



Dated

2022

## **Funding Agreement**

**The Crown in right of the State of New South Wales acting through the  
Department of Planning and Environment (ABN 20 770 707 468)**

**and**

**[Insert Recipient name] (ABN [insert ABN])**

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This Funding Agreement is dated

2022

**Parties:**

**Department**

**The Crown in right of the State of New South Wales acting through the Department of Planning and Environment** (ABN 20 770 707 468) of Level 11, 4 Parramatta Square, 12 Darcy Street, Parramatta NSW 2150 (“**Department**”)

**Recipient**

**[Insert council name]** a body politic of the State constituted under section 220 of the *Local Government Act 1993* (ABN [insert ABN#]) of **[Insert Recipient’s address]** (“**Recipient**”)

**Introduction:**

- A** The Department has established the non-competitive NSW Planning Portal API Grant Program which aims to provide support to NSW councils to integrate with the NSW Planning Portal via APIs.
- B** The Recipient has made an application to the Department for grant funding under the Program.
- C** The Department has agreed to provide the Funding from the Program to the Recipient to support the carrying out of the Project by the Recipient.
- D** The objective of this Agreement is to document the agreed outcomes for the Project including Milestones and timing for payment of the Funding and completion of the Project
- E** The parties also agree that in the event that part of the Funding is not required or used by the Recipient for the Project, those unspent funds will be returned to the Department.
- F** The Department agrees to provide, and the Recipient agrees to accept, the Funding in accordance with the terms of this Agreement.

**It is agreed:**

In consideration of the mutual promises contained in this Agreement, the parties to this Funding Agreement agree as follows:

**1. Definitions and interpretation**

**1.1 Definitions**

In this agreement, unless the context clearly indicates otherwise:

**ABN** means (Australian Business Number) as set out in section 41 of the *A New Tax System (Australian Business Number) Act 1999* (Cth);

**Agreement** means this deed and includes any Schedules and Annexures;

**Agreement Details** means those details in Schedule 1 of this Agreement;

**APIs** means application programming interfaces, being the digital tools necessary to complete the integration of an online service. APIs enable one party to push out data from a particular data field into their IT system (in this case, the NSW Planning Portal) and for another party to receive that data and map it to equivalent data fields from their side.

**Application** means the Recipient's application attached to this Agreement as Annexure A;

**Australian Accounting Standards** refers to the standards of that name maintained by the Australian Accounting Standards Board created by section 226 of the *Australian Securities and Investments Commission Act 2001* (Cth);

**Australian Auditing Standards** refers to the standards made by the Auditing and Assurance Standards Board created by section 227A of the *Australian Securities and Investments Commission Act 2001* (Cth);

**Australian Standards** means the standards of that name that are published documents setting out specifications and design procedures to ensure products and services consistently perform safely, reliable and perform the way they are intended to;

**Business Day** means any day that is not a Saturday, Sunday, gazetted public holiday or bank holiday in Sydney, New South Wales, and concludes at 5 pm on that day;

**Claim** means any cost, expense, loss, damage, claim, action, proceeding or other liability (whether in contract, tort or otherwise), however arising and includes legal costs;

**Confidential Information** means any information and all other knowledge at any time disclosed (whether in writing or orally) to a party, or acquired by a party which:

- (a) is by its nature confidential;
- (b) is designated, or marked, or stipulated as confidential; or
- (c) the party knows or ought to know is confidential.

**Date of this Agreement** means the date on which the Agreement is executed by the last party to do so;

**Department** where the context permits, includes officers, delegates, employees and agents and successors of the Department of Planning and Environment (ABN 20 770 707 468);

**Department Material** means any material:

- (a) provided by the Department to the Recipient for the purposes of this Agreement; or
- (b) derived at any time from the Material referred to in paragraph "a";

**Existing Material** means all Material in existence prior to the Date of this Agreement and;

- a) incorporated in;
- b) supplied with or part of; or
- c) required to be supplied with, or as part of

the Project Material.

**Funding Details** means those details in Schedule 2 of this Agreement;

**Financial Year** means each period from 1 July to the following 30 June, or any part of such a period as applicable;

**Funding** means:

- (a) the total amount payable by the Department under this Agreement as specified in the Funding Details, and
- (b) any interest earned on the Funding once paid by the Department to the Recipient;

**Funding Acknowledgment Guidelines** means the NSW Government Funding Acknowledgement Guidelines for NSW Government funded projects, as updated from time to time and available at <https://www.nsw.gov.au/branding/sponsorship-and-funding-acknowledgment-guidelines>

**Funding Acknowledgement Statement** means the NSW Government funding acknowledgement statement, as outlined in the Funding Acknowledgement Guidelines;

**Grant Purpose** means the objectives of the Program, as set out in Item 3 of the Agreement Details;

**GST** has the meaning that it has in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

**Intellectual Property** includes:

- (a) all copyright (including rights in relation to phonograms and broadcasts);
- (b) all rights in relation to inventions, plant varieties, trademarks (including service marks), designs, circuit layouts; and
- (c) all other rights resulting from intellectual activity in the industrial, scientific literary or artistic fields; and
- (d) Moral Rights;

**Law** includes:

- (a) Acts of the Commonwealth and the State(s) and Territory(s) in which the Activity will be undertaken, and any other relevant State or Territory;
- (b) ordinances, regulations, by-laws, orders and proclamations or other instruments of legal effect made under those Acts referred to in paragraph (a);
- (c) directions by any person exercising statutory powers regarding the Recipient or the Project; and
- (d) all the requirements, standard, approvals, licences, registrations or permits of any government (including local government) department, authority, agency or regulatory body that apply to the Project,

whether currently in force or coming into force on or after the date of this Agreement;

**Material** means all reports, studies, plans, diagrams, images, drawings, analysis, software, and all other information, items of a pictorial nature, documents and data howsoever stored or recorded including all copies and extracts of the same;

**Moral Rights** includes the following rights of an author of Copyright Material:

- (a) the right of attribution of authorship;

- (b) the right of integrity of authorship; and
- (c) the right not to have authorship falsely attributed;

