

Private Sector Pathways Program Terms of Participation

Agreement Term, Commencement and Expiry

- 1.1 The Challenge Owner agrees to be bound by such of these terms as are relevant (specifically clauses 1.5, 3.1, 3.2, 3.4, 8, 9.8), commencing upon:
- (a) the submission by the Challenge Owner and acceptance by the Department of the Challenge Owner's Challenge Statement form, specifying the Challenge to be solved.
- 1.2 In all other respects this agreement binds the parties from the Commencement Date and continues until the Expiry Date unless terminated earlier in accordance with this agreement (**Term**).
-

Performance of the Challenge

- 1.3 The Developer must:
- (a) commence the Challenge by the Commencement Date;
 - (b) carry out the Challenge in accordance with this agreement and with due care and skill;
 - (c) meet each of the Milestones by the relevant due date;
 - (d) provide each Report by the relevant due date;
 - (e) complete the Challenge by the relevant completion date;
 - (f) comply with:
 - (i) the terms and conditions of the agreement;
 - (ii) applicable laws and regulations (including obtaining and maintaining any licence or authorisations required for the Developer to develop the Challenge Solution);
 - (iii) standards of professional care and diligence of the industry to which the Developer belongs;
 - (iv) reasonable requests, directions and requirements of the Challenge Owner and/or the Department to their respective satisfaction.
 - (g) communicate with, report and provide information to the Challenge Owner and/or the Department contact as reasonably required.

1.4 Notifications by Developer

The Developer must promptly notify the Challenge Owner and the Department:

- (a) of any matters that the Developer reasonably considers may affect the Developer's ability to develop the Challenge Solution or meet any other obligations under this agreement;
- (b) if the Developer is unable to develop the Solution within the monetary limit of the Challenge or by the completion date;
- (c) of any adverse event which may impact on progress of the Solution development; and

- (d) of any matter that may affect the Developer's eligibility to participate in the PSP Program and the Challenge.

1.5 Notifications by Challenge Owner

The Challenge Owner must promptly notify the Department:

- (a) of any matters that the Challenge Owner reasonably considers may affect its ability to meet its obligations under this agreement;
- (b) of any matter that may affect the Challenge Owner's eligibility to participate in the PSP Program and the Challenge.

2 Contributions

Challenge Owner's Contributions

- 2.1 The Challenge Owner will pay the Challenge Owner's Contribution to the Developer in the instalments and on the dates specified in Item 4 of Schedule 1.
- 2.2 The Challenge Owner may withhold payment of an instalment of the Challenge Owner's Contribution to the Developer until:
 - (a) The Developer has met all Milestones, and provided all Reports to the Challenge Owner's reasonable satisfaction, due on or before the payment date for the instalment;
 - (b) The Developer has issued a tax invoice, if applicable, to the Challenge Owner for the instalment; and
 - (c) The Developer is otherwise not in breach of this agreement.
- 2.3 Any payment to the Developer by the Challenge Owner is not an admission or acceptance by the Challenge Owner that the Developer has complied with this agreement.

Department Contributions

- 2.4 The Department will pay the Department Contribution to the Developer in the instalments and on the dates specified in Item 4 of Schedule 1.
- 2.5 The Department may withhold payment of an instalment of the Department's Contribution to the Developer until:
 - (a) The Developer has met all Milestones, and provided all Reports to the Department's reasonable satisfaction, due on or before the payment date for the instalment;
 - (b) The Developer has issued a tax invoice, if applicable, to the Department for the instalment;
 - (c) The Challenge Owner confirms to the Department in writing that the Challenge Owner has paid the relevant Challenge Owner Contribution instalment, including the date and amount of payment; and
 - (d) The Developer is otherwise not in breach of this agreement.
- 2.6 Any payment to the Developer by the Department is not an admission or acceptance by the Department that the Developer has complied with this agreement.

2.7 No further Contributions, Compensation or Reimbursement

- (a) The Developer acknowledges that neither the Challenge Owner nor the Department has any obligation to provide the Developer with funding or assistance of any kind:
 - (i) in excess of the Contributions; or
 - (ii) beyond the term of the agreement.

