

Natural Hazards Research Australia Standard Research Services Agreement - Core Research Program

Note to respondents to Expressions of Interest:

The Centre reserves its rights to make amendments to the form of agreement.

Selection as a shortlisted or preferred provider does not give rise to a contract (express or implied) between the shortlisted or preferred provider and the Centre for the supply of goods or services. No legal relationship will exist between the Centre and the shortlisted or preferred provider until such time as a binding contract in writing is executed by both parties.

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Version control

| Version number | Author | Change | Date |
|----------------|--------------|---------------------|----------|
| 01 | Shiva Prasad | Initial publication | 25/07/23 |
| | | | |

Background

- A. The Centre is a not for profit public company limited by guarantee specialising in managing natural hazards research in the field areas of disaster risk reduction and disaster resilience. The Centre pursues, leads and co-ordinates world class research and training, the outcomes of which are used for the national public good. The Centre seeks to disseminate through its stakeholders, knowledge and understanding generated through research endeavours.
- B. The Centre has appointed the Research Provider to undertake the Project.
- C. The Research Provider has agreed to undertake the Project and provide the associated services and has represented to Centre that it has the skills, resources and experience necessary to do so.
- D. The parties have agreed to enter into this Agreement to give effect to their intentions.

Details

| Item No. | Item | Details | |
|----------|--|----------------------------|----------------|
| 1 | Natural Hazards and Disaster Resilience Research Centre Ltd t/as Natural Hazards Research Australia (Centre) | ABN: | 21 163 137 979 |
| | | Contact Name: | ###Insert |
| | | Position: | ###Insert |
| | | Address: | ###Insert |
| | | Phone: | ###Insert |
| | | Email: | ###Insert |
| 2 | Research Provider | Name of Research Provider: | ###Insert |

| Item No. | Item | Details | |
|----------|--------------------------------|---|---|
| | | ABN: | [[Insert]] |
| | | Research Provider Representative Name: | [[Insert]] |
| | | Position: | [[Insert]] |
| | | Address: | [[Insert – we encourage organisations to include their Traditional Place name]] |
| | | Phone: | [[Insert]] |
| | | Email: | [[Insert]] |
| | | Principal Researcher Name: | [[Insert]] |
| | | Position: | [[Insert]] |
| | | Address: | [[Insert – we encourage organisations to include their Traditional Place name]] |
| | | Phone: | [[Insert]] |
| | | Email | [[Insert]] |
| 3 | Term | Start Date: | The date on which this Agreement is signed by both parties. |
| | | End Date: | [[Insert]] |
| 4 | Project | [[Insert]] | |
| 5 | Objectives | [[Insert]] | |
| 6 | Key Personnel | Principal Researcher named in Item 2 of the Details. [[Insert any other Personnel of the Research Provider that are key personnel necessary for the delivery of the Project]] | |
| 7 | Project Material Owner | The Centre | |
| 8 | Nominated Third Party Material | [[Insert details of any third party licences that the Centre must obtain in order to use the Project Materials (ie if the Project Materials cannot be used without such a licence) or state not applicable.]] | |
| 9 | Deliverables & Milestone Dates | As listed in Schedule 1 of this Agreement | |
| 10 | Funding | [[Insert total funding]] ex GST | |
| | Invoice Details | Name | Natural Hazards Research Australia |

| Item No. | Item | Details | |
|----------|-----------------|--|--|
| 11 | | ABN | 21 163 137 979 |
| | | Address | [##Insert] |
| | | Attention | [##Insert] |
| | | Email | [##Insert] |
| | | Phone | [##Insert] |
| | | Project Invoice Code | [##Insert] |
| 12 | Insurance | Public liability | At least \$10 million |
| | | Products liability | At least \$10 million per event |
| | | Professional indemnity | At least \$10 million per event |
| | | Workers compensation | The amount required by applicable State or Territory laws. |
| 13 | Subcontractors | [##Insert any pre-approved subcontractors or state Not Applicable] | |
| 14 | Acknowledgement | <p>Wording to be included in any peer-reviewed publications, other project communication materials or approved uses of the Project Material in accordance with clause 13.2.2:</p> <p>Peer-reviewed outputs: Author affiliation - in all publications associated researchers must list Natural Hazards Research Australia as an affiliate institute of the Researcher.</p> <p>Funding acknowledgement - "This research is/was funded and supported by Natural Hazards Research Australia."</p> <p>Other project communication materials/outputs: "Natural Hazards Research Australia is/was a contributing partner in this research."</p> <p>First Nation's authorship and contribution to knowledge production and sharing</p> <ul style="list-style-type: none"> • First Nation-centred research protocols and guidelines are currently being developed by the Centre. Once publicly available, the Centre will require all research teams to closely adhere to these protocols and guidelines. | |

| Item No. | Item | Details |
|----------|--|---|
| | | <ul style="list-style-type: none"> If working with First Nations people, consider how First Nations knowledge is reflected in the authorship of all publications and reports. NB: Increasingly First Nations collaborators or Country are being cited as lead authors. |
| 15 | Research Provider's Liability Cap | The amounts specified in Item 12 of the Details. |
| 16 | Material | <p><i>[[[Insert agreed data arrangements for the purposes of clause 15.2.3]]</i></p> <ul style="list-style-type: none"> All Project Materials, including data will be owned by the Centre. Any use of the data by the Centre will comply with relevant ethics approvals, privacy legislation, cultural knowledge principles and other relevant legislation. The Researcher Provider retains the right to use the Project Materials and Project data for research and development and teaching. Any researchers not listed on this project, who wish to use the unpublished Project data, will be required to apply for approval from the Centre and from the relevant ethics committee, where the collection and use of that data is governed by approvals from an ethics committee. The Centre is developing a publicly accessible data catalogue that describes the data, where it is stored and how researchers can access it. Researchers are expected to work with the Centre to develop an agreed process to index or incorporate information about datasets generated as part of this Agreement into the Centre's data catalogue. The Researcher Provider and the Centre will work together to develop an agreement on the long-term storage, stewardship and custodianship of any datasets developed under this Agreement. |
| 17 | Special Conditions | |

Agreed Terms

1 Term

This Agreement starts on the Start Date and continues until the latter of the End Date or the date by which all Deliverables have been accepted under clause 7.2 (**Term**) unless terminated earlier in accordance with clause 21.1.

2 Scope of Agreement

2.1 Project

The Centre appoints the Research Provider to undertake the Project in accordance with this Agreement.

2.2 Non-exclusivity

Nothing in this Agreement is to be taken to imply that the Centre may not appoint another person to undertake research of the same kind as the Project.

3 Project

3.1 Project

3.1.1 The Research Provider must undertake and deliver the Project to the Centre.

3.1.2 The Research Provider must:

- (a) conduct the Project in accordance with the Research Plan;
- (b) provide the Deliverables in accordance with the Milestone Dates;
- (c) meet the Objectives;
- (d) maintain the safety of Personnel and Research Participants;
- (e) ensure quality control of Deliverables; and
- (f) obtain all necessary ethics approvals necessary to complete the Project.

3.2 Standards

The Research Provider must carry out the Project in a diligent and competent fashion consistent with the application of:

- 3.2.1 all due care and skill and generally accepted professional, scientific and ethical principles and standards of conduct;
- 3.2.2 generally accepted Australian business, accounting and financial standards and practices;
- 3.2.3 any Australian or international standards which are applicable to the performance of the Project;
- 3.2.4 any policies and procedures of the Centre made known to the Research Provider; and

- 3.2.5 with all applicable Laws;
- 3.2.6 with this Agreement; and
- 3.2.7 any applicable Special Conditions.

3.3 Directions

The Centre may give the Research Provider reasonable directions as to:

- 3.3.1 the manner of the performance of the Project; and
 - 3.3.2 the application of standards and practices in the performance of the Project,
- and the Research Provider must comply with all such reasonable directions.

3.4 Ethics approvals

If the Research Provider is unable to obtain ethics approvals necessary to complete the Project and comply with the Agreement by the scheduled Milestone specified in the Research Plan, or if the approval is rejected by a relevant ethics committee, it must advise the Centre within 3 Business Days of becoming aware of the failure to obtain necessary approvals.

3.5 Equipment and facilities

The Research Provider must provide all equipment, facilities and other incidental items and materials necessary to complete the Project. All such equipment must be properly maintained and be appropriate for the purpose for which it is used or intended to be used.

