



**NSW INSTITUTE OF RURAL
CLINICAL SERVICES & TEACHING**

FUNDING GUIDELINES

For Area Health Service Projects



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1. PERFORMANCE OF THE PROJECT

- 1.1 Funded project proposals submitted by an Area Health Service Staff member (AHSS) to the NSW Institute of Rural Clinical Services and Teaching (IRCST) are subject to the guidelines in this document.
- 1.2 IRCST has agreed to fund the AHSS to support and develop the Project. In return the AHSS must:
- a. Perform all aspects of the Project (including achieving the outcomes and objectives of the Project); and
 - b. Endeavour in good faith to ensure that all work undertaken is in support of the expected outcomes and objectives for the Project.
- 1.3 IRCST is required by law to ensure accountability for public money, and to be accountable for all funds provided. Therefore this document makes provision with respect to:
- a. The transparency of funding processes;
 - b. Accountability and responsibility of IRCST and the AHSS in the application and use of public funds; and
 - c. Principles, standards and values underpinning the delivery of the Project.
- 1.4 The AHSS agree to accept the funding for the purposes as specified in the proposal, and subject to these guidelines.
- 1.5 All NSW Department of Health Policies and Procedures apply.

2. PERFORMANCE OF THE PROJECT

- 2.1 The AHSS must perform the Project within the project period and according to the terms and conditions set out in these guidelines.
- 2.2 The AHSS must:
- a. perform all aspects of the Project (including achieving the outcomes and objectives of the Project); and
 - b. endeavour in good faith to ensure that all work undertaken is in support of the expected outcomes and objectives for the Project specified in the application for funding.

3. FUNDING FOR THE PROJECT

- 3.1 Payment of the funds will be transferred to the Area Health Service, in accordance with Appendix 2.
- 3.2 If there is any delay or suspension or an expectation or anticipation of a delay or suspension (of more than six (6) months) in the commencement or progress of the Project, the AHSS must notify IRCST as soon as possible after becoming aware of the delay or expected delay. The AHSS must request and obtain IRCST's written approval for the continuation of the Project. In the event of a delay or expected delay to the commencement or progress of the Project, IRCST may suspend, reduce or terminate payment of the funds for that Project.

- 3.3 Any payments may be deferred or suspended if the AHSS has outstanding or unacquitted moneys under any arrangement with IRCST.

4. MANAGEMENT AND ACCOUNTABILITY OF FUNDS

- 4.1 All funding is to be managed under the Policies and Procedures of the NSW Department of Health. S.
- 4.2 The AHSS must keep proper accounts and records of its use of the funds, separately from other accounts and records of the AHSS.
- 4.3 The funds are made available for a particular Project and are not transferable between Projects (except with the prior written approval of IRCST). The funds must not be used for any other purpose.
- 4.4 The AHSS must:
- a. ensure proper accounting controls are exercised over the Projects, including the funds; and
 - b. maintain separate accounting records for all transactions in relation to the Project.
- 4.5 Where the AHSS has not legally committed or expended the full amount of the funds during the period of funding, the AHSS must, within one (1) month after the end of the period of funding, pay to IRCST any amount not so committed or expended, unless the AHSS prior to the end of the period of funding advises IRCST of the reasons for the non-expenditure, and requests and obtains IRCST's written approval for the unexpended part of the funds to be carried forward and for the period of funding to be varied.
- 4.6 The AHSS must not pass on or reallocate the funds (including interest earned on the funds) to other persons without the prior written approval of IRCST.

5. REPORTING

- 5.1 The AHSS must at all times to the satisfaction of IRCST provide the following:
- a. Progress Reports and a Final Report in accordance with the requirements set out in Appendix 2.
 - b. receipts and other evidence relating to the expenditure of the funding amount if requested by IRCST.
- 5.2 The AHSS must keep comprehensive written records of the conduct of the Project including, without limitation, progress against the outcomes and objectives of the Project, the creation or acquisition of assets and the receipt and use of the funds.
- 5.3 The AHSS must provide IRCST with detailed reports, which must include detail on whether the objectives and outcomes of the Project are being achieved and must include annual financial statements and an annual report prepared by a Qualified Accountant (the Financial Acquittal).