**Open Access Licence** means a licence to the public on broad open access terms that allows any member of the public to perform a wide range of acts in respect of the material subject to certain restrictions. An Open Access Licence includes any Australian Government open access licence and any Creative Commons Attribution Licence (see <http://creativecommons.org.au/learn-more/licences>);

**Personnel** means:

- (a) in relation to the Recipient – any natural person who is an officer, employee, agent, or professional advisor of the Recipient or its subcontractors; and
- (b) in relation to the Department – any natural person, other than a person referred to in paragraph a, who is an officer, employee, agent or professional advisor of the Department;

**Privacy Act** refers to the *Privacy Act 1988* (Cth);

**Privacy Law** means the Privacy Act, the *Privacy Regulations 2013* (Cth), the Australian Privacy Principles, the *Privacy and Personal Information Protection Act 1998* (NSW), the *Privacy and Personal Information Protection Regulations 2014* (NSW);

**Program** means the program under which the Department is able to provide Funding to the Recipient named at Item 1 of the Agreement Details;

**Program Guidelines** refers to the guidelines for the Program as described in Item 2 of the Agreement Details;

**Project** has the meaning given in Item 4 of the Agreement Details;

**Project Acquittal Report** means a written report submitted by the Recipient to the Department in accordance with the Recipient's Reporting Requirements;

**Project End Date** means the date specified in Item 5 of the Agreement Details, which is the date by which the Recipient must expend the Funding Amount for the Project;

**Project Progress Report** means a written report submitted by the Recipient to the Department in accordance with the Recipient's Reporting Requirements;

**Project Material** means all Material:

- a) brought into existence by the Recipient (or the Recipient's Personnel) for the purposes of the Project or this Agreement, and
- b) incorporated in, supplied or required to be supplied with the Material referred to in (a) above except to the extent that it is Existing Material;

**Publication and Communications Material** includes, but is not limited to, any publications, promotional and advertising materials, public announcements, formal launches and activities by the Recipient in relation to the Project;

**Recipient** includes, where the context permits, the officers, employees, agents, volunteers and subcontractors, and successors of the Recipient;



**Records** includes documents, information and data stored by any means and all copies and extracts of the same;

**Report** means is the reports to be provided to the Department for reporting purposes as set out in Schedule 3 – Reporting Schedule;

**Recipient’s Reporting Requirements** means those requirements set out in Schedule 3 – Reporting Schedule;

**Schedule** means a schedule to this Agreement and may include Annexures and incorporate other documents by reference;

**Third Party Interest** means any legal or equitable right, interest, power or remedy in favour of any person other than the Department or the Recipient in connection with the Agreement, including any right of possession, receivership, control or power of sale, and any mortgage, charge, security or other interest;

**Unexpended Funding** means any part of the Funding paid to the Recipient, or any part of the Funding, that is unspent at the relevant time.

## 1.2 Interpretation

In this agreement, unless the context clearly indicates otherwise:

- (a) a reference to **this agreement** or another document means this agreement or that other document and any document which varies, supplements, replaces, assigns or novates this agreement or that other document;
- (b) a reference to **legislation** or a **legislative provision** includes any statutory modification or substitution of that legislation or legislative provision and any subordinate legislation issued under that legislation or legislative provision;
- (c) a reference to a **body** or **authority** which ceases to exist is a reference to either a body or authority that the parties agree to substitute for the named body or authority or, failing agreement, to a body or authority having substantially the same objects as the named body or authority;
- (d) a reference to the **introduction**, a **clause**, **schedule** or **annexure** is a reference to the introduction, a clause, a schedule or an annexure to or of this agreement;
- (e) **clause headings** and the **table of contents** are inserted for convenience only and do not form part of this agreement;
- (f) the **introduction**, **schedules** (if any) and **annexures** (if any) form part of this agreement;
- (g) the **introduction** accurately sets out the circumstances in which the parties have entered into this agreement;
- (h) a reference to a **person** includes a natural person, corporation, statutory corporation, partnership, the Crown or any other organisation or legal entity;
- (i) a reference to a **natural person** includes their personal representatives, successors and permitted assigns;
- (j) a reference to a **corporation** includes its successors and permitted assigns;

- (k) **related** or **subsidiary** in respect of a corporation has the same meaning given to that term in the Corporations Act;
- (l) a reference to a right or obligation of a party is a reference to a right or obligation of that party under this agreement;
- (m) an **obligation** or **warranty** on the part of 2 or more persons binds them jointly and severally and an obligation or warranty in favour of 2 or more persons benefits them jointly and severally;
- (n) a reference to a **breach of warranty** includes that warranty not being complete, true or accurate;
- (o) a requirement to do any thing includes a requirement to cause that thing to be done and a requirement not to do any thing includes a requirement to prevent that thing being done;
- (p) **including** and **includes** are not words of limitation;
- (q) the words **at any time** mean at any time and from time to time;
- (r) a reference to a time is to that time in New South Wales;
- (s) a word that is derived from a defined word has a corresponding meaning;
- (t) **monetary amounts** are expressed in Australian dollars;
- (u) the singular includes the plural and vice-versa;
- (v) words importing one gender include all other genders; and
- (w) a reference to a thing includes each part of that thing.

### 1.3 Construction

Neither this Agreement nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting.

## 2. Commencement

This Agreement commences on the Date of the Agreement.