3.6 Warranties

The Research Provider represents and warrants to the Centre that:

- 3.6.1 it will complete the Project in:
 - (a) a timely and professional manner in accordance with this Agreement using appropriately trained and experienced Personnel;
 - (b) a manner which is consistent at all times with best industry practice; and
 - (c) accordance with all applicable Laws, standards, specifications and procedures, and, if requested by the Centre, will provide evidence to the Centre of such compliance; and
- 3.6.2 the completion of the Project will not knowingly, having made all reasonable investigations expected of a diligent, prudent professional carrying out the duties of the Research Provider, infringe the Intellectual Property Rights of any person.

4 Funding and payment

4.1 Funding

- 4.1.1 The Centre will provide the Funding to the Research Provider to enable it to carry out the Project in accordance with clause 4.2.
- 4.1.2 The Research Provider must use the Funding in accordance with the Budget.
- 4.1.3 The Research Provider must not use the Funding for any of the following purposes:
 - (a) to meet any operational costs, salary subsidies or other administrative expenses of the Research Provider which are unrelated to the Project;

- (b) as security for any form of finance;
- (c) to meet existing debts, liabilities or obligations;
- (d) any purpose that is inconsistent with the stated priorities of the Centre or this Agreement.

4.2 Payment

- 4.2.1 The Funding will become payable to the Research Provider on acceptance of a Deliverable in accordance with Schedule 1 and clause 7.2.
- 4.2.2 Subject to the requirements of clause 4.2.1 being met, the Centre will pay the Funding to the Research Provider within 20 Business Days of receipt of a Valid Tax Invoice.

4.3 Refund of Funding

If the Project (or any Deliverables) is not completed by the Research Provider to the reasonable satisfaction of the Centre, then the Research Provider must refund the Funding (or the relevant part of the Funding) to the Centre.

5 Governance

5.1 Appointment of Contract Managers

- 5.1.1 The Research Provider must appoint a person to be its Contract Manager for the purposes of this Agreement and the Project.
- 5.1.2 The Research Provider's Contract Manager must be authorised by the Research Provider to be the contact point for all contract matters for the life of this agreement and to ensure that all actioned are completed in a timely manner.
- 5.1.3 The Contract Manager at the Start Date are the persons described in Items 2 the Details.
- 5.1.4 The Research Provider may change its Contract Manager at any time by giving notice to the other parties. The notice must include the name, address, phone number and email address of the new Contract Manager.

5.2 Project Management Committee

- 5.2.1 The Project Management Committee consists of the Contract Manager (or their approved delegate) for the Research Provider and the Centre's Research and Implementation Director (or their approved delegate).
- 5.2.2 The role of the Project Management Committee is to:
 - (a) coordinate the performance of each Research Provider's obligations under this Agreement and delivery of the Deliverables on behalf of the Research Provider;
 - (b) without limiting clause 20.2, to discuss any proposed variations to the Research Plan or the Budget;
 - (c) discuss and advise the parties on any issues that arise during the Project; and
 - (d) recommend to the Research Providers' senior management what should occur if there is a breach of this Agreement by one or more of the Research Providers.
- 5.2.3 Accordingly, each Contract Manager must:
 - (a) act as the agent for the Research Provider they represent on any matter arising out of or in connection with this Agreement;

- (b) be the first point of contact for any Disputes and Disputes relating to the operation of this Agreement in accordance with clause 21;
- (c) coordinate effort and input from the Research Provider they represent;
- (d) manage and administer this Agreement on behalf of the Research Provider they are representing;
- (e) hold authority to give and receive notices under this Agreement; and
- (f) act in accordance with this Agreement.

5.3 Communications

The Research Provider must ensure that it and its personnel communicate with the other parties through the nominated Contract Manager described in Item 2 of the Details, as amended from time to time in accordance with clause 5.1.4.

6 Research Plan

6.1 Draft Research Plan

- 6.1.1 The Research Provider must prepare a draft Research Plan for the Project and submit a draft Research Plan to the Centre within 30 Business Days of the Start Date.
- 6.1.2 The Research Provider must ensure that the Key Personnel prepare the draft Research Plan.
- 6.1.3 The draft Research Plan must contain:
 - (a) the information specified in Schedule 2; and
 - (b) any other details or information required by the Centre.

6.2 Review of Research Plan

- 6.2.1 The Centre must:
 - (a) review the draft Research Plan; and
 - (b) provide the Research Provider with any amendments the Centre, in its absolute discretion considers necessary,within 30 Business Days of the Centre receiving the draft Research Plan under clause 6.1.
- 6.2.2 The Research Provider must amend the draft Research Plan to incorporate any amendments required by the Centre under clause 6.2.1 and provide the revised draft Research Plan to the Centre within 30 Business Days of receiving notice of the required amendments.

6.3 Acceptance of Research Plan

- 6.3.1 The Centre will advise the Research Provider in writing of the acceptance or rejection of the draft Research Plan within 30 Business Days of receiving the revised draft Research Plan under clause 6.2.2.
- 6.3.2 If the Centre rejects the Research Plan it may terminate the Agreement in accordance with clause 22.2.1.

7 Deliverables

7.1 Timing

The Research Provider must complete the Deliverables and provide them to the Centre by the Milestone Dates.

7.2 Acceptance

7.2.1 If the Centre:

- (a) is satisfied that a Deliverable conforms with the requirements of this Agreement (including the Research Plan), the Centre will accept the Deliverable by giving written notice to the Research Provider; or
- (b) is not satisfied that a Deliverable conforms with the requirements of this Agreement, the Centre may by written notice to the Research Provider:
 - (i) reject the Deliverable and require the Research Provider, at its own cost, to rectify or remedy the defects identified by the Centre within 10 Business Days or such other period agreed between the parties; or
 - (ii) require the Research Provider to refund any prepaid Funding for that Deliverable within 10 Business Days.

7.2.2 The Research Provider must absorb all costs incurred to rectify or remedy any Deliverables not accepted by the Centre or reimburse the Centre for those costs as a debt due and payable.

7.3 No deemed acceptance

A Deliverable will not be accepted until the Centre has provided notice in accordance with clause 7.2.1(a).

8 Reports

8.1 Completed Deliverables report

The Research Provider must submit a report within 5 Business Days of a Deliverable being accepted under clause 7.2, containing:

- 8.1.1 a description of the Deliverable;
- 8.1.2 the progress and outcomes achieved as a result of the Deliverable (e.g. in terms of quality, timing and budget);
- 8.1.3 any variations from the Deliverable;
- 8.1.4 the impact that achieving the Deliverable has or may have on any other Deliverable; and
- 8.1.5 any issues, opportunities or lessons that arose in relation to the Deliverable.

8.2 Quarterly reports

The Research Provider must provide the Centre with a report in the format set out in Schedule 4 within 5 Business Days of the end of each quarter of the Term.

8.3 Project evaluation survey

The Research Provider must provide the Centre with a response to the Project evaluation survey within 30 Business Days of acceptance of the final Deliverable.

9 Personnel

9.1 Responsibility for Personnel

The Research Provider must ensure that its Personnel:

- 9.1.1 comply with all the Research Provider's obligations under this Agreement; and
- 9.1.2 act with all proper diligence and in good faith, and in a manner which is consistent with the Research Provider's obligations under this Agreement.

9.2 Key Personnel

The Research Provider must ensure that the Key Personnel:

- 9.2.1 are involved for the full duration of the Project;
- 9.2.2 do not engage in any other activity in the course of their employment with, or engagement by, the Research Provider which may, or may be likely to, hinder the performance of the Project; and
- 9.2.3 are available to meet with the Centre as reasonably required by the Centre from time to time.

9.3 Unavailability of Key Personnel

The Research Provider must inform the Centre as soon as possible if any of the Key Personnel become unavailable for any reason for a period exceeding 30 Business Days.

9.4 Other Personnel

Other Personnel may be involved in completing the Project, however the Research Provider must ensure that the Key Personnel have overall responsibility for performance of the Project.

9.5 Suitability of Personnel

The Research Provider must ensure that all Personnel have appropriate qualifications, registration and licences, are suitably trained and experienced and are capable of performing the Research Provider's obligations under this Agreement.

