.1 Variation and waiver**

A provision of this agreement or a right created under it, may not be waived or varied except in writing, [signed/or duly executed] by the Party or Parties to be bound.

### **18.2 Notices**

A notice, approval, consent or other communication in connection with this agreement must be:

- (a) in writing, signed by the sender (if an individual) or an Authorised Officer of the sender; and marked for the attention of the person identified in the Details or, if the recipient has notified otherwise, then marked for attention in the way last notified; and
- (b) left at the address set out or referred to in the Details, sent by prepaid ordinary post (airmail if appropriate) to the address referred to in the Details; or sent by fax to the fax number referred to in the Details.

A notice, approval, consent or other communication takes effect from the time it is received unless a later time is specified in it.

### **18.3 Announcements or releases**

A Party may not make press or other announcements or releases relating to this agreement and the dealings the subject of this agreement without the approval of the Lead Agency to the form and manner of the announcement or release unless and to the extent that the announcement or release is required to be made by the Party by law.

### **18.4 Inconsistent law**

To the extent permitted by law, this agreement prevails to the extent it is inconsistent with any law.

### **18.5 Counterparts**

This agreement may be executed in counterparts. All counterparts when taken together are to be taken to constitute one instrument.

### **18.6 Insurance**

Where required by law, the Parties will separately maintain insurance policies with respect to performance of their obligations under this agreement.

### **18.7 Governing law**

This agreement is governed by the law in force in the place specified in the Details.

### **18.8 Costs**

Each Party is responsible for its own costs in connection with the negotiation and preparation of this agreement and completion of the Transaction.

## 18.9 Entire agreement

This agreement constitutes the entire agreement of the Parties about its subject matter and supersedes all previous agreements, understandings and negotiations on that subject matter.

## 18.10 GST

Unless otherwise indicated, all consideration provided for a supply under this agreement is exclusive of any GST imposed on the supply. If for any reason GST is imposed on a supply under this agreement, the recipient of the supply on receipt of a tax invoice must pay to the supplier an additional amount equal to the GST imposed on the supply.

The recipient of a supply under this agreement is not liable to reimburse the supplier in relation to any amount for which the supplier can claim an input tax credit.

GST has the same meaning as in the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

## 19 Definitions

These meanings apply unless the contrary intention appears:

**Authorised Officer** means a person appointed by a Party to act as an Authorised Officer for the purposes of this agreement.

**Business Day** means a day other than a Saturday, Sunday or public holiday in the place or places set out in the Details under “Business Day place(s)”.

**Confidential Information** means all confidential, non-public or proprietary information regardless of how the information is stored or delivered, exchanged between the parties before, on or after the date of this agreement relating to the business, technology or other affairs of the any Party.

**Consortium** means [insert parties to the consortium].

**Corporations Act** means the Corporations Act 2001 (Cwlth).

**Details** means the section of this agreement headed “Details”.

**Dispute** includes any dispute, controversy, difference or claim arising out of or in connection with this agreement or the subject matter of this agreement, including any question concerning its formation, validity, interpretation, performance, breach and termination.

**Funding Agreement** means [insert name of agreement] entered into between [enter parties names] and the New South Wales Department of Community Services.

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

**GST** has the meaning it has in the GST Act.

**GST Act** means the A New Tax System (Goods and Services Tax) Act 1999 (Cwth).

**Holding Company** has the meaning it has in the Corporations Act.

**Infringement Claim** means a claim by a third party that a member of the Consortium's use of the Owner's intellectual property in accordance with clause 14 of this agreement infringes that party's intellectual property rights.

A person is **Insolvent** if:

- (a) it is (or states that it is) an insolvent under administration or insolvent (each as defined in the Corporations Act); or
- (b) it has had a Controller appointed or is in liquidation, in provisional liquidation, under administration or wound up or has had a Receiver appointed to any part of its property; or
- (c) it is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by the other parties to this agreement); or
- (d) an application or order has been made (and in the case of an application, it is not stayed, withdrawn or dismissed within 30 days), resolution passed, proposal put forward, or any other action taken, in each case in connection with that person, which is preparatory to or could result in any of (a), (b) or (c) above; or
- (e) it is taken (under section 459F(1) of the Corporations Act) to have failed to comply with a statutory demand; or
- (f) it is the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act (or it makes a statement from which another party to this agreement reasonably deduces it is so subject); or
- (g) it is otherwise unable to pay its debts when they fall due; or
- (h) something having a substantially similar effect to (a) to (g) happens in connection with that person under the law of any jurisdiction.

