



Australian Government

**Department of Infrastructure, Transport,
Regional Development and Local Government**

**BETTER REGIONS
FUNDING AGREEMENT
BETWEEN
COMMONWEALTH OF AUSTRALIA
as represented by the
Department of Infrastructure, Transport, Regional
Development and Local Government**

ABN 86 267 354 017

AND

[INSERT FUNDING RECIPIENT'S NAME and ABN]

in relation to the **[insert name of Project and Better Regions number]**

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PARTIES

COMMONWEALTH OF AUSTRALIA ('Commonwealth'), represented by and acting through the Department of Infrastructure, Transport, Regional Development and Local Government, **[insert address of Department of Infrastructure, Transport, Regional Development and Local Government National Office or Regional Office as desired]** ABN 86 267 354 017 ('Us' or 'We' or 'Our' as the case requires)

AND

[INSERT NAME, ABN / ACN and ADDRESS of FUNDING RECIPIENT], ('You' or 'Your' as the case requires)

BACKGROUND

- A. The Commonwealth intends for the Better Regions Program to deliver regional development and partner Activities and Projects.
- B. You are committed to helping achieve the objectives of the Program, through the completion of the Project and Your conduct of the Activity.
- C. As a result of this commitment, We have agreed to support the Activity and the Project by providing Funding to You, subject to the terms and conditions of this Agreement.
- D. We are required by law to ensure accountability for public money and to be accountable for all Funds provided by Us.
- E. You agree to accept the Funding for the purposes, and subject to the terms and conditions, set out in this Agreement.

1. INTERPRETATION

1.1 In this Agreement, unless the contrary intention appears:

'**ABN**' has the same meaning as it has in section 40 of the *A New Tax System (Australian Business Number) Act 1999* (Cth);

'**Activity**' means the activity described in the Schedule and includes the completion of the Milestones and the provision of Activity Material;

'**Activity Material**' means all Material:

- (a) brought into existence as part of performing the Activity;
- (b) incorporated in, supplied or required to be supplied along with the Material referred to in paragraph (a); or
- (c) copied or derived from Material referred to in paragraphs (a) or (b);

'**Activity Period**' means the period specified in the Schedule during which the Activity must be completed;

'**Adjustment Note**' has the same meaning as it has in section 195-1 of the GST Act;

'**Agreement**' means this document and includes any Schedules and Annexures;

'**Approved Auditor**' means a person who is:

- (a) registered as a company auditor under the *Corporations Act 2001* (Cth), or a member of the Institute of Chartered Accountants in Australia, or of CPA Australia or the National Institute of Accountants; and
- (b) not a principal, member, shareholder, officer or employee of Yours or of a Related Body Corporate;

‘Asset’ means any item of tangible property, purchased, leased, created or otherwise brought into existence either wholly or in part with use of the Funds, which has a value of over \$5,000 inclusive of GST but does not include Activity Material;

‘Auditor-General’ means the office established under the *Auditor-General Act 1997* (Cth) and includes any other entity that may, from time to time, perform the functions of that office;

‘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 set by the Auditor-General under section 24 of the *Auditor-General Act 1997* (Cth) and generally accepted audit practices to the extent they are not inconsistent with such standards;

‘Budget’ refers to a budget for expenditure of the Funding for the purposes of conducting the Activity or performing obligations under this Agreement, stipulated in Annexure A;

‘Business Day’ means in relation to the doing of any action in a place, any day other than a Saturday, Sunday, or public holiday in that place;

‘Commonwealth Material’ means any Material provided by Us to You for the purposes of this Agreement or which is copied or derived from Material so provided, except for Activity Material;

‘Completion Date’ means, unless a date is specified in the Schedule, the day after You have done all that You are required to do under this Agreement to Our satisfaction;

‘Conflict’ refers to a conflict of interest, or risk of a conflict of interest, or an apparent conflict of interest arising through You engaging in any activity or obtaining any interest that is likely to conflict with or restrict You in carrying out the Activity fairly and independently;

‘Constitution’ means (depending on the context):

- (a) a company’s constitution, which (where relevant) includes rules and any amendments that are part of the company’s constitution; or
- (b) in relation to any other kind of body:
 - (i) the body’s charter, rules or memorandum; or
 - (ii) any instrument or law constituting or defining the constitution of the body or governing the activities of the body or its members;

‘Date of this Agreement’ means the date written on the execution page of this Agreement, and if no date or more than one date is written there, then the date on which this Agreement is signed by the last Party to do so;

‘Depreciated’ means the amount representing the reduction in value of an Asset calculated in accordance with Australian Accounting Standards;

‘Electronic Communication’ has the same meaning as in the *Electronic Transactions Act 1999* (Cth);

‘Existing Material’ means all Material in existence prior to the Date of this Agreement:

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

the Activity Material;

‘Financial Year’ means each period from 1 July to the following 30 June (or other period You use for regular formal financial reporting) occurring during the Activity Period, or any part of such a period occurring at the beginning or end of the Activity Period;

‘Funding’ or **‘Funds’** means the amount or amounts (in cash or in kind) payable under this Agreement by Us as specified in the Schedule, including interest earned on that amount;

‘GST’ has the meaning as given in section 195-1 of the GST Act;

‘GST Act’ means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

‘Information System’ has the same meaning as in the *Electronic Transactions Act 1999* (Cth);

‘Intellectual Property Rights’ includes all copyright (including rights in relation to phonograms and broadcasts), all rights in relation to inventions (including patent rights), plant varieties, registered and unregistered trademarks (including service marks), registered designs, circuit layouts, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields;

‘Interest’ means interest calculated at an interest rate equal to the general interest charge rate for a day pursuant to section 8AAD of the *Tax Administration Act 1953* (Cth), on a daily compounding basis;

‘Material’ includes documents, equipment, software (including source code and object code), goods, information and data stored by any means including all copies and extracts of the same;