9.6 The Centre not responsible

The Research Provider acknowledges and agrees that:

- 9.6.1 The Centre is not and must not at any time be construed as the employer of any of the Research Provider's Personnel for the purposes of any Law;
- 9.6.2 the Research Provider is solely responsible and liable for the making of any payments in respect of superannuation, payroll or any other tax, WorkCover premium or any similar payments in relation to its Personnel;
- 9.6.3 it remains fully responsible for the delivery of the Project under this Agreement and for all costs incurred in respect of its Personnel; and

- 9.6.4 it is liable for all acts and omissions of its Personnel as though they were acts or omissions of the Research Provider itself.
-

10 Subcontracting

10.1 Approval

- 10.1.1 The Research Provider must not subcontract (or allow a Subcontractor to subcontract) any part of the performance of this Agreement without the prior written approval of the Centre.
- 10.1.2 The Subcontractors specified in Item 13 of the Details have been approved by the Centre for the purposes of this clause 10.1.

10.2 Liability for subcontractors

- 10.2.1 If the Research Provider is permitted to subcontract (including to a Subcontractor) any of the Research Provider's obligations under this Agreement it is not relieved of its responsibility for the performance of its obligations under this Agreement.
-

11 Confidentiality and privacy

11.1 Duty not to disclose or misuse Confidential Information

- 11.1.1 Each party may disclose Confidential Information only:
- (a) for the purposes of performing its obligations under this Agreement;
 - (b) as required by law; or
 - (c) as permitted or required in writing by the other party.
- 11.1.2 The parties may only use Confidential Information to perform their obligations under this Agreement.

11.2 Preservation of Confidential Information

Each party must take whatever measures are reasonably necessary to prevent the disclosure or misuse of Confidential Information, including:

- 11.2.1 complying with all security measures established to safeguard Confidential Information from unauthorised access or use;
- 11.2.2 implementing security practices against unauthorised copying, use and disclosure of Confidential Information; and
- 11.2.3 keeping Confidential Information under the party's control.

11.3 Return or destruction of Confidential Information

- 11.3.1 A party must immediately on termination of this Agreement or on the other party's written request at any other time:
- (a) return to the other party Confidential Information provided to or obtained or accessed by the party under this Agreement; or
 - (b) destroy Confidential Information so that it is incapable of being revived; and

- (c) provide a statutory declaration to the other party that all Confidential Information has been returned or destroyed in accordance with this clause.

11.3.2 This clause 11.3 does not require a party to retrieve copies of Confidential Information that have automatically been archived electronically.

11.4 Privacy

The parties agree to comply with the applicable Privacy Laws with respect to any Personal Information they collect, use or disclose in connection with this Agreement.

12 Conflict of interest

12.1 Research Provider warranty

The Research Provider warrants to the Centre that, to the best of its knowledge and having made diligent inquiries, at the Start Date no Conflict of Interest exists, is likely to arise or could reasonably be perceived to exist.

12.2 Obligation to take all reasonable steps

The Research Provider must take all reasonable steps to ensure that no actual or potential Conflict of Interest arises or could reasonably be perceived to arise during the Term.

12.3 Obligation to notify

- 12.3.1 The Research Provider must immediately notify the Centre of any matter that may give rise to a Conflict of Interest.
- 12.3.2 Upon receipt of notice given under clause 12.3.1, or whenever the Centre considers that a Conflict of Interest has arisen or is likely to arise, the Centre may direct the Research Provider to resolve the Conflict of Interest to the satisfaction of the Centre within a reasonable period.
- 12.3.3 If the Centre determines that the Research Provider has not resolved the Conflict of Interest to the sole and unfettered satisfaction of the Centre within the period specified, the Centre may terminate this Agreement pursuant to clause 22.2.

13 Fraud and Corruption

13.1 The Research Provider must comply with the Centre's Fraud and Corruption Policy (as amended from time to time) in the course of performing its obligations in relation to the Project and otherwise during the Term this Agreement.

13.2 Fraud

- 13.2.1 The Research Provider must:
 - (a) take all reasonable steps to prevent and detect Fraud in relation to the performance of this Agreement and the Project; and
 - (b) ensure its, officers, employees, agents or subcontractors do not engage in any Fraud in relation to, or otherwise in connection with the Agreement or the Project.

- 13.2.2 If the Research Provider becomes aware of:
- (a) any Fraud in relation to the performance of the Project; or
 - (b) any other Fraud that has had or may have an effect on the performance of the Project or otherwise in connection with this Agreement,
- then it must notify the Centre within 5 Business Days of becoming aware of any suspected or detected Fraud affecting the Project or this Agreement and actions taken by the Research Provider in response.
- 13.2.3 The Research Provider must, at its own cost, investigate any Fraud referred to in clause 13.2.5 in accordance with the Australian Government Investigations Standards available at www.ag.gov.au.
- 13.2.4 The Centre may, at its discretion, investigate any Fraud in relation to the Project or the Agreement. The Research Provider agrees (at its own cost) to cooperate and provide all reasonable assistance to the Centre with any such investigation.
- 13.2.5 Without limiting any other provision in this Agreement, if an investigation finds that the Research Provider or its officers, employees, agents or subcontractors have committed Fraud, or the Research Provider has failed to take reasonable steps to prevent Fraud, the Research Provider must reimburse the Centre in full for costs associated with the investigation as a debt due and payable.

13.3 Anti-corruption

- 13.3.1 The Research Provider will ensure that no offer, gift or payment, consideration or benefit of any kind that would or could be considered an Illegal or Corrupt Practice, will be made or received either directly or indirectly, as an inducement or reward in relation to the Research Provider's performance under this Agreement, including the selection and engagement of any subcontractors by the Research Provider.
- 13.3.2 The Research Provider warrants that the Research Provider, its officers, employees, agents and subcontractors will not engage in any Illegal or Corrupt Practice in relation to the Project or the Agreement.
- 13.3.3 The Research Provider agrees not to, and to take all reasonable steps to ensure that its officers, employees, agents and subcontractors do not engage in any practice that could constitute the offence of bribing a foreign public official contained in section 70.2 of the *Criminal Code Act 1995* (Cth).
- 13.3.4 The Research Provider will notify the Centre within 5 Business Days of becoming aware of any suspected or detected Illegal or Corrupt Practice affecting the Project and actions taken by the Research Provider in response.

13.4 Criminal Code

- 13.4.1 The Research Provider acknowledges that the giving of false or misleading information to the Centre may be deemed to be the giving of false or misleading information to the Commonwealth, which is a serious offence under section 137.1 of the Division 137 of the *Criminal Code Act 1995* (Cth).
- 13.4.2 The Research Provider must ensure that its officers, employees, agents and subcontractors engaged in connection with the Project or this Agreement are aware of the information contained in this clause.

13.5 Research Misconduct

- 13.5.1 The Research Provider must:
- (a) take all reasonable steps to prevent and detect Research Misconduct in relation to the performance of the Project; and

- (b) ensure the Principal Researcher and the Research Provider's officers, employees, agents or subcontractors do not engage in any Research Misconduct in relation to the Project.
- 13.5.2 If the Research Provider becomes aware of:
- (a) any Research Misconduct in relation to the performance of the Project; or
 - (b) any other Research Misconduct that has had or may have an effect on the performance of the Project,
- then it must promptly notify the Centre of any suspected or detected Research Misconduct affecting the Project and actions taken by the Research Provider in response.

14 Publicity

14.1 Project Material

- 14.1.1 Subject to clause 14.1.2, the Research Provider must keep the Project Material confidential and must not publish or present in written or oral form any of the Project Material without the prior written consent of the Project Material Owner. If the Research Provider wishes to use or publish the Project Material it must submit a written request to the Project Material Owner.
- 14.1.2 The Research Provider is not required to seek the Centre's consent to use or publish Project Material where the Project Material is being used by a Research Participant for sharing information in oral or written form with Research Participants or Centre Participants, or at events organised by the Centre.
- 14.1.3 The Project Material Owner has 20 Business Days following receipt of the details of the proposed use or publication of the Project Material under clause 14.1.1 to determine, in its absolute discretion, whether it consents to the proposed use or publication.
- 14.1.4 At the conclusion of the 20 Business Day Period referred to in clause 14.1.2, the Project Material Owner must:
- (a) notify the Research Provider in writing if the Project Material Owner requires additional time to consider the Research Provider's request under clause 14.1.1, in which case the Project Material Owner will have an additional 20 Business Days in which to consider the request; or
 - (b) notify the Research Provider in writing that it consents to the use or publication, or does not consent to the use or publication of Project Material and provide reasons for denying consent.
 - (i) if the Project Material Owner advises the relevant Research Providers that it does not consent to the use or publication and that the relevant Research Providers still believes it should be able to publish, the relevant Research Providers can invoke the dispute resolution under clause 22.
- 14.1.5 If the Project Material Owner fails to notify the Research Provider under clause 14.1.4 within 20 Business Days of receiving details of the proposed use or publication of the Project Material, the Project Material Owner is deemed to have rejected the Research Provider's request for the use or publication of the Project Material.
- 14.1.6 Where the Project Material Owner provides its consent under clause 14.1.1, the Research Provider must:
- (a) comply with any conditions imposed by the Project Material Owner;
 - (b) only use or publish the Project Material to the extent the Project Material Owner has provided its consent;

- (c) keep a record of all publications and submit a copy of the publication to the Centre within 5 Business Days of publication;
- (d) keep a record of all academic journal manuscripts submitted for publication and submit a copy of any pre-print manuscripts to the Project Material Owner within five business Days of submission to the journal; and
- (e) comply with the requirements of this clause 13.