6. PROJECT MANAGEMENT

- 6.1 Representatives:
- a. Each party must appoint one person with appropriate skills, qualifications and experience as its representative, to be responsible for the operational coordination and management between the parties of the performance of their respective roles.
 - b. Either party may change its representative by notice to the other from time to time.

7. ACCESS TO RECORDS

- 7.1 The AHSS must, upon reasonable notice, permit persons authorised in writing by IRCST, to
- a. inspect the performance of the Project, any assets, project material or other material relevant to this project; and
 - b. access and copy project material or other material, accounts, records or documents relating directly or indirectly to the Project or the receipt, expenditure or other use of the funds.
- 7.2 Upon receipt of reasonable written notice, the AHSS must provide any information in relation to the Project requested by IRCST for the purposes of this project, including monitoring and evaluation.
- 7.3 The AHSS agrees to provide all assistance reasonably requested by IRCST in respect of any inquiry into or concerning the Project .

8. PROJECT MATERIAL & INTELLECTUAL PROPERTY

- 8.1 Any Intellectual Property rights and title to, or in relation to, the project material will vest, upon its creation, in IRCST.
- 8.2 The AHSS will notify IRCST promptly after identifying any project material that the AHSS believes is patentable, and will supply IRCST with copies of the project material.
- 8.3 IRCST grants the AHSS a perpetual, royalty free, non-exclusive licence to use the project material for the purpose of carrying out the Project, but for no other purpose.
- 8.4 The AHSS and each employee and student of the AHSS will have the irrevocable, royalty-free right to use the intellectual property in the project materials for the purposes of academic teaching and academic research and clinical patient care but not for commercial purposes.

9. ACKNOWLEDGEMENT AND PUBLICITY

- 9.1 The AHSS must acknowledge the contribution of IRCST to the Project in all relevant publications including public correspondence, public announcements, advertising material and research reports produced by or on behalf of the AHSS.
- 9.2 The IRCST logo and the Institute of Rural Clinical Services & Training (IRCST) logo are not to be used without the prior written permission of IRCST.
- 9.3 The AHSS is to provide draft copies of all relevant publication material and is to submit draft media material for IRCST approval 24 hours prior to printing.
- 9.4 The AHSS must give IRCST at least two weeks prior notice of any public launch or event involving the Projects which is funded in part or in full through funds received from IRCST. The AHSS must give IRCST the opportunity to attend and if IRCST wishes, to give a formal speech or presentation at the launch or event.
- 9.5 For a period of three (3) years following completion of the Project, the AHSS must obtain the consent of IRCST prior to publication. Such consent will not be unreasonably withheld.
- 9.6 The AHSS must provide IRCST with a copy of any proposed publication at least one (1) month prior to publication. Consent to publish will be deemed to have been granted if IRCST does not respond within fourteen (14) business days of receipt of request.

10. TERMINATION AND SUSPENSION

- 10.1 IRCST may terminate the arrangements (at its discretion in whole or in part) if:
- a. IRCST is reasonably satisfied that any of the terms and conditions of these guidelines have not been complied with by the AHSS;

11. RECOVERY OF FUNDS

- 11.1 If at any time IRCST is reasonably satisfied that any part of the funds (including interest earned on the funds) has been expended or committed by the AHSS other than in accordance with these guidelines, IRCST may by written notice to the AHSS require the AHSS to repay that part of the funds within twenty eight (28) days of receipt of the notice. IRCST may recover that amount as a debt due to IRCST.
- 11.2 On the expiry of the project period or on any earlier termination of the project, any funds (including any interest earned on the funds) remain unspent or uncommitted, IRCST may by written notice to the AHSS require the AHSS to repay that part of the funds, and the AHSS must repay to IRCST the amount set out in the notice, within twenty eight (28) days of receipt of the notice.