## 3. Provision of Funding

### 3.1 Payment of Funding

- (a) Subject to sufficient funds being available, and compliance by the Recipient with the terms of this Agreement, the Department agrees to provide the Recipient with the Funding at the times and in the manner specified in the Funding Details.
- (b) The Department is not responsible for the provision of additional money to meet any expenditure in excess of the Funding.
- (c) The Recipient agrees to:
  - (i) undertake the Project and be responsible for any Project costs that exceed the Funding;

- (ii) remain responsible for all maintenance costs arising from the Project (including any costs incurred after the Project End Date); and
  - (iii) procure any additional funding above the Funding that is necessary to carry out the Project in order to ensure the Project is delivered and maintained in accordance with this Agreement.
- (d) Prior to the Department making any payment of the Funding to the Recipient, the Recipient agrees to provide the Department with a valid tax invoice (including itemisation of the GST component) in accordance with the following requirements:
- (i) be addressed to the Department;
  - (ii) prominently be identified as "Tax Invoice"; and
  - (iii) contain:
    - (A) the Recipient's name;
    - (B) the Recipient's ABN;
    - (C) the name of Program;
    - (D) the amount requested; and
    - (E) the GST component (listed separately to the amount requested)

## **4. Project**

### **4.1 Project Requirements**

The Recipient must:

- (a) use the Funding for the Project, in accordance with the terms and conditions of this Agreement and for no other purpose; and
- (b) must expend the Funding by the Project End Date in accordance with the terms and conditions of this Agreement.

### **4.2 Conduct of Project**

The Recipient agrees to carry out the Project:

- (a) to achieve the Grant Purpose and for no other purpose;
- (b) in accordance with the Program Guidelines and its Application;
- (c) in an efficient, effective, economical and ethical manner;
- (d) in accordance with this Agreement;
- (e) diligently and to a high standard; and
- (f) in accordance with all applicable Laws.

### 4.3 Project Acquittal

- (a) The Recipient must provide evidence of the costs it has incurred towards carrying out the Project in accordance with the Recipients Reporting Requirements.

### 4.4 Recipient's Reporting Obligations

- (a) The Recipient must provide to the Department the Reports in the manner and timeframe specified in the Schedule 3 - Reporting Requirements.
- (b) The Reports must be endorsed by the Recipient Representative identified at Item 9 of the Agreement Details before being provided to the Department.
- (c) The Recipient agrees to:
  - (i) liaise with and provide any information to the Department as reasonably requested by the Department;
  - (ii) comply with all of the Department's reasonable requests, directions, monitoring or reporting requirements; and
  - (iii) provide all reasonable assistance required by the Department.

### 4.5 Responsibility of the Recipient

The Recipient is fully responsible for the performance of the Project and for ensuring compliance with the requirements of this Agreement, and will not be relieved of that responsibility because of any:

- (a) involvement by the Department in the performance of the Project;
- (b) subcontracting all or any part of the Project;
- (c) payment of any amount of Funding to the Recipient.

## 5. Subcontractors

### 5.1 Subcontractors

- (a) The Recipient acknowledges that it is solely responsible for the performance of the Recipient's obligations under this Agreement.
- (b) The Recipient:
  - (i) must have a written contract with each of the Recipient's subcontractors (**subcontract**) and ensure that each subcontract is consistent with, and allows the Recipient to give effect to, the Recipient's obligations under this Agreement.;
  - (ii) must ensure that it, and any organisation or person engaged to carry out works in relation to the Project, adhere to all legal and regulatory requirements associated with carrying out the Project;
  - (iii) acknowledges and agrees that it remains fully responsible for the performance of the Project including if it subcontracts the performance of any part of the Project; and
  - (iv) must ensure that all contractors, subcontractors, project partners (if any) and any third party engaged to carry out works in relation to the Project:

- (A) is procured through open procurement processes in accordance with its procurement policies, to achieve best value for money; and
- (B) have appropriate skills, qualifications and experience, and hold the appropriate licences and insurances, for the work they have been engaged to perform.

## **6. Department's right to suspend payment or reduce Funding**

### **6.1 Suspension**

Without limiting the Department's rights, the Department may suspend any payment of the Funding in whole or in part where the Department is satisfied that the Recipient does not have the capacity to adequately:

- (a) manage the Funding; or
  - (b) undertake the Project in accordance with this Agreement,
- until the Recipient has performed its obligations under this Agreement.

### **6.2 Reduction**

The Department may reduce the amount of Funding payable under this Agreement where the Recipient:

- (a) owes money to the Department, or
  - (b) has money that the Recipient should have, but has not yet, acquitted
- under any arrangement with the Department (whether contractual, statutory or otherwise).

### **6.3 Continued obligations**

Notwithstanding such suspension of any payments or reduction in the amount of the Funding, the Recipient agrees to continue to perform any obligations under this Agreement.

## **7. GST**

### **7.1 Definitions**

Words used in this clause that are defined in the GST Law have the meaning given in that legislation.

### **7.2 Consideration is GST-exclusive**

Unless otherwise specified, all amounts payable under this Agreement are exclusive of GST and must be calculated without regard to GST.

### **7.3 GST payable on taxable supply**

- (a) If a supply made under this agreement is a taxable supply, the recipient of that taxable supply (**Recipient**) must, in addition to any other consideration, pay to the party making the taxable supply (**Supplier**) the amount of GST in respect of the supply.
- (b) The Recipient will only be required to pay an amount of GST to the Supplier if and when the Supplier provides a valid tax invoice to the Recipient in respect of the taxable supply.

- (c) If there is an adjustment to a taxable supply made under this Agreement then the Supplier must provide an adjustment note to the Recipient.
- (d) The amount of a party's entitlement under this agreement to recovery or compensation for any of its costs, expenses or liabilities is reduced by the input tax credits to which that party is entitled in respect of those costs, expenses or liabilities.

## **8. Management of Funding**

### **8.1 Account and financial records**

- (a) The Recipient agrees to ensure that the Funding is held in an account in the Recipient's name and which the Recipient solely controls, with an authorised deposit-taking institution authorised under the *Banking Act 1959* (Cth) to carry on banking business in Australia and that is an account that complies with any other reasonable requirements of the Department.
- (b) The Recipient must, in relation to the account referred to in clause 8.1(a):
  - (i) notify the Department, prior to the receipt of any Funding, of details sufficient to identify the account;
  - (ii) on notification from the Department, provide the Department and the authorised deposit-taking institution with a written authority for the Department to obtain any details relating to any use of the account; and
  - (iii) if the account changes, notify the Department within 10 Business Days of the change occurring and provide the Department with details of the new account.
- (c) The Recipient agrees to:
  - (i) keep financial accounts and records relating to the Funding and the Project that identify:
    - (A) all receipts and payments related to the Project; and
    - (B) all interest earned on the Funding.
  - (ii) unless otherwise notified by the Department, prepare financial statements for the Project in accordance with Australian Accounting Standards and
    - (A) arrange for the audit of those accounts and records in accordance with Australian Auditing Standards.