14.2 Use of logo and name

- 14.2.1 Neither party is permitted to use the name or logo of the other party without the prior written consent of the other party.
- 14.2.2 The Research Provider must include in any use or publication of the Project Material approved under clause 14.1, the acknowledgment set out in Item 14 of the Details.

14.3 Reputation

The Research Provider must not do or omit to do anything which may:

- 14.3.1 damage, bring into disrepute or ridicule the Centre's name, messages or reputation; or
- 14.3.2 attract public or media attention which may be prejudicial or otherwise detrimental to the Centre's name, messages or reputation.

15 Intellectual Property Rights

15.1 Project Material

- 15.1.1 All Intellectual Property Rights in the Project Material vest in and are owned exclusively by the Project Material Owner with effect from the date of creation.
- 15.1.2 The Research Provider irrevocably and unconditionally assigns to the Project Material Owner, including by way of an assignment of future Intellectual Property Rights, all of its Intellectual Property Rights in the Project Material on creation.
- 15.1.3 The Centre grants the Research Provider a non-exclusive, non-transferable, royalty-free licence for the Term to use the Project Material solely for the purpose of the Research Provider undertaking the Project and performing its obligations under this Agreement.
- 15.1.4 From the day after the End Date, the Centre grants the Research Provider or has procured from the Project Material Owner for the Research Provider, as relevant, a world-wide, perpetual, irrevocable, non-exclusive, non-transferable, royalty-free licence to:
 - (a) use the Project Material for the purposes of research and development and teaching only;
 - (b) if the Research Provider obtains the Centre's prior written consent, publish the Project Material.
- 15.1.5 If the Centre provides its written consent under clause 15.1.4, the Researcher must:
 - (a) only publish the Project Material to the extent the Centre has provided its consent;
 - (b) comply with any conditions specified by the Centre;
 - (c) keep records of all publication and submit a copy to the Centre prior to publication for approval.

15.2 Improvements and Enhancements

- 15.2.1 Any improvements made to Intellectual Property Rights in Existing Material that is owned and made available by a Party under clause 15.1.3, will be owned by the Party that owns the Existing material.
- 15.2.2 Enhancements to any existing Intellectual Property developed under this agreement will be treated as Project Intellectual Property.

15.3 Existing Material

- 15.3.1 This clause 15.2 does not affect ownership of any Existing Material.
- 15.3.2 The Centre grants the Research Provider a non-exclusive, non-transferable, royalty-free licence for the Term to use the Centre Existing Material solely for the purpose of the Research Provider undertaking the Project and performing its obligations under this Agreement.
- 15.3.3 The Research Provider grants the Centre and the Project Material Owner a non-exclusive, perpetual, irrevocable, world-wide, royalty-free, transferable licence (including the right to sub-license) to use, copy, modify, reproduce, improve, publish, adapt, distribute, communicate and exploit the Research Provider Existing Material to the extent necessary to allow the Centre and the Project Material Owner to enjoy the full benefit of the Deliverables, the Project and the Project Material.

15.4 Third Party Material

- 15.4.1 The Research Provider warrants and represents to the Centre that:
- (a) to the extent that it uses Third Party Material to perform its obligations under this Agreement, it has all necessary copyright and other Intellectual Property Right permission to use that Third Party Material; and
 - (b) the Centre's or the Project Material Owner's use of Third Party Material will not infringe the Intellectual Property Rights of any third party.
- 15.4.2 Where the Centre has agreed to the inclusion of Nominated Third Party Material in the Project, the Centre agrees that it will, where required, obtain a licence to use the Nominated Third Party Material from the relevant third party in order to exercise its rights to the Project Material.

15.5 Intellectual Property Rights indemnity

- 15.5.1 The Research Provider indemnifies the Centre from and against all Loss arising out of or in connection with any Claim by a third party that the Centre 's or its Personnel's use of the Project Material, Third Party Material or the Research Provider's Existing Material as permitted under this Agreement infringes their Intellectual Property Rights or Moral Rights (**Third Party IP Claim**).
- 15.5.2 Each party will promptly notify the other party if it becomes aware of any Third Party IP Claim.
- 15.5.3 Without limiting any of the Centre 's rights, if a Third Party IP Claim is made, the Research Provider will at its option, cost and without delay:
- (a) procure the right for the Centre to continue to use the affected Materials;
 - (b) modify the affected Materials to make those Materials non-infringing; or
 - (c) replace the affected Materials with non-infringing Materials acceptable to the Centre.

- 15.5.4 If the Research Provider is unable to comply with clause 15.5.3 after 20 Business Days of being notified of a Third Party IP Claim, the Centre may terminate this Agreement for breach under clause 23.2.

15.6 Moral rights

- 15.6.1 The Research Provider warrants that it has or will procure from all Personnel who have Intellectual Property Rights in the Project Material a written assignment of all of those Intellectual Property Rights as necessary to give effect to clause 15.1 and an irrevocable consent to the Project Material Owner doing, or omitting to do, anything in relation to any copyright works in the Project Material (including any act or omission which might otherwise have affected the Moral Rights of the Personnel).
- 15.6.2 The Research Provider must ensure that any consent it obtains under clause 15.6.1 is given genuinely and not obtained by duress or as a result of a false or misleading statement.

15.7 Knowhow

Subject to clause 11, each party will have the continuing right to use any knowhow it acquires in connection with performing its obligations under this Agreement.

15.8 ~~Special Conditions for Commonwealth Agencies~~

- 15.8.1 Where the Research Provider is a Commonwealth Government Agency, under clause ST3.2 of the Agreement between the Centre and the Commonwealth:
- (a) ST3.2: The Grantee (the Centre) agrees to provide the Commonwealth a permanent, non-exclusive, irrevocable, royalty-free license (including right to sub licence) to use, modify, communicate, reproduce, public and adapt the Activity Material as specified in the Grant Details for Commonwealth Purposes. The Commonwealth's right to sub licence under this clause includes but is not limited to sub licensing to another Government Agency who will in turn have the same rights as the Commonwealth under this clause.

16 Materials

16.1 Compliance with FAIR Data Principles, CARE Data Principles and the Centre Data Management Framework

- 16.1.1 All Materials generated by the Research Provider in delivering the Project must comply with the FAIR Data Principles, the CARE Data Principles and the Centre's Data Management Framework.

16.2 Access to Materials

- 16.2.1 The Research Provider must provide the Centre with access to the Materials on request.
- 16.2.2 The Centre and the Research Provider will agree on the management, curation and provision of ongoing access to the Materials (including after the End Date) by the Centre.
- 16.2.3 The parties have agreed to manage the Materials as set out in Item 16 of the Details.

17 Records

17.1 Maintain records

- 17.1.1 The Research Provider must establish and maintain proper books of account of all transactions relating to the Funding and operating records necessary to afford a correct and complete record and explanation of all expenditure by the Research Provider of the Funding, including:
- (a) proper books of account; and
 - (b) disbursement records.
- 17.1.2 Such records must be maintained in accordance with accounting principles generally applied in commercial practice, to an auditable standard and as required by Law.