12. INDEMNITY

- 12.1 The AHSS will indemnify and hold harmless the NSW Department of Health, IRCST, its officers, employees and agents ('those indemnified') from and against any liability, loss, actions, claims, suits, demands, damages, costs and expenses (including the costs of defending or settling any action, claim or demand) made, sustained, brought or prosecuted against those indemnified in any manner based on any loss or damage to any person or loss or damage to property which may arise in connection with any act or omission of the AHSS in the performance of the Project.
- 12.2 The AHSS's liability to indemnify IRCST under clause 14.1 will be reduced proportionally to the extent that any unlawful or negligent act or omission of IRCST or its employees or agents contributed to the loss or damage.

13. INSURANCE

- 13.1 The AHSS must effect and maintain the types of and the amount of insurance set out below for so long as any obligations remain in connection with these guidelines:
- a. Worker's Compensation as required by law.
 - b. Public Liability insurance deleting any contractual exclusions within the policy, in the amount of not less than \$10 million in respect of each and every occurrence and 10 times in the aggregate for any one period of cover.

14. CONFLICT OF INTEREST

- 14.1 The AHSS warrants that no conflict of interest exists or is likely to arise in the performance of its obligations under these guidelines.
- 14.2 If during the term of the project, a conflict of interest, or risk of a conflict of interest, or an apparent conflict of interest ('conflict, risk or apparent conflict') arises in respect of the AHSS, or an employee or agent of the AHSS, the AHSS must immediately notify IRCST in writing of that conflict, risk or apparent conflict.
- 14.3 If the AHSS fails to notify IRCST under this clause 16 or is unable or unwilling to resolve or deal with the conflict, risk or apparent conflict as required, IRCST may terminate the project in accordance with clause 12.

15. DISPUTE RESOLUTION

- 15.1 A party must notify the other party of any dispute with these guidelines. The parties must endeavour to resolve any disputes between them by good faith discussions.
- 15.2 If any dispute has not been resolved within ten (10) business days of the Notice being served, or such other period as the parties may agree in writing, each party will refer the issue to a Senior Executive Officer who will endeavour to negotiate to resolve the issue in a timely manner. The Senior Executive Officer should not be a person who is involved in the day to day administration of the project.
- 15.3 If the issue has not been resolved after twenty (20) business days of the Notice being served, or such other period as the parties may agree in writing, the parties will undertake a mediation or conciliation process before resorting to litigation (except where urgent interlocutory relief is sought).
- 15.4 The mediation or conciliation will be conducted in accordance with the Guidelines for Commercial Mediation and/or Conciliation published by the Australian Commercial Dispute Centre.
- 15.5 The Guidelines set out the procedures to be adopted, the process of selection of the mediator or conciliator and the costs involved.
- 15.7 Notwithstanding the existence of a dispute, the AHSS must continue to perform its obligations in accordance with these guidelines.

16. AGREEMENT

- 16.1 Where the AHSS has entered or enters into any agreement with a third party such as an external evaluator or consultant for the purpose of performing the project, that agreement must be forwarded to IRCST.
- 16.2 IRCST will not be liable for any loss or damage that may arise in connection with an act or omission of the third party in the performance of the Project.
- 16.3 The AHSS must provide IRCST with draft copies of any reports written by third parties, and where the Project is longer than 12 months, the third party must provide a draft paper to IRCST detailing how the evaluation methodology has been deployed.
- 16.4 Deliverables under any third party agreement must be disseminated to both IRCST and the AHSS in accordance with these guidelines.