- (b) For the avoidance of doubt, the Developer is responsible for acquiring and/or providing any additional funds, materials or equipment in excess of the Contributions required to develop the Challenge Solution.
- 2.8 Except in relation to Contributions payable in accordance with clause 2, the Developer:
- (a) expends money, makes commitments and incurs liabilities at its own risk and expense; and
 - (b) is not entitled to claim compensation or loss from the Department or the Challenge Owner for such expenses, commitments or liabilities;
- arising in connection with the agreement.
- 2.9 **Use of the Contributions**
- (a) The Developer must only use the Contributions for the purpose of development of the Challenge Solution and in accordance with this agreement.
 - (b) The Developer must hold the Contributions in an account in the Developer's name and in the Developer's sole control in a financial institution.
- 2.10 **Misapplied Contributions**
- (a) If the Developer uses the Contributions other than in accordance with this agreement (Misapplied Contributions):
 - (i) the Challenge Owner and/or the Department may, by written notice, require the Developer to refund the amount of the Misapplied Contributions; and
 - (ii) if the amount of the Misapplied Contributions are not repaid within 10 business days of the notice, the Challenge Owner and/or the Department may:
 - (i) recover the amount as a liquidated debt to that party; or
 - (ii) set the amount off against any other amount payable by that party to the Developer.
- 2.11 **Unspent Contributions**
- If, at the expiration or termination of the agreement, there remains Contributions that have not been acquitted or spent by the Developer in accordance with the agreement (Unspent Contributions), then:
- (a) The Developer must notify the Challenge Owner and Department and refund the Unspent Contributions within 10 business days of the termination or expiration of this agreement.

3 Challenge Owner and the Department obligations and procurement of the Challenge Solution

- 3.1 The Challenge Owner agrees to make its personnel reasonably available to meet and work with the Developer during the development of the Challenge Solution.
- 3.2 The Challenge Owner will use its best endeavours to provide information requested by the Developer, within a reasonable period of time, to allow the Developer to develop the Challenge Solution.
- 3.3 The Department agrees to:
 - (a) administer the PSP Program;
 - (b) facilitate collaboration between the Challenge Owner and the Developer; and

(c) facilitate the evaluation of Challenge applications.

Procurement of the Challenge Solution

- 3.4 At any time, the Challenge Owner may in its sole discretion provide written notice to a Developer of its intention to procure or further develop the Solution. Upon such notice, the Challenge Owner and the Developer will negotiate in good faith to enter into a formal agreement for the customer procurement, or further development, of the Solution for a fair market price, having regard to the Contributions provided (or to be provided) to the Developer in connection with the Challenge Solution.

4 Records, Reports and Audit

Records and Financial Statement

- 4.1 The Developer must record all expenditure of Contributions relating to the performance of the Challenge and development of the Solution, separate from all other income and expenditure of the Developer.
- 4.2 The Developer must keep proper and adequate records, accounts and supporting documents in accordance with generally accepted accounting principles and as required by law, about the performance of the Challenge and development of the Solution.
- 4.3 Upon request, the Developer must provide a financial statement detailing the receipt and expenditure of Contributions to date, including a declaration from the Developer's chief executive officer stating that the Contributions have been used solely for the development of the Solution.

Reporting

- 4.4 The Developer must:
- (a) submit all Reports to the Challenge Owner and the Department in the form and containing the information for the reporting periods as specified in Item 5 of Schedule 1;
 - (b) Provide to the Challenge Owner or the Department (as relevant) any other information relevant to the Challenge Solution and the agreement, as requested in writing within a reasonable time specified in the request; and
 - (c) Complete each Report to the Challenge Owner and the Department's satisfaction.
- 4.5 The Developer consents to the Challenge Owner and Department's use and disclosure (including disclosure other government bodies and to third parties) of the Reports and additional information provided under clause 4.4, for purposes related to the PSP Program and (for the Department) the Department's internal, non-commercial purposes.

Challenge Owner's Evaluation Report

- 4.6 The Challenge Owner must submit an evaluation Report to the Department in the form and containing the information for the reporting periods as specified in Item 5 of Schedule 1, to the Department's satisfaction.

Audit

- 4.7 The Department and the Challenge Owner each reserve the right, upon reasonable notice and during business hours, to each conduct a financial audit of the Developer in relation to the PSP

Program. The Developer must provide access and reasonable assistance to the Department or the Challenge Owner (including their employees and nominated auditors) to:

- (a) speak to persons associated with participation in the PSP Program;
- (b) examine, inspect and copy any material or records in the possession of the Developer, relevant to the participation in the PSP Program or to the receipt, expenditure or payment of Contributions.

- 4.8 When accessing premises or records in accordance with this clause 4.7, the Department or Challenge Owner will use their best endeavours to minimise interference to the Developer and its participation in the PSP Program.
-

5 GST

- 5.1 Unless otherwise stated, all amounts payable are exclusive of GST.
- 5.2 A party to this agreement need not make a payment for a taxable supply until it receives a tax invoice (or adjustment note) for that supply.
- 5.3 If for any reason, the amount of GST paid by the Challenge Owner or the Department differs from the amount of GST paid or payable by the Developer to the Commissioner of Taxation, the Challenge Owner or the Department must issue an appropriate adjustment note and any difference must be paid to or by the Challenge Owner or the Department.
- 5.4 The parties agree to use all reasonable endeavours and exchange such information as is necessary to assist each other in meeting their lawful obligations under the GST law in relation to the agreement.
-