17.2 **[## use this version if Research Provider IS NOT a Commonwealth Agency] Inspection of records and audit**

- 17.2.1 The Research Provider must give the Centre, or a third party nominated by the Centre, access to the information referred to in clause 17.1, or in any other clause of this Agreement, to enable the Centre or the third party to:
- (a) determine whether the Research Provider is complying with all of its obligations under this Agreement; and
 - (b) ascertain any other matters reasonably considered by the Centre or the third party to be relevant to the performance of the Centre's obligations under this Agreement.
- 17.2.2 If requested by the Centre or a third party nominated by the Centre, the Research Provider must provide to the Centre documentation evidencing costs, losses or expenses incurred by the Research Provider in undertaking the Project, or part of the Project, as soon as possible and in any event within 5 Business Days of receiving such a request.

17.3 **[## use this version if Research Provider is Commonwealth Agency] Inspection of records**

- 17.3.1 The Research Provider must give the Centre, or a third party nominated by the Centre, copies of the information referred to in clause 17.1, or in any other clause of this Agreement, to enable the Centre or the third party to:
- (a) determine whether the Research Provider is complying with all of its obligations under this Agreement; and
 - (b) ascertain any other matters reasonably considered by the Centre or the third party to be relevant to the performance of the Centre's obligations under this Agreement.
- 17.3.2 If requested by the Centre or a third party nominated by the Centre, the Research Provider must provide to the Centre documentation evidencing costs, losses or expenses incurred by the Research Provider in undertaking the Project, or part of the Project, as soon as possible and in any event within 5 Business Days of receiving such a request.
- 17.3.3 The parties agree that if a third party is engaged under clause 15.2, any costs incurred by that third party will be paid, in full, by the Centre

18 Warranties & Indemnities

18.1 Warranties

The Research Provider warrants to the Centre that:

- 18.1.1 it has the power to enter into this Agreement and to carry out the Project;
- 18.1.2 it has, or will have at the relevant time, all necessary approvals, consents and authorisations required to carry out the Project;
- 18.1.3 the carrying out of the Project will not breach any applicable Laws;
- 18.1.4 the Research Provider's Personnel involved in the Project:
 - (a) have the necessary qualifications and experience to undertake and complete the Project;
 - (b) will devote their efforts and attention to the performance of the Project; and
 - (c) will complete the Project in a timely and efficient manner, as required by and in accordance with this Agreement.

18.2 Indemnity

- 18.2.1 The Research Provider indemnifies each of the Indemnified Parties from and against any Loss suffered or incurred by the Indemnified Party (including any Losses incurred or sustained in connection with a third party Claim) arising out of or in connection with this Agreement and:
 - (a) the death of, disease or injury to, any person caused or contributed to by the Research Provider or the Research Provider's Personnel;
 - (b) the loss of, or damage to, any property caused or contributed to by the Research Provider or the Research Provider's Personnel;
 - (c) any negligent, fraudulent, unlawful, reckless or wilfully wrongful act or omission of the Research Provider or the Research Provider's Personnel;
 - (d) any breach of this Agreement or any Law by the Research Provider or any of the Research Provider's Personnel (including any warranty given by the Research Provider under this Agreement being incorrect or misleading in any way); and
 - (e) any Third Party IP Claim.
- 18.2.2 The Research Provider's obligation to indemnify an Indemnified Party under clause 18.2.1 will be reduced proportionally to the extent that a negligent act or omission of, or breach of this Agreement, by the Indemnified Party has directly caused the Loss.
- 18.2.3 Each indemnity in this Agreement is a continuing obligation, separate and independent from the other obligations of the parties under this Agreement and is intended to be enforceable and to survive expiry or termination of this Agreement.
- 18.2.4 Each Indemnified Party must take all reasonable steps to mitigate any amounts payable pursuant to an indemnity.
- 18.2.5 It is not necessary for an Indemnified Party to incur expense or make payment before enforcing a right of indemnity conferred by this Agreement.

18.3 Consequential Loss

Notwithstanding any other provision in this Agreement, neither party will have any liability to make any payment to the other party, by way of indemnity, damages or otherwise, in respect of any Consequential Loss incurred or suffered by the other party as a result of any act, omission or neglect of the first party.

18.4 Effect of legislation

Nothing in this Agreement is to be read as excluding, restricting or modifying the application of any legislation which cannot by Law be excluded, restricted or modified.

19 Limitation of liability

19.1 The liability of the Centre arising out of this Agreement is limited to an amount equal to the Funding paid or due to be paid under this Agreement less any amount already paid.

19.2 The liability of the Research Provider arising out of this Agreement is limited to the amount specified in Item 15 of the Details, which amount does not apply to liability arising out of or in connection with:

- 19.2.1 personal injury or death of any person;
 - 19.2.2 loss of, or damage to, tangible property and data;
 - 19.2.3 any fraudulent or wilful act or omission of the Research Provider or any of its Personnel;
 - 19.2.4 a breach by the Research Provider of its privacy or confidentiality obligations under this Agreement; or
 - 19.2.5 the infringement of a person's Intellectual Property Rights.
-

20 Insurance

20.1 The Research Provider must effect and maintain at all times during the Term the insurances specified in Item 12 of the Details.

20.2 On request from the Centre, the Research Provider must provide evidence that the insurances required under clause 20.1 have been effected and are being maintained. Evidence the Centre may request includes a copy of the certificate of currency.

21 Variation of Research Plan and Budget

21.1 If the Research Provider wishes to amend or vary the Research Plan or Budget it must submit a written proposal (**Amendment Proposal**):

- 21.1.1 detailing the nature of the proposed amendment or variation;
- 21.1.2 explaining why the amendment or variation is necessary; and
- 21.1.3 where the variation will lead to a delay in the delivery of 1 or more Deliverables that variation must be requested at least 15 Business Days before the relevant Milestone Date.

21.2 The Centre will in its sole discretion decide whether to approve or reject an Amendment Proposal made under clause 21.1 and will notify the Research Provider of that decision within 20 Business Days of receipt of the Amendment Proposal.

22 Dispute resolution

22.1 Dispute

- 22.1.1 A party claiming that a Dispute has arisen must promptly give the other party a Dispute Notice.
- 22.1.2 A Dispute Notice must state it is a notice under this clause 22.1 and must specify in reasonable detail:
- (a) the particulars of the Dispute;
 - (b) the facts relied on; and
 - (c) the relief or outcome sought.

22.2 Negotiation

- 22.2.1 The parties must attempt to resolve all Disputes by escalation through the following process:
- (a) within 10 Business Days of the Dispute Notice date, the Centre's contact person specified in Item 1 of the Details and the Research Provider Representative referred to in Item 2 of the Details must meet to discuss the Dispute;
 - (b) if the Dispute remains unresolved 10 Business Days after the contact persons meet under clause 22.2.1(a), the Chief Executive Officer or Managing Director (or equivalent) of each party must meet to discuss the Dispute.
- 22.2.2 If the Chief Executive Officers or Managing Directors (or equivalents) of the parties are not able to resolve the Dispute within 20 Business Days after referral to them under clause 22.2.1(b), either party may refer the Dispute to mediation in accordance with clause 22.3.

22.3 Mediation

If the Dispute is referred to mediation by either party under clause 22.2.2:

- 22.3.1 the mediation will be administered by the Australian Disputes Centre (**ADC**) according to its mediation guidelines;
- 22.3.2 the parties will agree on a mediator within 10 Business Days of the referral, failing which the mediator will be provided by the ADC;
- 22.3.3 the parties must conduct the mediation within 20 Business Days of the mediator being appointed;
- 22.3.4 the mediation will take place in Melbourne, Australia or online;
- 22.3.5 each party will pay its own costs in relation to attendance at, and participation in, the mediation; and
- 22.3.6 the cost of ADC and the appointed mediator will be shared equally between the parties.

22.4 Performance during a Dispute

Despite the existence of a Dispute, the parties must continue to perform their obligations under this Agreement.

22.5 Dispute resolution before court proceedings

- 22.5.1 Subject to clause 22.5.2, the parties must attempt to resolve all Disputes under this clause before starting any court proceedings, other than court proceedings for interlocutory relief.

22.5.2 If a Dispute remains unresolved 60 Business Days after the Dispute Notice date, either party may commence court proceedings in relation to the Dispute.

22.6 No effect on right to terminate

This clause does not affect the rights of the parties to terminate this Agreement under clause 23.

22.7 Confidentiality

Any information or documents disclosed by a party during the Dispute resolution process:

22.7.1 must be kept confidential; and

22.7.2 may only be used to attempt to resolve the Dispute.