‘Milestone’ means a stage of completion of the Activity, as identified at item 1.4 of the Schedule;

‘Operational’ means that the completed Project is operating in a way that enables it to achieve its intended Purpose, as identified at item 1.2 of the Schedule;

‘Operational Period’ means the period during which the completed Project must remain Operational, commencing from the date We accept the Project Completion Report to Our satisfaction. The duration of the Operational Period is dependent on the amount of Funding provided by Us under this Agreement. The timeframes are set out at item 1.3 of the Schedule;

‘Other Contributions’ means financial or in-kind resources (with in-kind resources valued at market rates) used by You for the Activity and the Project, other than the Funding;

‘Party’ means a party to this Agreement;

‘Personal Information’ has the same meaning as under the *Privacy Act 1988* (Cth), which currently is information or an opinion (including information or an opinion forming part of a data base), 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;

‘Purpose’ means the purpose for which the completed Project is required to be used, as set out at item 1.2 of the Schedule;

‘Privacy Commissioner’ means the Office of the Privacy Commissioner established under the *Privacy Act 1988* (Cth) and includes any other entity that may, from time to time, perform the functions of that Office;

‘Program’ means the Better Regions Program;

‘Progress Report’ means the report(s) as set out at item 3.2 and item 3.3 of the Schedule;

‘Project’ means the project identified in the Schedule and includes the Activity and Project;

Project Completion Report means the report as set out at item 3.4 of the Schedule;

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

‘Related Body Corporate’ has the meaning given in section 9 of the *Corporations Act 2001* (Cth);

‘Repayment Event’ means any of the following events:

- (a) termination of this Agreement;
- (b) failure to commence using the Asset within three months of its acquisition, or the cessation of using the Asset, in the manner and within the timeframe specified in item 1.7 of the Schedule;
- (c) failure to commence using the Upgraded Item within three months of the completion of its upgrade, or the cessation of using the Upgraded Item, in the manner and within the timeframe specified in item 1.7 of the Schedule;
- (d) failure to deal with the Asset as directed under subclauses 7.5, 7.6 and 7.7; and
- (e) failure to deal with the Upgraded Item as directed under subclauses 7A.3, 7A.4 and 7A.5.

‘Report’ means Activity Material that is provided to Us for reporting purposes on matters including the use of the Funding, whether or not Activity Milestones or Project Milestones have been achieved, progress reports and evaluations of the Activity, Project or obligations of this Agreement, as stipulated in the Schedule or as specified by Us at any time;

‘Schedule’ refers to the schedule to this Agreement;

‘Specified Personnel’ means the personnel (whether Your employees or subcontractors), or people with specific skills, specified in the Schedule as personnel required to undertake the Activity or any part of the work constituting the Activity;

‘Taxable Supply’ has the same meaning as it has in the *GST Act*;

‘Term of this Agreement’ refers to the period described in subclause 2.1;

‘Undepreciated’ in relation to the value of an Asset, means the value of the Asset, which has not been Depreciated;

‘Upgraded Item’ means any item of tangible property, which has been upgraded either wholly or in part with use of the Funds and has a value of over \$5,000 inclusive of GST, but does not include an Asset;

‘Us’, ‘We’ and ‘Our’ includes Our officers, delegates, employees and agents, and Our successors; and

‘You’ and ‘Your’ includes, where the context admits, Your officers, employees, agents and subcontractors, and Your successors.

1.2 In this Agreement, unless the contrary intention appears:

- (a) words in the 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 corporate or otherwise;
- (d) all references to clauses are clauses in this Agreement;
- (e) all references to dollars are to Australian dollars and this Agreement uses Australian currency;
- (f) reference to any statute or other legislation (whether primary or subordinate) is to a statute or other legislation of the Commonwealth and, if it has been or is amended, is a reference to that statute or other legislation as amended;
- (g) an uncertainty or ambiguity in the meaning of a provision of this Agreement will not be interpreted against a Party just because that Party prepared the provision; and
- (h) where any word or phrase is given a defined meaning, any other part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.

1.3 The Schedule (and annexure and documents incorporated by reference, if any) form part of this Agreement. In the event of any conflict or inconsistency between any part of:

- (a) the terms and conditions contained in the clauses of this Agreement;
- (b) the Schedule;
- (c) the annexure, if any;
- (d) documents incorporated by reference, if any;

then the material mentioned in any one of paragraph (a) to (d) of this subclause 1.3 has precedence over material mentioned in a subsequent paragraph, to the extent of any conflict or inconsistency.

2. TERM OF THIS AGREEMENT

2.1 The Term of this Agreement commences on the Date of this Agreement and, unless terminated earlier, it expires on the Completion Date.

3. USE OF ASSET OR UPGRADED ITEM

3.1 During the Activity Period, You must use any Asset or Upgraded Item in accordance with this Agreement for the Activity and Project.

3.2 After the Activity Period You must use the Asset or Upgraded Item in the manner and within the timeframe specified in item 1.7 of the Schedule.

4. PAYMENT

4.1 Subject to sufficient funds being available for the Program, and compliance by You with this Agreement (including the invoicing requirements, if any, specified in the Schedule) We will provide You with the Funding at the times and in the manner specified in the Schedule.

4.2 Without limiting Our rights, We may withhold or suspend any payment in whole or in part until You have performed Your obligations under this Agreement.

4.3 If the completed Project ceases to be Operational within the Operational Period, We reserve the right to recover the Funding from You.

4.4 Any payments under this Agreement may be deferred or suspended by Us if You have outstanding or unacquitted moneys under any arrangement (whether contractual or statutory) between Us and You. Notwithstanding such suspension or deferral of any payments, You must continue to perform any obligations under this Agreement, unless We agree otherwise in writing.