6 Use of material provided by the Department or the Challenge Owner

- 6.1 Any material or information provided to a Developer by the Department or the Challenge Owner remains the property of the Department or the Challenge Owner respectively.
- 6.2 The Developer must not disclose or publish material or information provided to them during the PSP Program to third parties, and must only use such information or data for the purposes of the PSP Program.
- 6.3 The Developer must cease to use and destroy any records of information or material supplied to them (excluding one copy for legislative compliance and/or recordkeeping purposes) by the Department or the Challenge Owner in connection with the PSP Program at the end of their participation, or if otherwise directed to do so by the Department or the Challenge Owner.
- 6.4 The Developer is not entitled to claim compensation or loss from the Department or the Challenge Owner for any losses, damages or expenses, or an extension of time to participate in the PSP Program or submit a Proposal, on the grounds that insufficient, incorrect, unintentionally misleading or ambiguous information was given by the Department or the Challenge Owner. The Developer is responsible for undertaking its own checking and due diligence as to the accuracy or reliability of any information provided by the Department or the Challenge Owner.
-

7 Intellectual property rights

- 7.1 Each party retains ownership of its Intellectual Property Rights in its Existing Material, including any modifications, developments and enhancements (“Improvements”) made by the party to its Existing Material.
- 7.2 All New Material, and Intellectual Property Rights in that New Material, created by a Developer as part of the PSP Program, is owned by the Developer.
- 7.3 All New Material, and Intellectual Property Rights in that New Material, created by the Challenge Owner or the Department as part of the PSP Program is owned by the party who created that New Material.
- 7.4 The Developer:
- (a) warrants (to the best of its knowledge having made proper inquiry) that the New Material it creates, and the Developer’s Existing Material which has been incorporated into that New Material:
 - (i) does not infringe the Intellectual Property Rights or Moral Rights of any other person; and
 - (ii) the granting of rights to the Department and the Challenge Owner under this agreement, and the exercise of those rights in accordance with this agreement, will not infringe the Intellectual Property Rights or Moral Rights of any person.
 - (b) grants the Department and the Challenge Owner an irrevocable, perpetual, non-exclusive, royalty free, worldwide, transferable licence (including right of sublicense) to use, adapt, modify and reproduce the Developer’s New Material, including any of the Developer’s Existing Material which has been incorporated into the New Material, and the Developer’s information submitted under the PSP Program, for the purpose of:
 - (i) evaluating Proposals; and
 - (ii) administering the PSP Program.
 - (c) warrants that it is authorised to grant the rights in clause 7.4(b).
- 7.5 If requested by the Department or the Challenge Owner, the Developer must procure from all of the Developer’s personnel involved in the creation of the Developer’s New Material, a Moral Rights consent substantially in the form approved by the Department or the Challenge Owner, as applicable. The Developer must, upon request, provide a copy of each Moral Rights consent procured by the Developer.

Exclusivity of Solution during development

- 7.6 The parties acknowledge the intent of the PSP Program is the development of a Solution tailored to the Challenge, and the procurement of the Solution by the Challenge Owner (which may be on an exclusive basis).
- 7.7 Notwithstanding clause 7.2, the Developer must not:
- (a) sell, exploit, lease hire or otherwise commercialise; or
 - (b) market, publish or disclose:
- the Intellectual Property Rights in its New Material (including the Solution), to any third party during the Term of this agreement, without the Challenge Owner’s written consent.
- 7.8 For clarity, clause 7.7 does not prevent the Developer from:

- (a) registering and protecting its Intellectual Property Rights in New Material;
 - (b) exercising its rights and performing its obligations under this agreement;
- during the Term of the agreement.
-

8 Confidentiality

- 8.1 Subject to clause 9.2, a party must not:
- (a) disclose another party's Confidential Information to a third party; or
 - (b) use another party's Confidential Information other than for the purpose of performing the agreement.
- 8.2 Each party must not disclose another party's Confidential Information to a third party other than:
- (a) as authorised or required by law;
 - (b) with the consent of the party that owns or provided the Confidential Information;
 - (c) to a professional adviser if that person is required to keep the information disclosed confidential;
 - (d) to comply with its obligations, or exercise its rights, under this agreement;
 - (e) to a responsible Minister administering the Department;
 - (f) in response to a request by parliament or a parliamentary committee of the State of Queensland; or
 - (g) as expressly permitted under this agreement.
- 8.3 The Department and/or the Challenge Owner reserve the right to require the Developer to sign a deed of confidentiality.
-