23 Termination

23.1 Termination for convenience

The Centre may terminate this Agreement at any time without cause and without needing to provide reasons by giving the Research Provider a minimum of 40 Business Days' notice.

23.2 Termination by the Centre

The Centre may terminate this Agreement immediately by notice to the Research Provider if:

23.2.1 the Research Provider does not prepare a Research Plan which the Centre, in its absolute discretion, considers capable of acceptance under clause 6.3.

23.2.2 the Research Provider commits a breach of this Agreement which cannot be remedied;

23.2.3 the Research Provider commits a breach of this Agreement and the Research Provider:

(a) fails to commence action to remedy the breach within 10 Business Days after the Centre has served notice requiring it to do so; or

(b) having commenced action to remedy the breach, fails to complete that action as soon as possible and in any event, within 20 Business Days of the Centre's notice;

23.2.4 an Insolvency Event occurs in relation to the Research Provider;

23.2.5 a Change in Control occurs in relation to the Research Provider;

23.2.6 a Force Majeure Event continues for longer than 3 months;

23.2.7 the Research Provider engages in any conduct that is contrary to the Research Provider's occupational health and safety obligations under Law;

23.2.8 The Centre determines that the Research Provider or any of its Personnel is guilty of conduct which:

(a) is dishonest, fraudulent, deceitful or abusive;

(b) is professional misconduct;

(c) causes or may cause imminent and serious risk to the reputation, viability or profitability of the Project;

(d) is an indictable offence under Commonwealth or State crimes legislation (or equivalent in any jurisdiction);

(e) is a contravention of a criminal or civil penalty provision under the Corporations Act (or equivalent in any jurisdiction);

- (f) adversely impacts the Research Provider's ability to meet its obligations under this Agreement; or
- (g) adversely impacts on the Centre 's reputation.

23.3 Termination by Research Provider

The Research Provider may terminate this Agreement immediately by notice to Centre:

- 23.3.1 if a Force Majeure Event continues for longer than 3 months;
- 23.3.2 if Centre commits a breach of this Agreement and Centre:
 - (a) fails to commence action to remedy the breach within 10 Business Days after the Research Provider has served notice requiring it to do so; or
 - (b) having commenced action to remedy the breach, fails to complete that action as soon as possible and in any event, within 20 Business Days of the Research Provider's notice.

23.4 No compensation for termination

- 23.4.1 If this Agreement is terminated for any reason:
 - (a) the Research Provider must, on receiving or issuing a termination notice under this Agreement, immediately:
 - (i) do everything possible to mitigate its Losses and Consequential Losses arising or which might arise in connection with termination;
 - (ii) comply with any directions given by the Centre in connection with termination (including a direction to stop the completion of Deliverables and the Project); and
 - (iii) provide the Centre with a financial report within 20 Business Days containing a statement of payments and receipts made in respect of the Project certified by a person undertaking the role of Chief Financial Officer (or comparable role) of the Research Provider that includes a statement that the financial accounts are true and fair; and
 - (b) The Centre must:
 - (i) pay the Research Provider all Funding which is due and payable under this Agreement prior to the effective date of termination; and
 - (ii) if applicable, pay the Research Provider Fees for any Deliverables completed in accordance with this Agreement but not yet invoiced as at the effective date of termination (calculated on a pro rata basis if required).
- 23.4.2 Except as provided for in clause 23.4.1, the Centre is not liable to the Research Provider or its Personnel for any costs in connection with termination of this Agreement (including any Loss or Consequential Loss suffered or incurred by the Research Provider in connection with termination).

23.5 Effect of termination or expiry

Termination or expiry of this Agreement will not affect:

- 23.5.1 any accrued rights or remedies of either party; or

- 23.5.2 the operation of clauses 25.3, 11, 12, 13, 14,15, 16, 19, 25, 26 and this clause 23.5 or any other provision which, by its nature, are intended to survive termination or expiry of this Agreement.

24 Force Majeure Events

24.1 Suspension

If a Force Majeure Event directly prevents a party (**Affected Party**) from performing some or all of its obligations under this Agreement (**Affected Obligations**), then:

- 24.1.1 the Affected Obligations are suspended from the date the Force Majeure Event starts until the earlier of the date on which the Affected Party:
- (a) ceases to be prevented from performing some or all of its Affected Obligations; or
 - (b) would have ceased to be prevented from performing some or all of its Affected Obligations if it had complied with clause 24.3; and
- 24.1.2 a failure of the Affected Party to perform the Affected Obligations during the period of suspension referred to in clause 24.1.1 is not a breach of this Agreement.

24.2 Notice of Force Majeure Event

If a Force Majeure Event occurs the Affected Party must, as soon as reasonably practicable, give written notice to the other party including:

- 24.2.1 particulars of the Force Majeure Event;
- 24.2.2 the likely duration of the Force Majeure Event;
- 24.2.3 each of the obligations which the Affected Party is unable to perform; and
- 24.2.4 the measures the Affected Party proposes to adopt to remedy or abate the Force Majeure Event.

24.3 Mitigation

While the Force Majeure Event is continuing the Affected Party must take all reasonable steps to:

- 24.3.1 minimise the duration of the Force Majeure Event; and
- 24.3.2 avoid or mitigate the effects of, and any Loss suffered or incurred by it or the other party as a result of, the Force Majeure Event.

24.4 End of Force Majeure Event

When a Force Majeure Event ceases to prevent the performance of the Affected Obligations, the Affected Party must immediately:

- 24.4.1 give written notice to that effect to the other party; and
- 24.4.2 resume performance of the Affected Obligations.

24.5 Termination due to Force Majeure Event

If a Force Majeure Event prevents the performance of the Affected Obligations for a continuous period of 60 Business Days, then either party may terminate this Agreement by giving written notice to the other.

24.6 Claims

Subject to clause 24.5, neither party is entitled to make any claim against, or be liable to, the other party in connection with a Force Majeure Event.

25 Definitions and Interpretation

25.1 Definitions

In this Agreement unless expressed or implied to the contrary:

Agreement means this agreement between the Centre and the Research Provider including the Details and any Schedules.

Budget means the budget for the Project approved by the Centre and set out at Schedule 3 or in the Research Plan.

Business Days means Monday to Friday excluding public holidays in Melbourne, Australia.

CARE Data Principles means the principles regarding Indigenous Data Governance. The principles of care include choice, dignity, independence, partnership, privacy, respect, rights, safety, equality and inclusion, and confidentiality.

Centre Participant means a person who has signed a Participant Agreement with the Centre in relation to research programs funded by the Commonwealth of Australia.

Change in Control means any act, event or circumstance that results in or causes any variation, amendment or modification to the Control of the Research Provider, where **Control** has the meaning given in section 50AA(1) of the Corporations Act.

Claims includes actions, proceedings, suits, causes of action, arbitrations, verdicts and judgments either at law (including negligence) or in equity or arising under a statute, debts, dues, demands, claims of any nature, costs and expenses.

Confidential Information means all information of a party (**Disclosing Party**) of any nature and in any form which is disclosed, made available, communicated by the Disclosing Party or delivered to or obtained by the other party (**Recipient**) in connection with this Agreement, which is about the Disclosing Party or its operations, dealings, organisation, Personnel, business, strategies, ideas, designs, Intellectual Property Rights, trade secrets or know how or is otherwise designated by the Disclosing Party as confidential (including the terms of this Agreement) or is by its nature confidential, but excludes information:

- (a) which is in or which subsequently enters the public domain other than as a result of a breach of the Agreement;
- (b) which the Recipient can demonstrate was in its possession prior to the Start Date;
- (c) which the Recipient can demonstrate was independently developed by the it; or
- (d) which is lawfully obtained by the Recipient from another person entitled to disclose such information.

Conflict of Interest means an actual or potential conflict of interest, or a conflict of interest that could reasonably be perceived to exist, between the Centre and the Research Provider in relation to the performance of the Research Provider's obligations under this Agreement.

Consequential Loss means:

- (e) any loss of income, profits, revenue, business, business reputation, access to markets, denial of business opportunity or anticipated savings whether or not that loss or damage

may reasonably be supposed to have been in the contemplation of the parties, when they entered this Agreement, as the probable result of that breach, act or omission;

- (f) any loss of or damage to goodwill; or
- (g) any business interruption, downtime costs, damage to credit rating or payment of liquidated sums or damages under any other agreement.

Contract Manager means the person appointed by a Research Provider in accordance with clause 5.1 and specified in Item 2 of the Details

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

Deliverables means the deliverables for the Project set out in Schedule 1.