**Intellectual Property** means all intellectual property including current and future registered and unregistered rights in respect of copyright, designs, circuit layouts, trade marks, know-how, confidential information, patents,

inventions and discoveries and all other intellectual property as defined in article 2 of the convention establishing the World Intellectual Property Organisation 1967.

**Lead Agency** means [insert name] who holds the responsibilities of Lead Agency as defined in the Funding Agreement.

**Receiver** includes a receiver or receiver and manager.

**Related Body Corporate** has the meaning it has in the Corporations Act.

**Related Entity** has the meaning it has in the Corporations Act 2001 (Cwlth).

**Representative** of a party includes an employee, agent, officer, director, auditor, advisor, partner, consultant, joint venturer, contractor or sub-contractor of that party.

**Subsidiary** of an entity means another entity which is a subsidiary of the first within the meaning of part 1.2 division 6 of the Corporations Act or is a subsidiary or otherwise controlled by the first within the meaning of any approved accounting standard.

**Tax Act** means the Income Tax Assessment Act 1936 (Cwlth) or the Income Tax Assessment Act 1997 (Cwlth), as the context requires.

**Tax Invoice** has the meaning it has in the GST Act.

## 19.1 References to certain general terms

Unless the contrary intention appears, a reference in this agreement to:

**(variations or replacement)** a document (including this agreement) includes any variation or replacement of it;

**(clauses, annexures and schedules)** a clause, annexure or schedule is a reference to a clause in or annexure or schedule to this agreement;

**(reference to statutes)** except in the definitions of Related Entity and Subsidiary 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;

**(law)** law means common law, principles of equity, and laws made by parliament (and laws made by parliament include State, Territory and Commonwealth laws and regulations and other instruments under them, and consolidations, amendments, re-enactments or replacements of any of them);

**(singular includes plural)** the singular includes the plural and vice versa;

**(person)** the word “person” includes an individual, a firm, a body corporate, a partnership, a joint venture, an unincorporated body or association, or any Government Agency;

**(executors, administrators, successors)** a particular person includes a reference to the person’s executors, administrators, successors, substitutes (including persons taking by novation) and assigns;

**(two or more persons)** an agreement, representation or warranty in favour of two or more persons is for the benefit of them jointly and each of them individually;

**(jointly and severally)** an agreement, representation or warranty by two or more persons binds them jointly and each of them individually;

**(reference to a group of persons)** a group of persons or things is a reference to any two or more of them jointly and to each of them individually;

**(dollars)** Australian dollars, dollars, A\$ or \$ is a reference to the lawful currency of Australia;

**(calculation of time)** if a period of time dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;

**(reference to a day)** a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later;

**(accounting terms)** an accounting term is a reference to that term as it is used in accounting standards under the Corporations Act, or, if not inconsistent with those standards, in accounting principles and practices generally accepted in Australia;

**(meaning not limited)** the words “include”, “including”, “for example” or “such as” when introducing an example, does not limit the meaning of the words to which the example relates to that example or examples of a similar kind;

**(reference to anything)** any thing (including any amount) is a reference to the whole and each part of it.

## **19.2 Next day**

If an act under this agreement to be done by a party on or by a given day is done after 5.30pm on that day, it is taken to be done on the next day.

## **19.3 Next Business Day**

If an event under this agreement must occur on a stipulated day which is not a Business Day then the stipulated day will be taken to be the next Business Day.

#### **19.4 Headings**

Headings (including those in brackets at the beginning of paragraphs) are for convenience only and do not affect the interpretation of this agreement.

**[EXECUTED as an agreement]**

# Signing page

**DATED:** \_\_\_\_\_