9 Marketing, Acknowledgement of Support and Media Opportunities

- 9.1 The Developer agrees that the Department or the Challenge Owner may publish:
- (a) details about the Developer's participation in the PSP Program, including Contribution details;
 - (b) information that identifies Developer subcontractors or related companies;
 - (c) details of the Proposal (excluding information of potential or actual commercial value or trade secrets as notified by the Developer in writing); and
 - (d) marketing and advertising information about the PSP Program (including media releases and case studies).
- 9.2 In publishing material under clause 9.1(c), the Department or the Challenge Owner agree to consult with the Developer prior to publication.
- 9.3 The Developer agrees to use reasonable endeavours to make its officers and employees available for, and to ensure they participate in, any PSP Program publicity and marketing events and opportunities notified by the Department or the Challenge Owner.
- 9.4 The Developer must ensure its proposed media, publicity and marketing events and opportunities related to the Solution or the PSP Program are notified to the Department and the Challenge Owner within a reasonable time prior to the event or opportunity, and the

Department and the Challenge Owner are given the opportunity to participate or otherwise contribute to those events and opportunities.

- 9.5 The Developer must, in making any Formal Public Statement about the Proposal or Solution:
- (a) include an acknowledgement of the support of the PSP Program by the Department and the Challenge Owner; and
 - (b) comply with any particular form or requirements relating to acknowledgement as notified to the Developer by the Department and the Challenge Owner from time to time.

Developer Warranties

- 9.6 The Developer warrants (on an ongoing basis) that:
- (a) it has the power, authority and ability to enter into this agreement, and that its representatives entering into this agreement for the Developer are authorised to do so on its behalf;
 - (b) (where the Developer is an individual), the individual is not an employee of the Department or the Challenge Owner;
 - (c) (where the Developer is an organisation), the Developer's personnel are not employees of the Department or the Challenge Owner;
 - (d) it has not provided incorrect, misleading or fraudulent information to the Department or the Challenge Owner in their Proposal or during participation in the PSP Program;
 - (e) it has not been convicted of an offence under the Criminal Code where one of the elements of the offence is that the person is a participant in a criminal organisation within the meaning of s 60A(3) of the Criminal Code; and
 - (f) it is not subject to an order under, or been convicted of an offence under the *Criminal Organisation Act 2009* (Qld).
- 9.7 The Developer warrants that it will immediately notify the Department and the Challenge Owner if the Developer becomes aware that any warranty made in this clause, or elsewhere in this agreement was or becomes inaccurate, incomplete, out of date or misleading in any way.

Challenge Owner Warranties

- 9.8 The Challenge Owner warrants and represents that:
- (a) it has the power, authority and ability to enter into this agreement, and that its representatives entering into this agreement for the Challenge Owner is authorised to do so on its behalf;
 - (b) it has not provided incorrect, misleading or fraudulent information to the Department during participation in the PSP Program;
 - (c) it has not been convicted of an offence under the Criminal Code where one of the elements of the offence is that the person is a participant in a criminal organisation within the meaning of s 60A(3) of the Criminal Code; and
 - (d) it is not subject to an order under, or been convicted of an offence under the *Criminal Organisation Act 2009* (Qld).

9.9 **Department Warranties**

The Department warrants and represents that it has the power, authority and ability to enter into this agreement.

Operation of Warranties

- 9.10 To the full extent permitted by law, all conditions and warranties not expressly stated in this agreement are excluded, or if unable to be excluded then limited to the fullest extent permitted by law.
- 9.11 The warranties in this agreement are provided as at the date of commencement of the agreement and on an ongoing basis. Each party warrants that it will promptly notify the other parties if it becomes aware that any warranty made was or becomes inaccurate, incomplete, out of date or misleading.
-

10 Subcontracting

- 10.1 A Developer must not subcontract (in whole or part) its obligations under this agreement, except:
- (a) As identified in the Developer's approved Proposal; or
 - (b) with the Challenge Owner's prior written consent;
- and subject to this clause 10.
- 10.2 The Developer will be responsible for the acts or omissions of any subcontractor as if they were the acts or omissions of the Developer.
- 10.3 The Developer must ensure that any subcontractor complies with the terms of this agreement.
- 10.4 The Developer must use reasonable endeavours to enter into a binding subcontract with the subcontractor consistent with this agreement, prior to the subcontractor performing services in relation to the PSP Program.
- 10.5 The Developer must promptly notify the Department and the Challenge Owner of any breach of the terms of this agreement by the subcontractor, including the details of the breach and the proposed action to be taken to remedy that breach.
- 10.6 In the event of any breach of the terms of this agreement by the Developer's subcontractor, the Department and the Challenge Owner each may:
- (a) direct the Developer to terminate the involvement of its subcontractor in the PSP Program; or
 - (b) request further information in relation to the details of the breach and proposed action to remedy the breach;
 - (c) notify their approval of the action to be taken by the Developer or their subcontractor to remedy the breach; or
 - (d) terminate the Developer's participation in the PSP Program in accordance with clause 14.1; or
- 10.7 take any other action permitted under this agreement.
-

11 No Collaboration between Developers

- 11.1 Developers must not observe or access the proposal, solution or ideas of another Developer, except with the prior written consent of the other Developer and providing written notice of such to the Department and Challenge Owner.