Details means the Agreement Details set out on page 6 of this Agreement.

Dispute means a dispute arising under or in connection with this Agreement.

Dispute Notice means a notice setting out details about a Dispute that is given under clause 22.1.

End Date means the end date of this Agreement specified in Item 3 of the Details.

Enhancements to a Party's Intellectual Property are features, capabilities and other developments that are not Improvements, but which can add to, or otherwise enhance the performance or functionality of that Party's Intellectual Property.

Existing Material means any Material and Intellectual Property Rights, other than Project Material, which is made available, provided or used by a party under this Agreement and includes Third Party Material.

FAIR Data Principles means the principles (Findable, Accessible, Interoperable, and Reusable), published in Scientific Data in 2016, setting out guiding principles proposed by a consortium of scientists and organizations to support the reusability of digital assets.

Force Majeure Event means any:

- (a) lightning strike, severe storm, earthquake, natural disaster, landslide, bushfire, mudslide or tsunami;
- (b) sabotage, vandalism, malicious damage, riot or a 'terrorist act' as defined in the *Terrorism Insurance Act 2003* (Cth);
- (c) explosion, flood or fire resulting from any of the events in paragraph (a) or (b);
- (d) war (declared or undeclared), civil war, insurrection, invasion, rebellion, revolution, military action or usurped power, martial law, act of public enemy or embargo;
- (e) ionising radiation, radioactive contamination, nuclear contamination or toxic, chemical or biological contamination; or
- (f) epidemic, pandemic or public health emergency, or any resulting governmental action including work stoppages, mandatory business, service or workplace closures, full or partial lockdowns of affected areas, quarantines, border closures and travel restrictions (for clarity, each stoppage or mandatory business, service or workplace closure full or partial lockdowns of affected areas, quarantines, border closures and travel restrictions is to be treated as one event),

that is beyond the reasonable control of a party, was not caused by an act or omission of the party, and could not have been prevented, avoided, mitigated, remedied or overcome by the party taking steps a prudent and reasonable person would have taken in the circumstances.

Fraud means (without limiting the definition as set out in AS8001:2021) dishonestly obtaining a benefit, or causing a loss, by deception or other means, and includes alleged, attempted, suspected or detected fraud. Fraud includes the deliberate falsification, concealment, destruction or use of falsified documentation used or intended for use for a normal business purpose or the improper use of information or position for personal benefit. Examples include:

- (a) theft of moneys or other property
- (b) false invoicing
- (c) false accounting / accounts receivable fraud
- (d) credit card fraud involving the unauthorised use of a credit card or credit card number issued to another person
- (e) deliberate falsification, concealment, destruction or use of falsified documentation used or intended for a normal business purpose
- (f) improper use of information or position for personal benefit; or misuse of position in order to gain some form of financial advantage.
- (g) plagiarising the work of others
- (h) fabrication of data, including making up research data and results, and or recording or reporting them; or
- (i) manipulating research materials, images, data, equipment or processes. Falsification includes changing or omitting data or results in such a way that the research is not accurately represented.

Fraud and Corruption Policy means the Centre's fraud and corruption policy available at [##insert link to policy](#).

Funding means the funding set out in Item 10 of the Details.

GST Law has the meaning given in the *A New System (Goods and Services Tax) Act 1999* (Cth).

Illegal or Corrupt Practice means (without limiting the definition as set out in AS 8001.2021) directly or indirectly:

- (a) making or causing to be made, any offer, gift, payment, consideration or benefit of any kind to any party; or
- (b) receiving or seeking to receive, any offer, gift, payment, consideration or benefit of any kind from any party,

as an inducement or reward in relation to the performance of the Project or this Agreement, which would or could be construed as an illegal or corrupt practice. Corruption includes dishonest activity in which a person associated with the Research Provider acts contrary to the interests of the Centre and abuses their position of trust in order to achieve personal advantage or advantage for another person or the Supplier. This can also involve corrupt conduct by the Research Provider, or a person purporting to act on behalf of and in the interests of the Research Provider, in order to secure some form of improper advantage for the Research Provider either directly or indirectly. Examples include:

- (a) manipulation of procurement processes by selectively providing information to some bidders and not to others;
- (a) receipt or the making of gifts or entertainment intended to achieve a specific or generic commercial outcome;
- (b) bribing or accepting bribes or kick-backs to secure contracts; or
- (c) release of confidential information for other than.

Improvements to a Party's Intellectual Property are:

- (a) developments that cannot be used independently of that Party's background Intellectual Property, and which require that Party's Background Intellectual Property for them to be used, and
- (b) developments where the use of the improvement would infringe any pre-existing Intellectual Property rights of the Party.

Indemnified Parties means the Centre and each of its directors, officers, employees, contractors and agents individually or collectively, as the case may be.

Insolvency Event means any of the following events:

- (a) the Research Provider, if an individual, commits an act of bankruptcy;
- (b) the Research Provider, its parent company or ultimate holding company becomes insolvent or unable to pay its debts as they fall due;
- (c) a receiver, receiver and manager, administrator, controller, provisional liquidator or liquidator is appointed to the Research Provider or its parent company or ultimate holding company or the Research Provider or its parent or ultimate holding company enters into a scheme of arrangement with its creditors or is wound up;
- (d) the Research Provider, its parent company or ultimate holding company assigns any of its property for the benefit of creditors or any class of them;
- (e) an encumbrance takes any step towards taking possession or takes possession of any assets of the Research Provider, its parent company or ultimate holding company or exercises any power of sale;
- (f) the Research Provider, its parent company or ultimate holding company has a judgment or order given against it in an amount exceeding \$1,000 (or the equivalent in another currency) and that judgment or order is not satisfied or quashed or stayed within 20 Business Days after being given; or
- (g) an act is done or an event occurs which, under the laws from time to time of a country having jurisdiction in relation to the Research Provider or its parent company or ultimate holding company, has an analogous or similar effect to any of the events in paragraphs (a) to (e) of this definition.

Intellectual Property Rights means all and any patents, patent applications, trade marks, service marks, trade names, domain names, registered designs, unregistered design rights, copyrights, know how, trade secrets and rights in confidential information, URLs and all and any other intellectual property rights, whether registered or unregistered, and including all applications and rights to apply for any of the same.

Key Personnel means the Personnel of the Research Provider specified in Item 6 of the Details.

Laws includes any law in force applying to the provision of the Project or this Agreement, including the common law and equity, regulatory requirements and any applicable standards, codes and guidelines.

Loss means any loss, cost (including legal costs on a full indemnity basis), expense, damage or liability (including any fine or penalty) whether direct or indirect or consequential, present or future, fixed or unascertained, actual or contingent and whether arising under contract (including any breach of the Agreement), in equity (including breach of an equitable duty, breach of confidentiality or breach of fiduciary duty), under statute (including breach of statutory duty to the maximum extent possible), in tort (including for negligence or negligent misrepresentation) or otherwise (including in restitution), but excluding Consequential Loss.

Materials include equipment, hardware, computer software, data, documentation, designs, plans, models, calculations, drawings, reports, notes, calculations, specifications, photographs, artwork, images, audio-visual materials, recordings, manuals, tools and anything else which is in a material form (and includes information stored in an electronic form).

Milestone Dates means the dates by which the Deliverables must be delivered to the Centre set out in Schedule 1.

Moral Rights has the same meaning and effect as given to that expression in the *Copyright Act 1968* (Cth).

Nominated Third Party Material means Material listed in Item 8 of the Details that a third party holds Intellectual Property Rights in.

Objectives means the objectives the Project must meet set out in Item 5 of the Details.

Personal Information means any health information as defined under the *Health Records Act 2001* (Vic) and any personal information as defined under the *Privacy and Data Protection Act 2014* (Vic) and *Privacy Act 1988* (Cth).

Personnel means employees, agents, contractors or subcontractors including representatives.

Privacy Laws means the *Privacy and Data Protection Act 2014* (Vic), the *Health Records Act 2001* (Vic), the *Privacy Act 1988* (Cth) and any other Law which relates to the privacy, confidentiality or use of any information about individuals and with which the parties must comply.

Project means the research project described in Item 4 of the Details.

Project Material means any Material and Intellectual Property Rights created by the Research Provider or its Personnel on or following the Start Date in the course of, or as a consequence of, performing its obligations under this Agreement.