4.5 The operation of this clause 4 survives the expiration or earlier termination of this Agreement.

5. MANAGEMENT OF FUNDING

5.1 You must carry out the Activity within the Activity Period and in accordance with this Agreement diligently, effectively and to a high professional standard.

5.2 The Funding must be expended by You only for the Activity in accordance with the Budget set out at Annexure B, and with this Agreement.

5.3 You must:

(a) ensure that the Funds are held in an account in Your name, and which You solely control, with an authorised deposit-taking institution authorised under the *Banking Act 1959* (Cth) to carry on banking business in Australia;

(b) if specified in the Schedule, the Funds must be held in an account that is:

- (i) established solely for the purposes of accounting for, and administering, any Funding provided by Us to You under this Agreement; and
- (ii) separate from Your other operational accounts;
- (c) notify Us, in writing, prior to the receipt of any Funds, of details sufficient to identify the account;
- (d) provide Us and the authorised deposit-taking institution with an authority for Us to obtain any details relating to the account;
- (e) if the account changes, notify Us in writing within 10 Business Days of the change occurring providing Us with details of the new account;
- (f) unless You are a sole director company or an individual, ensure that two signatories, who have Your authority to do so, are required to operate the account; and
- (g) identify the receipt and expenditure of the Funds separately within Your accounting Records so that at all times the Funds are identifiable and ascertainable.

5.4 You must keep financial Records relating to the Activity and Project so as to enable:

- (a) all income and expenditure related to the Activity and Project to be identified in Your accounting Records;
- (b) the preparation of financial statements in accordance with Australian Accounting Standards; and
- (c) the audit of those Records in accordance with Australian Auditing Standards.

5.5 Except with Our prior written approval, You must not use any of the following as any form of security for the purpose of obtaining or complying with any form of loan, credit, payment or other interest:

- (a) the Funds;
- (b) this Agreement or any of Our obligations under this Agreement; or
- (c) any Assets, Upgraded Items or Intellectual Property Rights in Activity Material.

5.6 If, during the Term of this Agreement, there remains an amount of Funding that has not been expended in accordance with this Agreement or not acquitted to Our satisfaction, then this amount must be refunded by You to Us within 20 Business Days, or other time period as advised by Us in writing, of a written notice from Us or dealt with as directed in writing by Us.

5.7 On completion of the Project, if the cost of the completed Project is less than the initial cost estimate of the Project, We may require You to return any unexpended Funding to Us within 20 Business Days of the completion of the Project, or any other time period as advised by Us in writing.

5.8 If Other Contributions were obtained, and the cost of the completed Project is less than the initial cost estimate of the Project, We may require You to return to Us a proportion of the cost savings. This proportion must be determined according to the percentage of Our contribution to the total amount of contributions (including any in-kind contributions) obtained by You for the Project.

- 5.9 You must return the proportion of cost savings referred to in subclause 5.8 to Us within 20 Business Days of the completion of the Project, or any other time period as advised by Us in writing.
- 5.10 If We do not direct otherwise in writing and the amount is not refunded to Us within 20 Business Days, or other time period as advised by Us in writing, Interest will accrue and be payable on the amount after the expiry of the 20 Business Days, or other time period as advised by Us in writing, until the amount is paid in full.
- 5.11 Any amount owed to Us under subclauses 5.6, 5.7 and 5.8 and any Interest owed under subclause 5.10, will be recoverable by Us as a debt due to Us by You without further proof of the debt by Us being necessary.
- 5.12 You must only expend the Funds in accordance with the Budget.
- 5.13 You may expend the Funds on any separate category of expenditure item within the Budget, but You must obtain prior written approval from Us for any transfer of Funds between categories of expenditure items within the Budget which exceed a percentage of the total Budget as specified in the Schedule. The total amount of transfers in any financial year must not exceed the percentage of the Budget specified in the Schedule.
- 5.14 We are not responsible for the provision of additional money to meet any expenditure in excess of the Funds.
- 5.15 The operation of this clause 5 survives the expiration or earlier termination of this Agreement.

6. OTHER CONTRIBUTIONS

- 6.1 Where You are required to secure Other Contributions under the terms of the Project approval, You must:
- (a) within 12 months of the Date of this Agreement, secure the Other Contributions; and
 - (b) within 10 Business Days of securing the Other Contributions, notify Us that You have secured the required amount of Other Contributions.
- 6.2 You must provide Us with satisfactory written evidence that the people (other than Us) identified in Annexure B will provide the Other Contributions to You, including the amounts to be provided, their due dates and the terms and conditions of the provision of the Other Contributions. The terms and conditions on which the Other Contributions are to be provided must be satisfactory to Us.
- 6.3 If You are not able to provide or obtain Other Contributions or provide or obtain them in time to enable completion of the Activity or the Project, then We may:
- (a) suspend payment of the Funds until the evidence of the Other Contributions referred to in subclause 6.2 has been received; or
 - (b) terminate this Agreement in accordance with clause 21.
- 6.4 You must inform Us in writing within 10 Business Days:
- (a) of entering into any arrangement (whether contractual or statutory) under which You are entitled to receive any Other Contributions not identified in Annexure B; or

- (b) any changes to the Other Contributions identified in Annexure B.

6A. STATUTORY APPROVAL

- 6A.1 If the terms of the Project approval require You to obtain any statutory approvals, You must provide Us with satisfactory written evidence that these statutory approvals have been obtained.
- 6A.2 You must provide Us with the evidence referred to in subclause 6A.1 within six (6) months of the Date of this Agreement, unless stated otherwise in the Schedule.
- 6A.3 If you do not comply with the requirements in subclauses 6A.1 and 6A.2, We may:
 - (a) suspend payment of the Funds until the evidence of the statutory approvals referred to in subclause 6A.1 has been received; or
 - (b) terminate this Agreement in accordance with clause 21, at Our sole discretion.