- 11.2 Developers must immediately report to the Department or the Challenge Owner any breach of clause 11.1 by another Developer or any unpermitted access that they obtain to the proposal, solutions or ideas of another Developer.
- 11.3 For clarity, subject to clause 11.1, a Developer may collaborate with another Developer in submitting a Proposal and developing a Solution, subject to the written consent of the Challenge Owner. In the event of such collaboration, one Developer will be required to nominate itself as the lead Developer and the other as their subcontractor, for the purposes of this agreement.
-

12 Limitation of liability

- 12.1 Subject to clause 12.4, 12.5, 12.6 and 12.7, the maximum liability of the Department and the Challenge Owner respectively to the Developer under or in connection with this agreement is limited in the aggregate to the amount of the Contributions contributed by the Department or Challenge Owner respectively.
- 12.2 Subject to clause 12.4, 12.5, 12.6 and 12.7 the maximum liability of the Developer to the Department and the Challenge Owner respectively under or in connection with the agreement is limited in the aggregate to three times the amount of total Contributions payable in connection with this agreement.
- 12.3 To the extent permitted by law, no party will be liable to any person, for any indirect or consequential loss whatsoever (including without limitation loss of, profit, revenue, anticipated savings, bargain, data, goodwill, reputation, or business, or any indirect, consequential, special or incidental loss or damage), in connection with the PSP Program or this agreement.
- 12.4 The Developer indemnifies and will defend each of the Department and the Challenge Owner from and against all claims, liabilities, losses, damages costs and expenses (including legal fees and costs on a solicitor and own client basis) arising from or incurred in connection with:
- (a) Performance or breach of this agreement by the Developer or its representatives;
 - (b) Any unlawful, fraudulent or negligent act or omission of the Developer, the Developer's representatives or any person for whose conduct the Developer is liable;
 - (c) Personal injury (including sickness and death) of any person arising out of or in connection with performance or breach of this agreement by the Developer or its representatives;
 - (d) Property damage or loss arising out of or in connection with the performance or breach of this agreement by the Developer;
 - (e) Any actual or alleged infringement of Intellectual Property Rights or Moral Rights (in relation to material provided by or on behalf of the Developer or its representatives);
- 12.5 The Developer's liability to indemnify the Department under clause 12.4 will be reduced proportionally to the extent that any negligent act or omission or breach of this agreement by the Department caused the loss or liability.
- 12.6 The Developer's liability to indemnify the Challenge Owner under clause 12.4 will be reduced proportionally to the extent that any negligent act or omission or breach of this agreement by the Challenge Owner caused the loss or liability.
- 12.7 Each party who suffers loss or damage must use reasonable steps to mitigate its loss.

12.8 It is not necessary for the Department or the Challenge Owner to incur expense or make payment before enforcing a right of indemnity conferred by this agreement.

13 Termination for default

- 13.1 The Department or the Challenge Owner may terminate the Developer's participation in the agreement immediately by notice where it reasonably believes that the Developer:
- (a) has breached an express warranty in this agreement;
 - (b) has breached this agreement, and the Department or the Challenge Owner reasonably considers such breach as not capable of remedy;
 - (c) has failed to remedy a breach of this agreement within ten (10) business days of receiving a notice outlining the breach, for a breach that the Department or the Challenge Owner reasonably considers as capable of remedy;
 - (d) is no longer eligible to participate under the PSP Program or no longer eligible to receive the Contributions;
 - (e) refuses to proceed or withdraws from performance of the agreement;
 - (f) has become bankrupt or insolvent, entered into a scheme of arrangement with creditors, or come under any form of external administration.
- 13.2 The Department may terminate the agreement immediately by notice where it reasonably believes that the Challenge Owner:
- (a) has breached an express warranty in this agreement;
 - (b) has breached this agreement, and the Department reasonably considers such breach as not capable of remedy;
 - (c) has failed to remedy a breach of this agreement within ten (10) business days of receiving a notice outlining the breach, for a breach that the Department reasonably considers as capable of remedy;
 - (d) is no longer eligible to participate under the PSP Program;
 - (e) refuses to proceed or withdraws from performance of the agreement;
 - (f) has become bankrupt or insolvent, entered into a scheme of arrangement with creditors, or come under any form of external administration.
- 13.3 Other than termination pursuant to clause 13.1, this agreement may be terminated by one party by provision of written notice to parties if:
- (a) A party breaches a term of this agreement which is capable of being remedied and fails to remedy that breach within ten (10) business days after receiving notice requiring it to do so.
- 13.4 When a party must give written notice to another party under this clause 13 or 14.1, the party must also give a copy of such notice to any other party to the agreement.
-

14 Termination of the PSP Program or agreement for convenience

- 14.1 The Department may terminate the PSP Program (in whole or in part) and/or terminate the agreement, or the Developer's participation in the agreement, at any time by thirty (30) business days' written notice, for any reason including for a Machinery of Government Change.