17. PRIVACY AND PROTECTION OF PERSONAL INFORMATION

- 17.1 The AHSS will:
 - a. use *Personal Information* only for the purposes of fulfilling the obligations of the project and agrees to comply with the requirements of the *Privacy and Personal Information Act 1988* (NSW) and requirements of the *Health Records and Information Privacy Act 2002* (NSW), the AHSS must also comply with all other privacy legislation;
 - b. take all reasonable measures to ensure that personal information is protected against loss and unauthorised access, use, modification, disclosure or other misuse and that only authorised personnel have access to the information;
 - c. unless otherwise agreed with IRCST, comply with the Information Protection Principles set out in Part 2, Divisions 1 and 2 of the *Privacy and Personal Information Act 1988* (NSW);

- d. immediately notify IRCST of any complaint alleging an interference with the privacy of any person and similarly notify IRCST where the AHSS becomes aware of a breach of any privacy law; and
- e. co-operate with any reasonable requests or directions of IRCST arising from or in relation to the exercise of the functions of the Privacy Commissioner under the *Privacy and Personal Information Act 1988* (NSW) and comply as far as practicable with any reasonable direction of IRCST's Liaison Officer to observe any recommendation of the Privacy Commissioner relating to any acts or practices of the AHSS in relation to the Project.

17.2 The AHSS must not:

- a. disclose personal information; nor
- b. transfer personal information outside Australia, or allow any person outside Australia to have access to it;

unless:

- c. IRCST gives its prior written consent to disclosure (which consent may be conditional);
- d. necessary to be disclosed to the extent required for the proper discharge of the AHSS's obligations under these guidelines;
- e. required to be disclosed for the sole purpose of the AHSS obtaining legal, financial, medical or other relevant advice from suitably qualified persons; or
- f. legally required to be disclosed, in which case the AHSS will immediately notify IRCST when it becomes aware that a disclosure may be required by law.

18. NOTICES

18.1 Notices under these guidelines must be in writing and given by hand or sent by facsimile or by mail to the facsimile numbers or addresses specified in Item 4 of Appendix 2 or such other address as notified in writing by the relevant Party.

18.2 Any notice, request or other communication will be deemed to be received:

- a. if delivered personally, on the date of delivery;
- b. if sent by prepaid ordinary post within Australia upon the expiration of three (3) business days after the date on which it was sent;
- c. if sent by facsimile, on the business day following the day of dispatch providing that the sender receives an "OK" code in respect of the transmission and is not notified by the AHSS by close of business of the next business day following the day of dispatch that the transmission was illegible.

19. INTERPRETATION

19.1 In these guidelines, unless the contrary intention appears:

- a. Words in singular number include the plural and words in the plural number include the singular;
- b. Words importing a gender include any other gender;

- c. Words importing persons include a partnership and a body (whether incorporated or not);
 - d. Clause headings are for convenience only and have no effect in limiting or extending the meaning of the provisions to which they refer;
 - e. Where any word or phrase is given a defined meaning, any other form of that word or phrase has a corresponding meaning;
 - f. A reference to a Party (by whatever title) will, where the context so admits, include the officers, employees, agents and subcontractors of the Party, and the Party's successors and assigns; and
 - g. All reference to clauses are clauses in these guidelines and all references to items are items in the Appendixes to these guidelines.
- 19.2 Any reference to "Appendixes" means the Appendixes to these guidelines. The Appendixes form part of these guidelines.

20. ENTIRE AGREEMENT, VARIATION AND SEVERANCE

- 20.1 These guidelines comprise the entire agreement between the Parties and supersedes all communications, negotiations, arrangements and agreements, either oral or written in relation to this project.
- 20.2 No variation of these guidelines is binding unless agreed in writing between the parties.

21. WAIVER

- 21.1 If a party does not exercise, or delays in exercising, any of its rights in these guidelines, that failure or delay does not operate as a waiver of those rights.
- 21.2 A single or partial exercise by a Party of any of its rights in these guidelines or at law does not prevent the further exercise of any right.