### **8.2 Refunds of unexpended and misspent Funds**

- (a) Without limiting the Department's rights under this Agreement or at law, the Department may by Notice recover all or part of the Funding from the Recipient (as a debt due and payable on demand) in any of the circumstances set out below in Column A in the table below, but only to the extent set out in in the Column B in the table below:

	<b>Column A: Circumstance in which some or all of the Funding may be recovered by the Department</b>	<b>Column B: Extent to which some or all of the Funding may be recovered by the Department</b>
<b>1.</b>	The Recipient is paid more than the Funding as specified in this Agreement.	Only to the extent of the amount of overpayment.
<b>2.</b>	The Recipient has incorrectly claimed some or all of the Funding.	Only to the extent which the Funding has been incorrectly paid to the Recipient.
<b>3.</b>	The Recipient spends any part of the Funding in breach of the Agreement.	To the extent to which the Funding has been spent in breach of the Agreement.
<b>4.</b>	There is Unexpended Funding at the Project End Date.	Only to the extent of any Unexpended Funding.
<b>5.</b>	The Recipient breaches this Agreement and fails to remedy that breach within a reasonable time following receipt of a written request from the Department.	Only to the extent that any part of the Funding has been spent by the Recipient in breach of this Agreement.
<b>6.</b>	If this Agreement is terminated for any reason in accordance with clause 21.	<ul style="list-style-type: none"> <li>i. to the extent that any part of the Funding has been spent by the Recipient in breach of this Agreement; and</li> <li>ii. to the extent of any Unexpended Funding.</li> </ul>

- (b) If the Department exercises the right to require the refund of all or part of the Funding in accordance with clause 8.2(a) the Recipient must refund:
- (i) the full amount of the Funding; or
  - (i) the part of the Funding that is the subject of the Notice,
- within the period (which must be reasonable in the circumstances) specified in the written Notice.
- (c) In addition to the Department's right under clause 8.2(a) above, if the cost of the completed Project is less than the Funding, the Department may by a Notice require the Recipient to otherwise deal with the Unexpended Funding in accordance with any conditions that the Department considers appropriate, including conditions relating to the ongoing use and expenditure by the Recipient of that amount for particular goals or objectives associated with the Project.
- (d) This clause survives termination or expiry of this Agreement.

## **9. Cost Savings**

### **9.1 Cost Savings**

Subject to compliance with this Agreement, the Recipient must:

- (a) continually identify any costs saving or efficiency measures in carrying out the Project; and
- (b) in consultation with the Department:
  - (i) implement those costs saving or efficiency measures; and
  - (ii) ensure that any reductions in expenditure for the Project that result from those costs saving or efficiency measures are accounted for and allocated equitably in proportion to the relative total values of the Funding as committed to the Project.

## **10. Records**

### **10.1 Records**

The Recipient agree to comply with all obligations under, and reasonable directions from the Department in respect of, the *State Records Act 1998 (NSW)* and the *State Records Regulation 2015 (NSW)*.

### **10.2 Keeping Records**

The Recipient must create and maintain full and accurate accounts and records of the conduct of the Project including, without limitation, all:

- (a) receipt and use of Funding

### **10.3 Retention of Records**

The Recipient agrees to retain the records and accounts created under clause 10.2 for a period of no less than seven years after the end of the Project End Date.

### **10.4 Audit**

- (a) The Department may at its expense and in its discretion conduct an audit of the Recipient's compliance with this Agreement.
- (b) The Department or a person commissioned by the Department will give the Recipient prior notice of its requirements in relation to an audit and endeavour to minimise disruption and interference to the Recipient's performance of its obligations under this Agreement.
- (c) The Recipient must co-operate fully with the audit, including permitting the person conducting the audit to inspect and make copies of the Recipient's Records and materials relevant to the Project and the performance of this Agreement.
- (d) Except where otherwise determined by the Department, the Recipient is responsible for its own costs of participating in or conducting an audit and such costs are not to be paid out of the Funding.
- (e) The Recipient must promptly take any reasonable action required by the Department to rectify any error, non-compliance or inaccuracy identified in an audit in relation to the Project or the Recipient's performance of this Agreement.
- (f) The Recipient is not entitled to any delay costs or other costs or expenses of whatever nature relating in any way to an audit.
- (g) Where the Department directs, the Recipient must not further spend nor make any further commitment to spend any amount of Funding until such time as the audit has been



completed and the Department has confirmed in writing that any action required under clause 10.4(e) has been taken.

## 11. Intellectual Property

### 11.1 Use of Department Material

- (a) The Department grants a royalty-free, non-exclusive licence for the Recipient to use, reproduce and adapt the Department Material for the purposes of this Agreement.
- (b) The Recipient agrees to use the Department Material strictly in accordance with any conditions or restrictions the Department may notify to the Recipient.

### 11.2 Use of Project Material

- (a) Subject to this clause 11.2, Intellectual Property in Project Material vests or will vest in the Recipient. Nothing in this clause affects the ownership of Intellectual Property in any Existing Material incorporated into the Project Material.
- (b) The Recipient grants to (or will procure for) the Department a permanent, irrevocable, royalty-free, worldwide, non-exclusive, transferable licence in perpetuity (including a right of sublicense) to copy, use, reproduce, exploit, communicate, adapt and distribute the Project Material and any Recipient -owned Existing Material for any purpose.
- (c) In addition to the rights granted by the Recipient to the Department, the Recipient agrees that the licence granted in clause 11.2(b) includes a right for the Department to licence the Project Material to the public under an Open Access Licence.