- 14.2 Each party agrees on receipt of a notice of termination under clause 13, or 14.1, to stop the performance of their obligations as specified in the notice, and take all available steps to minimise loss resulting from that termination.
- 14.3 In the event of termination under clause 13.2 or 14.1, the Challenge Owner and the Department will be liable (in equal shares) to pay only the reasonable costs (if any) that have been or will be incurred by the Developer as a direct result of the termination of the agreement, that can be substantiated to the reasonable satisfaction of the Challenge Owner and the Department, and which the Developer cannot recoup or avoid and which would not otherwise have been incurred by the Developer if the agreement had continued until its expiry.
- 14.4 The Challenge Owner and the Department's liability to pay any amount under clause 14.3 is subject to the Developer's compliance with the agreement.
- 14.5 Any amount payable by the Challenge Owner and the Department under this clause will not exceed the total amount of the Contributions.
- 14.6 In the event of termination under any clause of this agreement except clause 14.1 or 13.2 the Department and the Challenge Owner will not be liable to the Developer for any loss or damage suffered by the Developer as a result of termination.
- 14.7 In the event of termination under clause 14.1 of:
- (a) the PSP Program; or
 - (b) this agreement;
- the Department will not be liable to the Challenge Owner for any loss or damage suffered by the Challenge Owner as a result of termination.
-

15 Obligations after termination

- 15.1 Within ten (10) business days of the date of termination of the agreement, the Developer must provide:
- (a) all reports and documents due under the agreement as at the date of termination;
 - (b) the amount(s) equivalent to any unspent Contributions from each party, less any costs agreed under clause 15.3 (where applicable), which will be a debt due and owing; and
 - (c) the amount(s) equivalent to any Contributions used or spent contrary to this agreement from each party, which will be a debt due and owing;
- to the Challenge Owner and the Department respectively.
- 15.2 Termination in accordance with this agreement is without prejudice to any rights of a party under this agreement existing at the date of termination.
-

16 Commissions and Incentives

- 16.1 A Developer must not, and must ensure that its officers, employees and agents do not, give or offer anything to the Department or the Challenge Owner or any of their officers or employees,

or to a parent, spouse, child or associate of their officers or employees, including any commission, inducement, gift or reward, which could in any way be perceived as attempting to influence the Department or the Challenge Owner's actions in relation to the PSP Program.

17 Privacy

- 17.1 The parties acknowledge the Department is bound by the *Information Privacy Act 2009* (Qld) in relation to Personal Information.
- 17.2 Where the Developer's performance of this agreement amounts to a "service arrangement" under the *Information Privacy Act 2009* (Qld), and the Developer collects or has access to Personal Information to perform the agreement, the Developer agrees to comply with Chapter 2 Parts 1 and 3 of the *Information Privacy Act 2009*.
- 17.3 Where clause 17.2 does not apply, and the Developer is bound by the *Privacy Act 1988* (Cth), the Developer agrees to comply with the Australian Privacy Principles.
-

18 Anti-competitive Conduct and Conflict of Interest

- 18.1 The Developer warrants that, except in accordance with clause 11:
- (a) any material, Proposal or Solution that it prepares during the PSP Program is not prepared with any consultation, communication, contract, arrangement or understanding with any competitor (including any other Developer) regarding:
 - (i) prices;
 - (ii) the quality, quantity, specifications or delivery particulars of goods and/or services;
or
 - (iii) the terms of its Proposal or a competitor's proposal.
 - (b) it has not and will not during the PSP Program:
 - (i) provide any benefit directly or indirectly to, or enter into any contract, arrangement or understanding to provide any benefit directly or indirectly to, any competitor (including any other Developer) relating in any way to the PSP Program; or
 - (ii) receive any benefit directly or indirectly from, or enter into any contract, arrangement or understanding to receive any such benefit directly or indirectly from any competitor (including any other Developer) relating in any way to the PSP Program.
- 18.2 The Developer warrants that:
- (a) it and its personnel or representatives do not hold any office or possess any property, are not engaged in any business or activity and do not have any obligations whereby a Conflict of Interest is created, or may appear to be created, in conflict with its obligations under this agreement, except as previously disclosed to the Department and the Challenge Owner;
 - (b) it will not, and will ensure that its personnel and representatives do not, place themselves in a position that may give rise to a Conflict of Interest in conflict with its obligations under this agreement, during the PSP Program; and