7. ASSETS

- 7.1 You must not use the Funding to acquire any Asset, apart from those detailed in the Schedule, without obtaining Our prior written approval. Approval may be given subject to any conditions We may impose.
- 7.2 Unless it is specified in the Schedule that We own the Asset then, subject to this clause 7 and the terms of any relevant lease, You own any Asset.
- 7.3 If We own the Asset, or the Asset is leased by You from a third party, then:
 - (a) if We own the Asset, subclauses 7.7 and 7.9 do not apply; and
 - (b) if the Asset is leased, You must ensure that the terms of the lease are consistent with this clause 7 except for subclauses 7.7 and 7.9.
- 7.4 You must:
 - (a) obtain good title to the Asset;
 - (b) for the timeframe specified in the Schedule, not dispose of or grant any rights to any third party in or over any of the Assets without Our prior written approval until the expiry of the timeframe specified in the Schedule;
 - (c) notify Us of any impending event as referred to in paragraphs 7.4(b) or (d) as soon as possible;
 - (d) for the timeframe specified in the Schedule, not encumber or dispose of any Asset, or deal with or use any Asset other than in accordance with clause 3 and this clause 7, without Our prior written approval until the expiry of the timeframe specified in the Schedule;
 - (e) hold all Assets securely and safeguard them against theft, loss, damage, or unauthorised use;
 - (f) maintain all Assets in good working order;
 - (g) maintain all appropriate insurances for all Assets to their full replacement value noting Our interest, if any, in the Asset under this Agreement and provide satisfactory evidence of this on request from Us;

- (h) where the Asset is real property, such as land and/or a building, pay all rents, rates, taxes levies and other outgoings of any nature in relation to the Asset;
- (i) where the Asset is a building, construct the building:
 - i. in accordance with the designs and plans submitted by You to Us;
 - ii. in a good and workmanlike manner by qualified tradespeople; and
 - iii. with a minimum of delay;
- (j) where the Asset is a building, comply with all laws regarding the construction of the building;
- (k) if required by law, maintain registration and licensing of all Assets;
- (l) be fully responsible for, and bear all risks relating to, the use or disposal of all Assets;
- (m) if specified in the Schedule, maintain an Assets register in the form and containing the details as described in the Schedule; and
- (n) as and when requested by Us, provide copies of the Assets register to Us.

7.5 You must deal with any Asset as directed by Us in Our sole discretion for the purpose of securing its ongoing use or to give any charge, mortgage or other appropriate form of security in favour of Us over it and on terms specified by Us.

7.6 Subject to subclause 7.5 and without prejudice to any other rights that arise in the event of a breach of this Agreement, if a Repayment Event occurs, You must, as We may direct in writing:

- (a) continue to use the Asset in the manner, and in accordance with any conditions, notified by Us;
- (b) pay to Us within 20 Business Days after the Repayment Event, an amount specified by Us up to the total amount of Funding; or
- (c) sell the Asset for the best price reasonably obtainable and pay to Us, within 20 Business Days of the sale, the proportion of the proceeds of the sale that is equivalent to the proportion of the purchase price of the Asset (less an amount equal to the reasonable disposal costs incurred by You) that was funded from the Funding.

7.7 If You sell or otherwise dispose of an Asset during the Term of this Agreement (which must be with Our prior written consent and subject to any conditions We may impose) and at the time of the sale or disposal the Asset has not been fully Depreciated You must take the action We require (which may include paying to Us an amount equal to the proportion of the Undepreciated value of the Asset, that is equivalent to the proportion of the purchase price of the Asset that was funded from the Funding).

7.8 If any of the Assets are lost, damaged or destroyed, You must reinstate the Assets including from the proceeds of the insurance and this clause 7 continues to apply to the reinstated Assets. Any surplus from the proceeds of the insurance must be notified to Us and used and accounted for as Funding under this Agreement.

7.9 On completion of the Activity or earlier termination of this Agreement We may require You to deal with the Asset as We may, at Our sole discretion, direct in writing.

- 7.10 If, on completion of the Activity or earlier termination of this Agreement, an Asset has not been fully Depreciated You must take the action We nominate with respect to the Asset, including:
- (a) continue to use the Asset in the manner outlined in item 1.7 of the Schedule for the period specified in that item;
 - (b) transfer ownership of the Asset to a third party nominated by Us so that they can use the Asset in the manner outlined in item 1.7 of the Schedule; or
 - (c) pay to Us, within 20 Business Days after completion of the Activity or earlier termination of this Agreement, an amount equal to the proportion of the Undepreciated value of the Asset that is equivalent to the proportion of the purchase price of the Asset that was funded from the Funding.
- 7.11 If You fail to make payment as required by subclauses 7.6, 7.7 or 7.10:
- (a) You must pay Us the Interest on the relevant amount from the date it was due, for the period it remains unpaid; and
 - (b) the relevant amount, and Interest owed under this clause, will be recoverable by Us as a debt due to Us by You.
- 7.12 Our approvals under subclause 7.1 and paragraphs 7.4(b) and 7.4(d) will not be unreasonably withheld. A decision as to whether an approval will be provided will be made within a reasonable time of the request.
- 7.13 The operation of this clause 7 survives the expiration or earlier termination of this Agreement.