### 11.3 Moral Rights

- (a) In this clause 11.3, **Permitted Acts** means any of the following classes or types of acts or omissions:
  - (i) using, reproducing, adapting or exploiting all or any part of the Project Material, with or without attribution or authorship;
  - (ii) supplementing the Project Material with any other material; and
  - (iii) using the Project Material in a different context to that originally envisaged.
 but does not include false attribution of authorship.
- (b) Where the Recipient is a natural person and the author of the Project Material he or she:
  - (i) consents to the performance of the Permitted Acts by the Department or any person claiming under or through the Department (whether occurring before or after the consent is given); and
  - (ii) acknowledges that their attention has been drawn to the Department's general policies and practices regarding Moral Rights.
- (c) Where clause 11.3(b) does not apply, the Recipient agrees:
  - (i) to obtain from each author a written consent which extends directly or indirectly to the performance of the Permitted Acts by the Department or any person claiming under or through the Department (whether occurring before or after the consent is

given) and, upon request, will provide the executed original of any such consent to the Department; and

- (ii) to ensure that each author's attention is drawn to the Department's general policies and practices regarding Moral Rights.
- (d) This clause 11.3 does not apply to any Department Material incorporated in the Project Material.

#### **11.4 IP Warranty**

The Recipient warrants that:

- (a) it is entitled; or
- (b) it will be entitled at the relevant time,

to deal with the Intellectual Property in the Project Material in the manner provided for in this clause 11.

#### **11.5 Further Assistance**

The Recipient agrees, on request by the Department, to create, sign, execute or otherwise deal with any document necessary or desirable to give effect to this clause 11.

### **12. Confidential information**

#### **12.1 Obligation**

- (a) Subject to this clause 12, each party must maintain in confidence all Confidential Information and ensure that the Confidential Information is kept confidential.
- (b) The Recipient agrees to secure all of the Department's Confidential Information against loss and unauthorised access, use, modification or disclosure.

#### **12.2 Written Undertakings**

The Recipient must, on request by the Department at any time, arrange for:

- (a) its Personnel; or
- (b) any person with a Third Party Interest,

to give a written undertaking in a form acceptable to the Department relating to the use and non-disclosure of the Department's Confidential Information.

#### **12.3 Exceptions to confidentiality**

The obligations on the parties under this clause 12 will not be taken to have been breached to the extent that the Confidential Information:

- (a) is required to be disclosed by law or by any stock exchange to disclose, in which case the disclosing party must immediately notify the other party of the requirement and must take lawful steps and permit the opposition or restriction of the disclosure to preserve, as far as possible, the confidentiality of the Confidential Information;
- (b) is disclosed by a party to its Personnel solely in order to comply with obligations, or to exercise rights, under this Agreement;

- (c) is disclosed to a party's internal management Personnel, solely to enable effective management or auditing of Agreement-related activities;
- (d) is disclosed by the Department to the responsible Minister;
- (e) is disclosed by the Department, in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia;
- (f) is shared by the Department (including other agencies), where this serves the Department's or the Commonwealth of Australia's legitimate interests;
- (g) is in or enters the public domain for reasons other than a breach of this Agreement; or
- (h) is disclosed to its professional advisers to obtain professional advice.

#### **12.4 Obligation to notify**

Where a party discloses Confidential Information to another person pursuant to clause 12.3 the disclosing party must notify the receiving person that the information is confidential.

#### **12.5 Survival of clause**

This clause 12 will survive the termination of this agreement.

### **13. Privacy**

#### **13.1 Privacy Obligations**

- (a) The Recipient agrees, in conducting the Project:
  - (i) not to do any act or engage in any practice which, if done or engaged in by the Department, would be a breach of a Privacy Law;
  - (ii) to comply with the Privacy Law; and
  - (iii) to comply with any directions, guidelines, determinations or recommendations of the Department, to the extent that they are consistent with the Privacy Law.
- (b) The Recipient agrees to notify the Department immediately if it becomes aware of a breach or possible breach of any of its obligations under this clause 13.1.
- (c) The provisions of this clause 13.1 survive the termination or expiration of this Agreement.

#### **13.2 No reduction in Privacy Obligations**

The obligations in clause 12 do not detract from any of the Recipient's obligations under the Privacy Law or under clause 13.1.

### **14. Acknowledgement and publicity**

#### **14.1 Acknowledgement of support**

- (a) Unless otherwise notified by the Department, the Recipient must, in all Publication and Communications Material:
  - (i) acknowledge the support the Recipient has received from the New South Wales Government, in accordance with the Funding Acknowledgment Guidelines, or as otherwise approved by the Department; and

- (ii) use the Funding Acknowledgement Statement;
- (b) The Recipient must provide the Department with no less than 30 Business Days' notice of any proposed publications, promotional and advertising materials or public announcements and activities by the Recipient in connection to the Project.
- (c) If a notice is issued under clause 14.1(d), the recipient must:
  - (i) provide the Department with all such information as reasonably required by the Department regarding the proposed publications, promotional and advertising materials or public announcements and activities; and
  - (ii) do such things as required to allow a representative of the Department to attend or participate in (including making an announcement at any public announcement or activity) which the Department may choose to do so in its absolute discretion.

#### **14.2 Right to publicise Funding**

- (a) The Department reserves the right to publicise and report on the awarding of Funding to the Recipient. The Department may do (but is not limited to doing) this by including the Recipient's name, the amount of the Funding given to the Recipient, the date the Agreement commences and its term, and the title, location, purpose and a brief description of the Project in media releases, general announcements about the Funding, annual reports or through any other means as determined by the Department.
- (b) The Department may in its discretion and where it is practicable to do so, give notice to the Recipient of any such publication under clause 14.2(a).

#### **14.3 Removal of promotional material**

- (a) If the Department:
  - (i) suspends or reduces Funding under clause 6;
  - (ii) terminates the Agreement under clause 19; or
  - (iii) otherwise determines in its absolute discretion that the Project is not consistent with the Grant Purpose,

the Department may, by written notice to the Recipient, request the Recipient to remove any promotional material, and the Recipient must immediately comply with such request.