- (c) it will immediately notify the Department and the Challenge Owner of any Conflict of Interest that arises during the PSP Program, and take such steps to resolve or otherwise deal with the conflict to the Department and the Challenge Owner's reasonable satisfaction.
- 18.3 If the Department or the Challenge Owner receive notice of a Conflict of Interest or if they otherwise identify that a Conflict of Interest exists, the Department or the Challenge Owner may:
- (a) direct the Developer as to how to manage the Conflict of Interest and the Developer must comply with any such reasonable direction; or
 - (b) terminate the Developer's participation in the PSP Program immediately by written notice in accordance with clause 13.1.
-

19 Insurance

- 19.1 The Developer acknowledges and agrees that it must hold and maintain the following insurances during the agreement term:
- (a) Public liability insurance in the amount of \$10 million per claim;
 - (b) Workers' compensation insurance if required under legislation; and
 - (c) Any other insurance as specified in the Developer's approved Proposal.
- 19.2 The Developer agrees to provide a copy of the certificates of insurance to the Challenge Owner and/or the Department:
- (a) within ten (10) business days of the commencement date; and
 - (b) upon request by the Challenge Owner or the Department.
-

20 General

- 20.1 **Independent advice** – Developers are responsible for obtaining their own independent legal and financial advice regarding the terms of this agreement and their participation in the PSP Program.
- 20.2 **No assignment or novation** - The Developer may not assign or novate any part of this agreement without the Department and the Challenge Owner's prior written consent. For the avoidance of doubt, an assignment under this clause includes but is not limited to a change in the ultimate or beneficial ownership of the Developer, such that the assignment results in a change in control of the Developer.
- 20.3 **Variation** – This agreement may only be varied by agreement in writing by authorised representatives of the Department, the Challenge Owner and the Developer.
- 20.4 **Governing law** - The agreement is governed by and construed in accordance with the laws of Queensland and the parties submit to the non-exclusive jurisdiction of the courts of Queensland.
- 20.5 **Government entities** - A reference to the Department and any other government department, entity, authority, association, or body, whether statutory or otherwise ('Government Entity') will in the event of any such Government Entity ceasing to exist or being reconstituted, renamed or replaced or the powers or functions of the Government Entity being transferred to any other

department, entity, authority, association or body, be deemed to refer respectively to the Government Entity established, constituted or succeeding, or as nearly as may be, to the powers or functions of the Government Entity.

- 20.6 **Survival** – The following clauses survive termination or expiration of the agreement:
(a) clause 2.7, 2.8, 2.9, 2.10, 2.11, 3.3, 3.4, 4, 6, 7, 8, 9, 12, 13, 14, 15, 17, 18 & 19.
- 20.7 **Counterparts** - The agreement may be validly agreed by exchange of signed counterparts between the parties. In addition to any other valid method, signed counterparts may be exchanged by successful electronic transmission.
- 20.8 **Relationship of the parties** - Nothing in the agreement will be taken as giving rise to any employment, agency, partnership or joint venture relationship between the parties. The Challenge Owner and Developer each acknowledge that their respective personnel are their responsibility including payment of all employee wages and entitlements.
- 20.9 **Waiver** – No clause of this agreement will be deemed waived unless that waiver is in writing and signed by the waiving party. A waiver of a breach of this agreement will not operate as a waiver of a subsequent breach. Any forbearance, delay or indulgence granted by a party to another party will not constitute a waiver of that party's rights.
- 20.10 **Severability** – Any clause of this agreement, which is invalid or unenforceable, is to be read down if possible, so as to be valid and enforceable, and if that is not possible the clause must, be severed to the extent of the invalidity or unenforceability, without affecting the remaining provisions.
- 20.11 **Further assistance** – Each party must do all things reasonably required by the other parties to give effect to this agreement.
- 20.12 **Compliance with laws** – Each party must comply with all relevant laws in performing its obligations under this agreement.
- 20.13 **Notices** – Notices under this agreement must be in writing and signed by the sending party and may be delivered by hand, by mail, by email or by facsimile transmission to the parties at the address specified in the agreement or as notified by a party from time to time.
- (a) Notices will be deemed to be given (during standard business hours):
(i) five days after posting;
(ii) immediately upon delivery by hand;
(iii) if sent by facsimile transmission, upon completion of transmission as evidenced by a successful transmission report; or
(iv) if sent by email, upon completion of transmission and confirmation of receipt by the addressee.
- (b) Notices given after 5pm on a business day, or given on a non-business day, will be deemed given at the start of the next business day.

Interpretation

20.14 The following definitions apply in this agreement:

Australian Privacy Principles has the meaning as stated in the *Privacy Act 1988 (Cth)*.