7A. UPGRADED ITEMS

- 7A.1 You must not use the Funding to upgrade any item of tangible property, which will result in that item being valued at over \$5000, apart from those detailed in the Schedule, without obtaining Our prior written approval. Approval may be given subject to any conditions We may impose.
- 7A.2 You must:
- (a) have and maintain good title to the Upgraded Item;
 - (b) for the timeframe specified in the Schedule, not dispose of or grant any rights to any third party in or over any of the Upgraded Items without Our prior written approval until the expiry of the timeframe specified in the Schedule;
 - (c) notify Us of any impending event as referred to in paragraphs 7A.2(b) or (d) as soon as possible;
 - (d) for the timeframe specified in the Schedule, not encumber or dispose of any Upgraded Item, or deal with or use any Upgraded Item other than in accordance with clause 3 and this clause 7A, without Our prior written approval until the expiry of the timeframe specified in the Schedule;
 - (e) hold all Upgraded Items securely and safeguard them against theft, loss, damage, or unauthorised use;
 - (f) maintain all Upgraded Items in good working order;

- (g) maintain all appropriate insurances for all Upgraded Items to their full replacement value noting Our interest, if any, in the Upgraded Item under this Agreement and provide satisfactory evidence of this on request from Us;
- (h) where the Upgraded Item is real property, such as land and/or a building, pay all rents, rates, taxes levies and other outgoings of any nature in relation to the Upgraded Item;
- (i) where the Upgraded Item is a building, construct the building:
 - i. in accordance with any designs and plans submitted by You to Us;
 - ii. in a good and workmanlike manner by qualified tradespeople; and
 - iii. with a minimum of delay;
- (j) where the Upgraded Item is a building, comply with all laws regarding the upgrade of the building;
- (k) if required by law, maintain registration and licensing of all Upgraded Items;
- (l) be fully responsible for, and bear all risks relating to, the use or disposal of all Upgraded Items;
- (m) if specified in the Schedule, maintain an Upgraded Items register in the form and containing the details as described in the Schedule; and
- (n) as and when requested by Us, provide copies of the Upgraded Items register to Us.

7A.3 You must deal with any Upgraded Item as directed by Us in Our sole discretion for the purpose of securing its ongoing use or to give any charge, mortgage or other appropriate form of security in favour of Us over it and on terms specified by Us.

7A.4 Subject to subclause 7A.3 and without prejudice to any other rights that arise in the event of a breach of this Agreement, if a Repayment Event occurs, You must, as We may direct in writing:

- (a) continue to use the Upgraded Item in the manner, and in accordance with any conditions, notified by Us;
- (b) pay to Us within 20 Business Days after the Repayment Event, an amount specified by Us up to the total amount of Funding; or
- (c) sell the Upgraded Item for the best price reasonably obtainable and pay to Us, within 20 Business Days of the sale, the proportion of the proceeds of the sale that is equivalent to the proportion of the upgrade of the Upgraded Item (less an amount equal to the reasonable disposal costs incurred by You) that was funded from the Funding.

7A.5 If You sell or otherwise dispose of an Upgraded Item during the Term of this Agreement (which must be with Our prior written consent and subject to any conditions We may impose) and at the time of the sale or disposal the Upgraded Item has not been fully Depreciated You must take the action We require (which may include paying to Us an amount equal to the proportion of the upgrade of the Upgraded Item that was funded from the Funding).

- 7A.6 If any of the Upgraded Items are lost, damaged or destroyed, You must reinstate the Upgraded Items including from the proceeds of the insurance and this clause 7A continues to apply to the reinstated Upgraded Items. Any surplus from the proceeds of the insurance must be notified to Us and used and accounted for as Funding under this Agreement.
- 7A.7 On completion of the Activity or earlier termination of this Agreement We may require You to deal with the Upgraded Item as We may, at Our sole discretion, direct in writing.
- 7A.8 If, on completion of the Activity or earlier termination of this Agreement, an Upgraded Item has not been fully Depreciated You must take the action We nominate with respect to the Upgraded Item, including:
- (a) continue to use the Upgraded Item in the manner outlined in item 1.7 of the Schedule for the period specified in that item;
 - (b) transfer ownership of the Asset to a third party nominated by Us so that they can use the Asset in the manner outlined in item 1.7 of the Schedule; or
 - (c) pay to Us, within 20 Business Days after completion of the Activity or earlier termination of this Agreement, an amount equal to the proportion of the Undepreciated value of the Upgraded Item, that is equivalent to the proportion of the upgrade of the Upgraded Item that was funded from the Funding.
- 7A.9 If You fail to make payment as required by subclauses 7A.4, 7A.5 and 7A.8:
- (a) You must pay Us the Interest on the relevant amount from the date it was due, for the period it remains unpaid; and
 - (b) the relevant amount, and Interest owed under this clause, will be recoverable by Us as a debt due to Us by You.
- 7A.10 Our approvals under subclause 7A.1 and paragraphs 7A.2(b) and 7A.2(d) will not be unreasonably withheld. A decision as to whether an approval will be provided will be made within a reasonable time of the request.
- 7A.11 Unless otherwise specified in the Schedule paragraphs 7A.2 (b) and (d), subclauses 7A.3, 7A.5 and 7A.7 do not apply to this Agreement.
- 7A.12 The operation of this clause 7A survives the expiration or earlier termination of this Agreement.

8. RECORDS

- 8.1 You must keep full and accurate Records of the conduct of the Activity and the Project including, progress against the Milestones, the receipt and use of Funding and Other Contributions (if any), the acquisition of Assets and Upgraded items and the creation of Intellectual Property Rights in Activity Material.
- 8.2 Records maintained under subclause 8.1 must be retained by You for a period of no less than 7 years after the end of the Activity Period.
- 8.3 The operation of this clause 8 survives the expiration or earlier termination of this Agreement.

9. REPORTING

9.1 You must provide to Us, at the times and in the manner stated in the Schedule or as requested by Us at any time:

- (a) progress reports and performance information of Your progress in undertaking the Activity and the Project ; and
- (b) financial information (including bank statements, receipts and invoices) and audited financial reports of receipt and expenditure of the Funding and Other Contributions (excluding in-kind).