### **15. Compliance with Law**

#### **15.1 The Recipient agrees:**

- (a) to comply with and must procure its personnel to comply with all Laws relating to work health and safety including (but not limited to), the *Work Health and Safety Act 2011 (NSW)* and the *Work Health and Safety Regulation 2017 (NSW)*;
- (b) to comply with all applicable standards, Laws, policies and guidelines for the Project;
- (c) to ensure compliance by any organisation(s) or person(s) engaged to contribute to or work on the Project with all applicable standards, Laws, and policies;
- (d) not to do anything that would cause the Department to breach its obligations under any Law;

- (e) The Council must hold all rights, permissions, approvals and consents required to conduct and carry out the Project and otherwise fulfil its obligations under this Agreement; and
- (f) The Council must obtain all necessary statutory approvals in relation to the Project, and the Department may at its sole discretion suspend payment of any part of the Funding until it is provided with evidence that the Council has obtained all such statutory approvals.

## **16. Insurance**

### **16.1 Recipient Insurance Obligations**

- (a) The Recipient must ensure that it obtains relevant insurance in relation to the carrying out of the Project including, without limitation:
  - (i) Public Liability in the amount reasonably required by the Department, not to be less than \$20 million per event and unlimited as to the number of events;
  - (ii) Workers' compensation as required by the Law
  - (iii) Fully comprehensive motor vehicle insurance in respect of all and any vehicles used in respect of the Project
- (b) The insurance must cover liability of subcontractors and volunteers that may be involved in the Project.
- (c) The Recipient must comply with all reasonable requirements of the Department in relation to:
  - (i) The identity of the insurer;
  - (ii) The amount of any deductible or excess;
  - (iii) The insurance being in the joint names of the Department and the Recipient, or noting the Department's interest on the policy;
  - (iv) Not containing unacceptable or non-commercial exclusions from cover;
  - (v) The Department receiving notice, at the same time as the Recipient in relation to key policy events such as claims, cancellation, expiry and non-renewal; and
  - (vi) Inspecting the full terms of the policies of insurance for compliance with the Agreement.

## **17. Liability**

### **17.1 Proportionate liability regime**

To the extent permitted by law, the operation of any legislative proportionate liability regime is excluded in relation to any claim against the Recipient under or in connection with this Agreement.

### **17.2 Indemnity**

- (a) The Recipient indemnifies the Department from and against any:
  - (i) loss of or damage to property of the Department; or

- (ii) Claim incurred by the Department in dealing with any claim against it, including legal costs and expenses on a solicitor/own client basis and the cost of time spent, resources used, or disbursements paid by the Department,

arising from:

- (iii) any breach by the Recipient of the Agreement;
  - (iv) any act or omission involving fault by the Recipient in connection with this Agreement; or
  - (v) the use by the Department of the Project Material, including any claims by third parties about the ownership or right to use the Intellectual Property in the Project Material.
- (b) The Recipient's liability to indemnify the Department under clause 17.2(a) will be reduced proportionately to the extent that any act or omission involving fault on the part of the Department or its Personnel contributed to the relevant cost, liability, loss, damage or expense.
  - (c) The right of the Department to be indemnified under this clause 17.2 is in addition to, and not exclusive of, any other right, power or remedy provided by law, but the Department is not entitled to be compensated in excess of the amount of the relevant cost, liability, loss, damage or expense.
  - (d) In this clause 17.2, "fault" means any negligent or unlawful act or omission or wilful misconduct.

## **18. Dispute Resolution**

### **18.1 Procedure for dispute resolution**

The parties agree that a dispute arising under this Agreement will be dealt with as follows, and that, subject to clause 18.4, neither party will commence legal proceedings in relation to that dispute until this procedure is completed:

- (a) the party claiming that there is a dispute will give the other party a Notice setting out the nature of the dispute;
- (b) within five Business Days (or such other period as agreed by the parties in writing) each party will nominate a senior representative not having any prior involvement in the dispute;
- (c) the senior representatives will try to settle the dispute in good faith by direct negotiation between them;
- (d) failing settlement within a further 10 Business Days or such other period as agreed by the parties in writing (or failure of one or both parties to nominate a senior representative within the period set out in clause 18.1(b)), the parties may agree to refer the dispute to an independent third person with power:
  - (i) to intervene and direct some form of resolution, in which case the parties will be bound by that resolution; or
  - (ii) to mediate and recommend some form of non-binding resolution;

- (e) the parties will co-operate fully with any process instigated under clause 18.1(d) in order to achieve a speedy resolution; and
- (f) if the parties have been unable to agree to refer the dispute to an independent third person, or they have agreed and a resolution is not reached within a further 20 Business Days (or such other period as the parties may agree in writing), either party may commence legal proceedings.

## **18.2 Costs**

Each party will bear its own costs of complying with this clause 18, and the parties will bear equally the cost of any third person engaged under clause 18.1(d).

## **18.3 Continued performance**

Despite the existence of a dispute, the Recipient will (unless requested in writing by the Department not to do so) continue to perform the Recipient's obligations under this Agreement.

## **18.4 Application of clause**

This clause 18 does not apply to:

- (a) legal proceedings by either party for urgent interlocutory relief; or
- (b) action by the Department under or purportedly under clauses 3, or clause 19.

## **19. Termination**

### **19.1 Termination for convenience**

- (a) The Department may by notice, at any time and in its absolute discretion, terminate this Agreement or reduce the scope of the Agreement immediately.
- (b) The Recipient agrees, on receipt of a Notice of termination or reduction, to:
  - (i) stop or reduce the performance of the Recipient's obligations as specified in the Notice;
  - (ii) take all available steps to minimise loss resulting from that termination or reduction;
  - (iii) continue performing any part of the Project not affected by the Notice; and
  - (iv) immediately return to the Department any Funding in accordance with clause 8.2, or deal with any such Funding as directed by the Department.