Challenge means the relevant issue or problem described on the PSP Program website, submitted by the Challenge Owner to be solved through the PSP Program.

Challenge Owner means the entity that has submitted the Challenge to be solved through the PSP Program, and includes its employees, contractors, subcontractors and agents.

Confidential Information means all information, trade secrets and knowledge of, or disclosed by, a party (“the discloser”) to another party (“the disclosee”) that is by its nature confidential, is designated by the discloser as confidential or the disclosee knows or ought to know is confidential and includes information:

- (a) about a Developer’s Proposal;
- (b) comprised in or relating to any Intellectual Property Rights of the discloser;
- (c) concerning the internal management and structure, personnel, processes and policies, commercial operations, financial arrangements or affairs of the discloser;
- (d) that is of actual or potential commercial value to the discloser; or
- (e) relating to clients or suppliers of the discloser,

but does not include information that:

- (f) was already in the possession of the and not subject to an obligation of confidentiality;
- (g) is lawfully received from a third party or independently developed by a Developer; or
- (h) is public knowledge other than through a breach of an obligation of confidentiality.

Conflict of Interest means having an interest (whether personal, financial or otherwise) which conflicts or which may reasonably be perceived as conflicting with the ability to perform obligations under this agreement.

Contributions means the monetary amounts the Challenge Owner and the Department has each agreed to contribute towards the development of the Solution, as specified in Item 4 Schedule 1 to this agreement.

Department means the State of Queensland acting through the Department of Tourism, Innovation and Sport and includes its employees, contractors, subcontractors and agents.

Developer means the entity participating in the PSP Program to solve a Challenge, and includes the entity’s employees, contractors, subcontractors and agents.

Existing Material means all things, materials, documents, information and items which existed at the commencement date of this agreement or which are developed independently of the party’s participation in the PSP Program.

Formal Public Statement means any formal statement by the Developer in relation to the Proposal or Solution which is intended for the public domain including media releases, interviews and presentations, presentations at conferences; promotional and advertising material and any recording or publication relating to the Solution intended to be distributed into the public domain.

Intellectual Property Rights includes all copyright, trade mark, design, patents or other proprietary rights, or any rights to registration of such rights existing in Australia, or elsewhere or as protected by legislation from time to time, whether created before, on or after the commencement of the agreement, but excludes Moral Rights.

Machinery of Government Change means a change to the title, structure, functions or operations of the Department or a part of the Department (including corporatisation) as a result of an order made under the Constitution of Queensland 2001 (Qld) or other Queensland legislation.

Milestones means the Solution development activity description and due date, as specified in the approved Proposal.

Moral Rights means the right of integrity of authorship, the right of attribution of authorship and the right not to have authorship falsely attributed, more particularly as conferred by the *Copyright Act 1968* (Cth), and rights of a similar nature anywhere in the world whether existing before, on or after the commencement of the agreement.

New Material means all things, material, documents, information and items that are created, written, developed or otherwise brought into existence by or on behalf of, a party in the course of the agreement.

Personal Information means information or an opinion, including information or an opinion forming part of a database, whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

Proposal means the proposal submitted by the Developer to participate in the PSP Program, outlining the Challenge Solution, as approved by the Department and Challenge Owner, set out in annexure 1.

Report means an evaluation, progress or final report in connection with development of the Challenge Solution, the required content of which is set out in Item 5 of Schedule 1.

PSP Program means the Private Sector Pathways Program being conducted by the Department as a means of solving Challenges through the development of Solutions by Developers.

Solution or **Challenge Solution** means the innovative solution to a Challenge outlined in the Developer's approved Proposal and developed through the PSP Program.

Schedules means the schedules 1 and 2 attached to these terms.

20.15 In this agreement:

- (a) words importing a gender include any other gender and words in the singular include the plural and vice versa;
- (b) a reference to legislation includes subordinate legislation made under it and any legislation amending, consolidating or replacing it;
- (c) "person" includes an individual, a corporation, an authority, an association or a joint venture (where incorporated or unincorporated) a partnership and a trust;
- (d) if an expression is defined, other grammatical forms of that expression will have corresponding meanings;
- (e) a reference to a party, includes that party's successors, executors, administrators and permitted assigns;
- (f) a reference to a schedule or annexure means a schedule or annexure to this document;
- (g) "includes" in any form is not a word of limitation;
- (h) no rule of construction will apply to a provision of this agreement to the disadvantage of a party merely because that party drafted the provision or would otherwise benefit from it; and
- (i) an obligation on the part of two or more persons binds them jointly and each of them individually.

20.16 Where any inconsistency exists between the terms of this agreement, and the Schedules, the terms take precedence to the extent of the inconsistency.