Appendix 1 - Definitions

In these guidelines, the following expressions have the meaning set opposite:

Application:	means the application for funding in relation to the Project submitted by the AHSS to IRCST.
Business day:	means a day other than: <ol style="list-style-type: none">a Saturday, Sunday or public holiday in NSW; anda day during the period from (and including) 24 December in any year to (and including) the first Monday in the following January.
Confidential Information:	This includes but is not limited to: an invention or discovery, before the filing of a patent application; the contents of a patent application up to the time that a patent is granted; new commercially valuable knowledge which is intentionally omitted from a patent application, and never becomes protected by the grant of a patent, for example, to minimise the prospect of reverse engineering; biological materials; commercially sensitive information such as confidential reports; information marked confidential; information which is stated as to be confidential information by one of the Parties, information which is described in Item 5 of Appendix 2, and trade secrets.
Guidelines:	this document, including its Appendixes.
Final report:	means the report required to be provided to IRCST by the AHSS in accordance with the requirements contained in clause 5 and Appendix 2.
Funds:	the amount payable by IRCST or part thereof as specified in Item 2 of Appendix 2 and includes any interest earned on the funds.
Good faith:	an obligation on the parties to cooperate in achieving the contractual objects (loyalty to the promise itself); compliance with honest standards of conduct; compliance with standards of conduct which are reasonable having regard to the interests of the parties.
Intellectual property:	refers to both statutory intellectual property and confidential information and trade secrets as defined.
Issue:	means a difference, question or dispute that arises between the parties in relation to these guidelines or the services.
Know how:	unpatented technical information (including without limitation, information relating to inventions, discoveries, concepts, methodologies, models, research, development and testing procedures, the results of experiments, tests and trials, manufacturing processes, techniques and specifications, quality control data, analyses, reports and submissions) that is not in the public domain.

Liability:	means any liability (whether actual, contingent or prospective), including any loss, irrespective of when the acts, events circumstances or things giving rise to the liability occurred or existed.
Liaison Officer:	means the persons or position holders specified in Item 3.
Material:	includes documents, equipment, software, goods and any medium whatsoever in which information is embodied.
Obligation:	means any legal, equitable, contractual, statutory or other obligation, commitment, duty, undertaking or Liability, present or (where the context permits) future.
Party:	means a party to these guidelines.
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 a natural person whose identity is apparent, or can reasonably be ascertained, from the information or opinion.
Progress Reports:	are the reports required to be provided to IRCST by the AHSS in accordance with the requirements contained in clause 5 and Appendix 2.
Project:	means the projects described in Appendix 2 and each of them.
Project material:	means all material including reports: <ul style="list-style-type: none"> a. brought into existence for the purpose of performing the Project; b. incorporated in, supplied or required to be supplied along with the material referred to in paragraph (a); or copied or derived from the material referred to in paragraphs (a) or (b);(c).
Project period:	means the period specified in Item 1 of the Appendix 2.
Publication:	includes: (a) a book; (b) a publication in an academic journal; (c) a conference presentation; (d) a technical report; (e) a monograph; (f) an abstract; (g) a poster presentation; and (h) an electronic publication.
Qualified Accountant:	means a registered company auditor or a member of the Institute of Chartered Accountants or the Australian Society of Certified Practising Accountants, where that person is acting in a professional capacity as an accountant and is not a member, officer or employee of the institution.
Report:	material that reports to IRCST in accordance with clause 5 (Records and Reports).
Right:	means any legal, equitable, contractual, statutory or other right, power, authority, entitlement, benefit, privilege, immunity, remedy, discretion or cause of action.
Statutory intellectual property:	is intellectual property that is protected by specific Commonwealth statutes such as the following: the <u>Patents Act, 1990</u> , which deals

with patents granted over inventions, discoveries, and new products and processes; the Copyright Act, 1968, which deals with works in which copyright subsist, including literary works (including computer programs), dramatic works, musical works, artistic works (including architectural drawings), films, sound recordings, broadcasts, published editions and certain types of performances; the Plant Breeders' Rights Act, 1994, which deals with new plant varieties; the Designs Act, 1906, which deals with industrial and product designs; and the Trade Marks Act, 1995, which deals with trade marks; and the Circuit Layouts Act, 1989, which deals with circuit layouts.