Project Material Owner means the person identified in Item 7 of the Details.

Project Management Committee or PMC means the project management committee comprising of the Personnel specified in Item 6 of the Details.

Research Misconduct means:

- (a) research misconduct related to the Centre's funding or activities, that breaches the Australian Code for the Responsible Conduct of Research 2018; or
- (b) Fraud related to the Centre's funding or activities.

Research Participants means any participants in the Project.

Research Plan means the research plan for the Project approved by the Centre and set out at Schedule 2

Research Provider means the party described in Item 2 of the Details.

Special Conditions means any special conditions listed in Item 17 of the Details.

Subcontractors means a person engaged as a subcontractor by the Research Provider to perform any part of the Project or perform any of the Research Provider's obligations under this Agreement, who is approved by the Centre under clause 10.1.

Start Date means the start date of the Agreement specified in Item 3 of the Details.

Term has the meaning given in clause 1.

Third Party Material means Existing Material excluding Nominated Third Party Material to the extent that a third party holds Intellectual Property Rights in that Material.

Valid Tax Invoice means an invoice containing the information specified in Item 11 of the Details issued under clause 4.2.

25.2 Interpretation

In this Agreement, except where the context requires otherwise:

- 25.2.1 the singular includes the plural and vice versa;
- 25.2.2 another grammatical form of a defined word or expression has a corresponding meaning;
- 25.2.3 a reference to:

- (a) a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
 - (b) a clause, schedule, appendix or annexure is a reference to a clause, schedule, appendix or annexure in or to this Agreement all of which are deemed part of this Agreement;
 - (c) a person includes the legal personal representatives, successors and permitted assigns of that person;
 - (d) any body which no longer exists or has been reconstituted, renamed, replaced or whose powers or functions have been removed or transferred to another body or agency, is a reference to the body which most closely serves the purposes or objects of the first-mentioned body;
 - (e) '\$' or 'dollars' is a reference to Australian dollars;
 - (f) time is a reference to the time in the place where the obligation is to be performed;
 - (g) a statute includes regulations under it and consolidations, amendments, re-enactments or replacements of any of them;
 - (h) this or any other document is a reference to that document (or, if required by the context, to part of it) as amended, novated, updated or replaced at any time;
- 25.2.4 headings and sub-headings are inserted for ease of reference only and do not affect the interpretation of this Agreement;
- 25.2.5 where the expression **including** or **includes** is used it means 'including but not limited to' or 'including without limitation'; and
- 25.2.6 a payment or other act required to be made or done on a day which is not a Business Day, must be made or done on the next following Business Day.

25.3 Priority of documents

This Agreement comprises the following, which will be read in the following order of precedence:

- 25.3.1 any Special Conditions;
- 25.3.2 clauses 1 to 26 (inclusive) of this Agreement;
- 25.3.3 the Details;
- 25.3.4 the Schedules; and
- 25.3.5 any other documents created under this Agreement or incorporated by reference.

26 General

26.1 Entire understanding

This Agreement contains the entire understanding between the parties as to the subject matter contained in it. All previous agreements, representations, warranties, explanations and commitments, expressed or implied, affecting this subject matter are superseded by this Agreement and have no effect.

26.2 Variation

This Agreement may only be varied or replaced by a document duly executed by the parties.

26.3 Notices

All notices and communications given under this Agreement must be in writing and directed to the recipient's contact person at the postal address or email stated in Items 1 and 2 of the Details.

26.4 Governing law and jurisdiction

This Agreement is governed by and is to be construed in accordance with the laws of Victoria. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Victoria and waives any right to object to proceedings being brought in those courts.

26.5 Further assurance

Each party must promptly execute and deliver all documents and take all other action necessary or desirable to effect, perfect or complete the transactions contemplated by this Agreement.

26.6 Waiver and exercise of rights

A right relating to this Agreement may only be waived by a written notice signed by the party waiving the right. A single or partial exercise or waiver of a right relating to this Agreement does not prevent any other exercise of that right or the exercise of any other right.

26.7 Rights and remedies

The rights and remedies conferred on a party by this Agreement are in addition to all other rights and remedies of that party, whether those rights are provided for under this Agreement, any other document or by law.

26.8 Assignment

The parties must not assign, novate or otherwise transfer any of their rights or obligations under this Agreement without the prior written consent of the other party, which must not be unreasonably withheld.

26.9 Legal costs and expenses

Each party must pay its own legal costs and expenses in relation to the negotiation, preparation and execution of this Agreement and other documents referred to in it, unless expressly stated otherwise.

26.10 No relationship

No party to this Agreement has the power to obligate or bind any other party. Nothing in this Agreement will be construed or deemed to constitute a partnership, joint venture or employee, employer or representative relationship between any of the parties. Nothing in this Agreement will be deemed to authorise or empower any of the parties to act as agent for or with any other party.

26.11 No merger

The warranties, undertakings, agreements and continuing obligations in this Agreement do not merge on completion.

26.12 Rule of construction

In the interpretation of this Agreement, no rule of construction applies to the disadvantage of the party preparing the document on the basis that it prepared or put forward this Agreement or any part of it.

26.13 Severance

- 26.13.1 If a provision in this Agreement is held to be illegal, invalid, void, voidable or unenforceable, that provision must be read down to the extent necessary to ensure that it is not illegal, invalid, void, voidable or unenforceable.
- 26.13.2 If it is not possible to read down a provision as required in this clause, that provision is severable without affecting the validity or enforceability of the remaining part of that provision or the other provisions in this Agreement.

26.14 Counterparts

This Agreement may be executed in any number of counterparts all of which taken together constitute one instrument.

26.15 Business Day

If a payment or other act is required by this Agreement to be made or done on a day which is not a Business Day, the payment or act must be made or done on the next following Business Day.

26.16 Electronic execution

The parties:

- 26.16.1 agree that this Agreement may be executed by a party using the digital or electronic signature of an authorised representative of the party; and
- 26.16.2 consent to the requirement for execution of this Agreement to be met by the method referred to in clause 26.16.1; and
- 26.16.3 consent to the exchange of this Agreement via email to the Centre's contact person and the Research Provider's Representative referred to in Item 1 and Item 2 of the Details.

Signing Page

Executed by the parties

Executed by **Natural Hazards and Disaster Resilience Research Centre Ltd trading as Natural Hazards Research Australia ACN 163 137 979** by being signed by those persons who are authorised to sign for the Centre:

Signature of authorised representative

Print name of authorised representative

Signature of witness

Print name of witness

Date

[Use this signature block for companies and firms. Change to match NHRA style for universities and government entities)

Executed by **[##insert Research Provider ACN ##]** in accordance with section 127(1) of the *Corporations Act 2001* by being signed by authorised persons for the company:

Signature of director

Print name of director

Signature of director / company secretary

Print name of director / company secretary

Date

Schedule 1 Deliverable & Milestone Dates

| No. | Deliverable | Milestone Date | Funding (ex GST) |
|------------------|--|-----------------|------------------|
| Stage 1 | | | |
| Quarter 1 | | | |
| 1. | <i>##Insert Deliverable, can be broken down into tasks required to complete that Deliverable</i> | <i>##Insert</i> | <i>##Insert</i> |
| 2. | <i>##Insert Deliverable, can be broken down into tasks required to complete that Deliverable</i> | <i>##Insert</i> | <i>##Insert</i> |
| Quarter 2 | | | |
| 3. | <i>##Insert Deliverable, can be broken down into tasks required to complete that Deliverable</i> | <i>##Insert</i> | <i>##Insert</i> |
| 4. | <i>##Insert Deliverable, can be broken down into tasks required to complete that Deliverable</i> | <i>##Insert</i> | <i>##Insert</i> |
| Quarter 3 | | | |
| 5. | <i>##Insert Deliverable, can be broken down into tasks required to complete that Deliverable</i> | <i>##Insert</i> | <i>##Insert</i> |
| 6. | <i>##Insert Deliverable, can be broken down into tasks required to complete that Deliverable</i> | <i>##Insert</i> | <i>##Insert</i> |
| Quarter 4 | | | |
| 7. | <i>##Insert Deliverable, can be broken down into tasks required to complete that Deliverable</i> | <i>##Insert</i> | <i>##Insert</i> |
| 8. | <i>##Insert Deliverable, can be broken down into tasks required to complete that Deliverable</i> | <i>##Insert</i> | <i>##Insert</i> |

Schedule 3

Budget