9.2 You must:

- (a) within, the period stated in the Schedule after the expiry of the Activity Period or any earlier termination of this Agreement;
- (b) at the times stated in the Schedule; and
- (c) at other times notified by Us,

provide Us with:

- (d) audited statements of receipts and expenditure in respect of the Funding and Other Contributions (excluding in-kind) which must include a definitive statement made by the Approved Auditor as to whether:
 - (i) the statements of receipts and expenditure are fair and true; and
 - (ii) Funding and Other Contributions (excluding in-kind) were held and expended in accordance with this Agreement; and
- (e) a certificate that:
 - (i) all Funding and Other Contributions (excluding in-kind) received was expended for the purpose of the Activity and Project and expended and held in a manner in accordance with this Agreement; and
 - (ii) salaries and allowances paid to persons involved in the Activity are in accordance with any applicable award or agreement in force under any relevant law on industrial or workplace relations.

9.3 The audits referred to in paragraph 9.2(d) and the certificate referred to in paragraph 9.2(e), must comply with the requirements, if any, described in the Schedule.

9.4 The audits referred to in paragraph 9.2(d) must be carried out by an Approved Auditor and must comply with the Australian Auditing Standards.

9.5 The certificate referred to in paragraph 9.2(e) must be provided by Your Chief Executive Officer, Chief Financial Officer or a person authorised by You to execute documents and legally bind You by their execution.

9.6 The operation of this clause 9 survives the expiration or earlier termination of this Agreement.

10 TAXES, DUTIES AND GOVERNMENT CHARGES

- 10.1 Subject to this clause, all taxes, duties and government charges imposed or levied in Australia or overseas in connection with this Agreement must be borne by You.
- 10.2 The provisions of this clause in respect of GST apply if You are registered or are required to be registered for GST.
- 10.3 We are registered in accordance with the *GST Act* and will notify You of any change in Our GST registration status.
- 10.4 The Funds paid by Us under this Agreement include GST for supplies provided by You to Us in accordance with this Agreement and which are Taxable Supplies within the meaning of the *GST Act*.
- 10.5 You must give Us a tax invoice in accordance with the *GST Act* in relation to any Taxable Supply by You to Us in connection with this Agreement prior to payment of Funds by Us.
- 10.6 The Funding payable by Us to You under this Agreement must not include any amount which represents GST paid by You on Your own inputs and for which an input tax credit is available to You.
- 10.7 If a payment to satisfy a claim or a right to claim under or in connection with this Agreement (for example, a claim for damages for breach of this Agreement) gives rise to a liability to pay GST, the payer must also pay the amount of that GST (except any GST for which the payee is entitled to an input tax credit).
- 10.8 If a Party has a claim under or in connection with this Agreement for a cost on which that Party must pay GST, the claim is for the cost plus all GST on that cost (except any GST for which that Party is entitled to an input tax credit).
- 10.9 Any refund under subclause 5.6 must be inclusive of GST and must be accompanied by an Adjustment Note under the *GST Act* relating to Taxable Supplies for which You previously issued to Us a tax invoice.
- 10.10 You should be aware that, generally:
- (a) Funding received by You is included in Your assessable income if it is received in relation to the carrying on of a business, unless You are specifically exempt from income tax;
 - (b) any capital gain on disposal of an Asset or Upgraded item is included in Your assessable income, unless You are specifically exempt from income tax; and
 - (c) You may be required, in respect to employees, to pay fringe benefits tax and make superannuation contributions to a complying superannuation fund or pay the superannuation guarantee charge to the Australian Taxation Office.

11. COMMONWEALTH MATERIAL

- 11.1 Ownership of all Commonwealth Material, including Intellectual Property Rights in that Material, remains vested at all times in Us but We grant You a licence to use, copy and reproduce that Material only for the purposes of this Agreement and in accordance with any conditions or restrictions specified in the Schedule.
- 11.2 Upon the expiration of the Activity Period or earlier termination of this Agreement, You must return all Commonwealth Material to Us unless otherwise specified by Us.

- 11.3 Subject to clause 11.2, You must keep safely and maintain Commonwealth Material You have been given for the purposes of this Agreement.
- 11.4 The operation of this clause 11 survives the expiration or earlier termination of this Agreement.

12. INTELLECTUAL PROPERTY

- 12.1 Subject to this clause 12, as between Us and You (but without affecting the position between You and a third party) Intellectual Property Rights in Activity Material vest immediately in You.
- 12.2 You grant to Us a permanent, irrevocable, free, world wide, non-exclusive licence (including a right of sublicense) to use, reproduce, communicate, adapt and exploit the Intellectual Property Rights in Activity Material for any Commonwealth purpose.
- 12.3 This clause 12 does not affect the ownership of any Intellectual Property Rights in any Existing Material, which is specified in the Schedule. You, however, grant to Us or must arrange for the grant to Us of a permanent, irrevocable, free, world-wide, non-exclusive licence (including a right of sublicense) to use, reproduce, communicate, adapt and exploit the Intellectual Property Rights in Existing Material for any Commonwealth purpose.
- 12.4 You:
- (a) must, if requested by Us to do so, bring into existence, sign, execute or otherwise deal with any document which may be necessary or desirable to give effect to this clause 12;
 - (b) warrant that You are entitled, or will be entitled at the relevant time, to deal with the Intellectual Property Rights in the Activity Material and the Existing Material in accordance with this clause 12; and
 - (c) except as expressly provided for in this Agreement, must not deal with the Intellectual Property Rights in the Activity Material during the Term of this Agreement.
- 12.5 The operation of this clause 12 survives the expiration or earlier termination of this Agreement.

12A. MORAL RIGHTS

- 12A.1 For this clause, the 'Specified Acts' means the following classes or types of acts or omissions by or on behalf of Us:
- (a) those which would, but for this clause infringe the author's right of attribution of authorship or the author's right of integrity of authorship;
- but does not include:
- (b) those which would infringe the author's right not to have authorship falsely attributed.
- 12A.2 You warrant or undertake that:
- (a) the author of any Activity Material, other than Existing Material, has given or will give a written consent to the Specified Acts (whether occurring before or after the consent is given) which extends directly or indirectly for Our benefit; and

- (b) the author of any Existing Material has given or will give a written consent to the Specified Acts (whether occurring before or after the consent is given) which extends directly or indirectly for Our benefit in relation to such material used, reproduced, adapted and exploited in conjunction with the other Activity Material.