### **19.2 Termination for fault**

- (a) The Department may by giving the Recipient 20 days written notice terminate this Agreement if any one or more of the following occurs:
  - (i) The Recipient abandons the Project and does not resume performance of the Project within 10 Business Days after receiving notice from the Department requiring it to do so;
  - (ii) The Recipient breaches any other clause of this Agreement in a manner that, in the Department's reasonable opinion, is not capable of remedy;

- (iii) The Recipient breaches any other clause of this Agreement that in the Department's reasonable opinion is capable of remedy and the Recipient has failed to comply with a notice from the Department to remedy the breach within the reasonable period for remedy specified in that notice;
  - (iv) The Department, in its discretion, determines that the Project ceases to be viable during the Term; or
  - (v) The Department determines that the Recipient is unable to proceed with the performance of its obligations under this Agreement by reason of a pandemic, war, strikes, riot or civil commotion (whether war be declared or not) or any other circumstance whatsoever beyond the Recipient's control.
- (b) The Recipient agrees, on receipt of a notice of termination to return to the Department any part of the Funding in accordance with clause 8 or deal with any such part of the Funding as directed by the Department.

### **19.3 Clauses that survive termination**

Clauses 8.2, 11, 12, 13 16, 17.2 and this clause 19.3 and any other provision of this Agreement which by its nature should survive termination will survive termination, expiry or repudiation of this Agreement

## **20. Assignment**

**20.1** This Agreement is personal to each party and neither party may assign the rights or benefits of this Agreement to any person. Warranties of capacity

## **21. Warranties of capacity**

### **21.1 General warranties**

Each party warrants to each other party that:

- (a) this Agreement creates legal, valid and binding obligations, enforceable against the relevant party in accordance with its terms; and
- (b) unless otherwise stated, it has not entered into this Agreement in the capacity of trustee of any trust.

### **21.2 Power of attorney**

If an attorney executes this Agreement on behalf of any party, the attorney declares that it has no notice of the revocation of that power of attorney.

## **22. Notices**

### **22.1 Notices**

Any notice, demand, consent, approval, request or other communication to be given under this agreement (**Notice**) must be:

- (a) in writing;
- (b) given to the following contact person:



- (i) in the case of the Department, that person specified in Item 8 of the Agreement Details, or other person as notified by the Department; or
  - (ii) in the case of the Recipient, that person specified in Item 9 of the Agreement Details, or other person as notified by the Recipient;
- (c) served in accordance with clause 22.2; and

## **22.2 Service of Notices**

- (a) A Notice under this Agreement is only effective if it is in writing, and addressed as follows:
- (i) if given by the Recipient to the Department – addressed to the Department at the Address for Service specified in Item 6 of the Agreement Details, or other address as notified by the Department; or
  - (ii) if given by the Department to the Recipient – given by the Department and addressed as specified in Item 7 of the Agreement Details, or other address as notified by the Recipient.
- (b) A Notice must be given at the recipient's Address for Service by being:
- (i) hand delivered;
  - (ii) sent by electronic mail; or
  - (iii) sent by prepaid mail within Australia.
- (c) A Notice is given if:
- (i) hand delivered, on the date of delivery;
  - (ii) sent by electronic mail, on the date of delivery unless an automated response is received by the receiver advising that the email has not been received by the recipient;
  - (iii) sent by prepaid mail within Australia, on the date that is 2 Business Days after the date of posting.
- (d) If a Notice is received:
- (i) after 5:00 pm on any Business Day; or
  - (ii) on a day that is not a Business Day,

it is deemed to be received at 9:00 am on the next Business Day for the purposes of this clause 22.

## **23. General provisions**

### **23.1 Entire agreement**

This agreement constitutes the entire agreement between the parties regarding the matters set out in it and supersedes any prior representations, understandings or arrangements made between the parties, whether orally or in writing.

### **23.2 Variation**

This agreement must not be varied except by a later written document executed by all parties.

### **23.3 Waiver**

A right created by this agreement cannot be waived except in writing signed by the party entitled to that right. Delay by a party in exercising a right does not constitute a waiver of that right, nor will a waiver (either wholly or in part) by a party of a right operate as a subsequent waiver of the same right or of any other right of that party.

### **23.4 Conflicts of Interest**

- (a) The Recipient must not do anything to bring itself into a situation where it has a conflict of interest with the Department.
- (b) Where the Recipient identifies that there is a conflict of interest between itself and the Department (whether actual, perceived or potential) it must:
  - (i) Immediately notify the Department;
  - (ii) Take proactive steps to mitigate the impact of the conflict of interest;
  - (iii) Take steps to remove or manage the conflict of interest; and
  - (iv) Do whatever the Department reasonably requests of it to remove or manage the conflict.
- (c) Where the conflict of interest is unable to be managed to the satisfaction of the Department then the Department may terminate the Agreement, such termination to be treated as if it were a termination for cause under clause 19.2 of this Agreement.

### **23.5 Further assurances**

Each party must promptly execute all documents and do every thing necessary or desirable to give full effect to the arrangements contained in this Agreement.

### **23.6 Time for doing acts**

- (a) If:
  - (i) the time for doing any act or thing required to be done; or
  - (ii) a notice period specified in this Agreement,expires on a day other than a Business Day, the time for doing that act or thing or the expiration of that notice period is extended until the following Business Day.
- (b) If any act or thing required to be done is done after 5 pm on the specified day, it is taken to have been done on the following Business Day.

### **23.7 Governing law and jurisdiction**

- (a) The laws applicable in New South Wales govern this agreement.
- (b) The parties submit to the non-exclusive jurisdiction of the courts of New South Wales and any courts competent to hear appeals from those courts.

### **23.8 Severance**

If any clause or part of any clause is in any way unenforceable, invalid or illegal, it is to be read down so as to be enforceable, valid and legal. If this is not possible, the clause (or where possible, the offending part) is to be severed from this agreement without affecting the enforceability, validity or legality of the remaining clauses (or parts of those clauses) which will continue in full force and effect.

### **23.9 Preservation of existing rights**

The expiration or termination of this agreement does not affect any right that has accrued to a party before the expiration or termination date.

### **23.10 No merger**

Any right or obligation of any party that is expressed to operate or have effect on or after the completion, expiration or termination of this agreement for any reason, will not merge on the occurrence of that event but will remain in full force and effect.

### **23.11 Counterparts**

This agreement may be executed in any number of counterparts. All counterparts taken together constitute one instrument. Delivery of this agreement by email constitutes an effective mode of delivery.