12A.3 The operation of this clause 12A survives the expiration or earlier termination of this Agreement.

13. DISCLOSURE OF INFORMATION

- 13.1 You acknowledge that We may be required to provide information in relation to the Funding or this Agreement, as required by the operation of any law, judicial or parliamentary body or governmental agency and accordingly We can give no undertakings to treat any of Your information or this Agreement as confidential information.
- 13.2 You are permitted to disclose Commonwealth Material, except to the extent, if any, specified in the Schedule. If We require You to keep any Commonwealth Material confidential We may permit You to disclose it subject to compliance with any conditions on that disclosure that We may impose.

14. PROTECTION OF PERSONAL INFORMATION

- 14.1 This clause applies only where You deal with Personal Information when, and for the purpose of, conducting the Activity under this Agreement.
- 14.2 You agree to be treated as a 'contracted service provider' within the meaning of section 6 of the *Privacy Act 1988* (Cth) (the Privacy Act), and agree in respect to the conduct of the Activity under this Agreement:
 - (a) to use or disclose Personal Information obtained during the course of conducting the Activity under this Agreement, only for the purposes of this Agreement;
 - (b) not to do any act or engage in any practice that would breach an Information Privacy Principle (IPP) contained in section 14 of the Privacy Act, which if done or engaged in by an agency, would be a breach of that IPP;
 - (c) to carry out and discharge the obligations contained in the IPPs as if You were an agency under that Act;
 - (d) to notify individuals whose Personal Information You hold, that complaints about Your acts or practices may be investigated by the Privacy Commissioner who has power to award compensation against You in appropriate circumstances;
 - (e) not to use or disclose Personal Information or engage in an act or practice that would breach section 16F (direct marketing), a National Privacy Principle (NPP) (particularly NPPs 7 to 10) or an Approved Privacy Code (APC), where that section, NPP or APC is applicable to You, unless:
 - (i) in the case of section 16F - the use or disclosure is necessary, directly or indirectly, to discharge an obligation under this Agreement; or
 - (ii) in the case of an NPP or an APC - where the activity or practice is engaged in for the purpose of discharging, directly or indirectly, an obligation under this Agreement, and the activity or practice which is authorised by this Agreement is inconsistent with the NPP or APC;

- (f) to disclose in writing to any person who asks, the content of the provisions of this Agreement (if any) that are inconsistent with an NPP or an APC binding a Party to this Agreement;
 - (g) to immediately notify Us if You become aware of a breach or possible breach of any of the obligations contained in, or referred to in, this clause 14, whether by You or any subcontractor;
 - (h) to comply with any directions, guidelines, determinations or recommendations of the Privacy Commissioner to the extent that they are not inconsistent with the requirements of this clause; and
 - (i) to ensure that any of Your employees who are required to deal with Personal Information for the purposes of this Agreement are made aware of Your obligations set out in this clause 14.
- 14.3 You agree to ensure that any subcontract entered into for the purpose of fulfilling Your obligations under this Agreement contains provisions to ensure that the subcontractor has the same awareness and obligations as You have under this clause, including the requirement in relation to subcontracts.
- 14.4 You agree to indemnify Us in respect of any loss, liability or expense suffered or incurred by Us which arises directly or indirectly from a breach of any of Your obligations under this clause 14, or a subcontractor under the subcontract provisions referred to in subclause 14.3.
- 14.5 In this clause 14, the terms 'agency', 'Approved Privacy Code' (APC), 'Information Privacy Principles' (IPPs), and 'National Privacy Principles' (NPPs) have the same meaning as they have in section 6 of the Privacy Act, and 'subcontract' and other grammatical forms of that word has the meaning given in section 95B(4) of the Privacy Act.
- 14.6 The operation of this clause 14 survives the expiration or earlier termination of this Agreement.

15. INDEMNITY

- 15.1 You indemnify (and keep indemnified) Us, Our officers, employees, and agents against any:
- (a) loss or liability incurred by Us;
 - (b) loss of or damage to Our property; or
 - (c) loss or expense incurred by Us in dealing with any claim against Us, including legal costs and expenses on a solicitor/own client basis and a cost of time spent, resources used, or disbursements paid by Us;
- arising from:
- (d) any act or omission by You, or any of Your employees, agents, volunteers, or subcontractors in connection with this Agreement, where there was fault on the part of the person whose conduct gave rise to that liability, loss, damage, or expense;
 - (e) any breach by You of Your obligations or warranties under this Agreement;
 - (f) the use of the Assets or Upgraded Items; or

(g) the use by Us of the Activity Material or Existing Material, including any claims by third parties about the ownership or right to use Intellectual Property Rights in Activity Material or Existing Material.

15.2 Your liability to indemnify Us under this clause 15 will be reduced proportionally to the extent that any fault on Our part contributed to the relevant loss, damage, expense, or liability.

15.3 Our right to be indemnified under this clause 15 is in addition to, and not exclusive of, any other right, power, or remedy provided by law, but We are not entitled to be compensated in excess of the amount of the relevant liability, damage, loss, or expense.

15.4 In this clause 15, “fault” means any negligent or unlawful act or omission or wilful misconduct.

15.5 This operation of this clause 15 survives the expiration or earlier termination of this Agreement.

16. INSURANCE

16.1 You must, for as long as any obligations remain in connection with this Agreement, have insurance as specified in the Schedule.

16.2 Whenever requested, You must provide Us, within 10 Business Days of the request, with evidence satisfactory to Us that You have complied with Your obligation to insure.