### **23.12 Relationship of parties**

Unless otherwise stated:

- (a) nothing in this agreement creates a joint venture, partnership, or the relationship of principal and agent, or employee and employer between the parties; and
- (b) no party has the authority to bind any other party by any representation, declaration or admission, or to make any contract or commitment on behalf of any other party or to pledge any other party's credit.

### **23.13 Legal expenses**

Each party must pay its own legal costs and disbursements in connection with the negotiation, preparation, execution and carrying into effect of this agreement.

### **23.14 Electronic Execution**

- (a) Each party consents to this Agreement and any variations of this Agreement as outlined in clause 23.14 being signed by electronic signature by the methods set out in this clause.
- (b) This clause applies regardless of the type of legal entity of the parties. If this Agreement or any subsequent variations are signed on behalf of a legal entity, the persons signing warrant that they have the authority to sign.
- (c) For the purposes of this clause, the parties agree that the following methods validly identify the person signing and indicate that person's intention to sign this Agreement and any variation of it:
  - i. insertion of an image (including a scanned image) of the person's own unique signature on to the Agreement;

- ii. insertion of the person's name on to the Agreement; or
- iii. use of a stylus or touch finger on a touch screen to sign the Agreement;

provided that in each of the above cases, words to the effect of 'Electronic signature of me, [NAME], affixed by me on [DATE]' are also included on the Agreement;

- iv. use of a reliable electronic signature and exchange platform (such as DocuSign or AdobeSign) to sign the Agreement; or
  - v. as otherwise agreed in writing (including via email) between the parties.
- (d) The parties agree that the above methods are reliable as appropriate for the purpose of signing this Agreement and that electronic signing of this document by or on behalf of a party indicates that party's intention to be bound.
- (e) A signed copy of this Agreement transmitted by email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this Agreement for all purposes.

**Execution page**

**Executed** as a Deed

**Signed, sealed and delivered by The Crown in right of the State of New South Wales acting through the Department of Planning and Environment (ABN 20 770 707 468) by its Authorised Officer but not so as to incur any personal liability in the presence of:**

.....  
Signature of Witness

.....  
Signature of Authorised Officer

.....  
Name of Witness

.....  
Name and position of Authorised Officer

**Signed, sealed and delivered by [insert Council name] (ABN insert) by its Authorised Officer:**

.....  
Signature of Witness

.....  
Signature of Authorised Officer

.....  
Name of Witness

.....  
Name of Authorised Officer

## Schedule 1 Agreement Details

	Item	Detail
1.	Program	NSW Planning Portal API Grant
2.	Program Guidelines	<p>The NSW Planning Portal API Grant Guidelines as published on the Department's Planning Portal website.</p> <p>Also refer to the Frequently Asked Questions</p> <p>These documents are available at <a href="https://www.planningportal.nsw.gov.au/form/nsw-planning-portal-api-grant">https://www.planningportal.nsw.gov.au/form/nsw-planning-portal-api-grant</a></p>
3.	Grant Purpose	<p>The purpose the grant program is to support councils to:</p> <ol style="list-style-type: none"> <li>1. achieve digital integration of the council's IT systems with NSW Planning Portal Online DA Version 2 (V2) APIs by 31 March 2023. This includes the adoption of new services and updates from Online DA V1 to V2; and</li> <li>2. achieve digital integration of the council's IT systems with the following NSW Planning Portal integration APIs by 31 Dec 2023: <ul style="list-style-type: none"> <li>▪ Online Certificate Registration Service API V1</li> <li>▪ Online Post Consent Certificate Service API V1</li> <li>▪ Online CDC Service API V1</li> <li>▪ Online Building Information Certificate (BIC) Application Service API V1</li> </ul> </li> </ol>
4.	Project	Undertaking the digital integration described in the Grant Purpose, regardless of whether that integration is undertaken before or after the Date of this Agreement.
5.	Project End Date	31 December 2023
6.	Department Address for Service	4 Parramatta Square, 12 Darcy St, Parramatta, NSW 2150.
7.	Recipient Address for Service	[insert Recipient's address]
8.	Department Representative	Phani Chilukuri, Director Data & Integration, Digital Analytics & Insights
9.	Recipient Representative	[insert representative's name and position]
10.	Insurance	Public Liability - \$20 million

**Schedule 2 - Funding Details**

<b>Funding Amount</b>	<b>Date for payment of Funding</b>
\$80,000	Following receipt by the Department of invoice for payment, in accordance with clause 3.1 (d) of this Agreement and prior to 30 June 2022

**Schedule 3 Reporting Requirements**

Report		Date of Report	Requirements
<b>Project Report</b>	<b>Progress</b>	No later than 31 May 2023	<ul style="list-style-type: none"> <li>• The Recipient must demonstrate by way of a progress report how it has expended the Funding towards item 1 in the Grant Purpose</li> <li>• The Project Progress Report must include details of, and where applicable, copies of relevant documentation:                             <ul style="list-style-type: none"> <li>▪ Funds expended</li> <li>▪ Deliverables</li> <li>▪ Relevant communications and media releases.</li> <li>▪ Risks and issues identified</li> <li>▪ Invoices and payment receipts for payments made to the IT vendors or 3<sup>rd</sup> party integrators.</li> </ul> </li> </ul>
<b>Project Report</b>	<b>Acquittal</b>	No later than 29 February 2024	<ul style="list-style-type: none"> <li>• The Recipient must demonstrate by way of an acquittal report how it has expended the Funding towards the achievement of items 1 and 2 in the Grant Purpose,</li> <li>• The Project Acquittal Report must include:                             <ul style="list-style-type: none"> <li>▪ Funds expended</li> <li>▪ Deliverables</li> <li>▪ Relevant communications and media releases.</li> <li>▪ Risks and issues identified</li> </ul> </li> <li>• Invoices and payment receipts for payments made to the IT vendors or 3<sup>rd</sup> party integrators. The Project Acquittal Report must include a statement signed by CFO or equivalent officer that the report is a true and accurate record of the Recipient’s use of the Funding</li> </ul>



**Annexure A: Application [insert number]**