16.3 The operation of this clause 16 survives the expiration or earlier termination of this Agreement.

17. CONFLICT OF INTEREST

17.1 You warrant that, to the best of Your knowledge after making diligent inquiry, at the Date of this Agreement no Conflict exists or is likely to arise in the performance of Your obligations under this Agreement.

17.2 Without limiting the operation of this clause 17, You must, during the Term of this Agreement, ensure that no Conflict arises through Your involvement with the parties or programs, if any, specified in the Schedule.

17.3 If during the Term of this Agreement, a Conflict arises, You must:

- (a) immediately notify Us in writing of that Conflict and of the steps You propose to take to resolve or otherwise deal with the Conflict;
- (b) make full disclosure to Us of all relevant information relating to the Conflict; and
- (c) take such steps as We may, if We choose to, reasonably require to resolve or otherwise deal with that Conflict.

17.4 If You fail to notify Us under this clause 17, or are unable or unwilling to resolve or deal with the Conflict as required, We may terminate the Term of this Agreement in accordance with clause 21 .

18. ACCESS TO PREMISES AND RECORDS

18.1 You must give the Auditor-General, the Privacy Commissioner and persons authorised by Us (referred to in this clause 18 collectively as ‘those permitted’) access to premises at

which Records and Material associated with this Agreement are stored or work under the Activity is undertaken at all reasonable times and allow those permitted to inspect and copy Records and Material, in Your possession or control, for purposes associated with this Agreement or any review of performance under this Agreement. You must also give those permitted access to any Assets and Upgraded Items, wherever they may be located, and reasonable access to Your employees, for the same purpose.

- 18.2 You must provide all reasonable assistance requested by those permitted when they exercise the rights under subclause 18.1.
- 18.3 The rights referred to in subclause 18.1 are subject to:
- (a) the provision of reasonable prior notice by those permitted (except where they believe that there is an actual or apprehended breach of the law); and
 - (b) Your reasonable security procedures.
- 18.4 The requirement for access as specified in subclause 18.1 does not in any way reduce Your responsibility to perform Your obligations in accordance with this Agreement.
- 18.5 You must ensure that any subcontract entered into for the purpose of this Agreement contains an equivalent clause allowing those permitted to have access as specified in this clause 18.
- 18.6 This clause 18 applies for the Term of this Agreement and for a period of 7 years from the date of expiration or earlier termination of this Agreement.

19. DELAY

- 19.1 You must take all reasonable steps to minimise delay in completion of the Activity and the Project.
- 19.2 If You become aware that You will be delayed in progressing or completing the Activity in accordance with this Agreement or the Project generally, You must immediately notify Us in writing of the cause and nature of the delay. You are to detail in the notice the steps You will take to contain the delay.
- 19.3 On receipt of a notice of delay, We may at Our option:
- (a) notify You in writing of a period of extension to complete the Activity and vary this Agreement accordingly;
 - (b) notify You in writing of reduction in the scope of the Activity and any adjustment to the Funds for You to complete the reduced Activity and vary this Agreement accordingly;
 - (c) terminate this Agreement under clause 21 or
 - (d) take such other steps as are available under this Agreement.
- 19.4 Unless We take action under subclause 19.3, You are required to comply with the time frame for progressing and completing the Activity as set out in this Agreement.

20. TERMINATION WITH COSTS

- 20.1 We may, at any time by written notice to You, terminate the Term of this Agreement in whole or reduce the scope of this Agreement without prejudice to the rights, liabilities, or

obligations of either Party accruing prior to the date of termination. If this Agreement is terminated or reduced in scope We will only be liable for:

- (a) subject to subclause 20.3, payments under the payment provisions of this Agreement; and
- (b) subject to subclauses 20.4, 20.5 and 20.6, any reasonable costs incurred by You and directly attributable to the termination of this Agreement or reduction in scope of this Agreement.

20.2 Upon receipt of a notice of termination or reduction in scope You must:

- (a) cease or reduce the performance of Your obligations under this Agreement in accordance with the notice;
- (b) immediately do everything possible to mitigate all losses, costs, and expenses, arising from the termination or reduction in scope contained in the notice; and
- (c) immediately return to Us any Funds in accordance with paragraph 20.3(b); or
- (d) deal with any such Funds as We may direct in writing.

20.3 Where We terminate the Term of this Agreement under subclause 20.1 We:

- (a) will not be obliged to pay to You any outstanding amount of the Funds except to the extent that those monies have been legally committed for expenditure by You in accordance with this Agreement and payable by You as a current liability (written evidence of which will be required) by the date notice of termination given under subclause 20.1 is deemed to be received in accordance with subclause 35.2 [Notices]; and
- (b) will be entitled to recover from You any part of the Funds which:
 - (i) has not been legally committed for expenditure by You in accordance with this Agreement and payable by You as a current liability (written evidence of which will be required) by the date the notice of termination given under subclause 20.1 is deemed to be received in accordance with subclause 35.2 [Notices]; or
 - (ii) has not, in Our opinion, been expended by You in accordance with the terms and conditions of this Agreement,

and all such Funds will be regarded as a debt due to Us capable of being recovered as such in any court of competent jurisdiction.

20.4 If there is a reduction in scope of the obligations under this Agreement, Our liability to pay any part of the Funding will, in the absence of agreement to the contrary, abate proportionately to the reduction in the obligations under this Agreement.

20.5 Our liability to pay any compensation under or in relation to this clause 20 is subject to:

- (a) Your strict compliance with this clause 20; and
- (b) Your substantiation of any amount claimed under paragraph 20.1(b).

20.6 We will not be liable to pay compensation for loss of prospective profits for a termination or reduction in scope under this clause 20 or loss of any benefits that would have been conferred on You had the termination or reduction not occurred.

21. TERMINATION FOR DEFAULT

21.1 If:

- (a) You fail to fulfil, or are in breach of any of Your obligations under this Agreement, and do not rectify the omission or breach within 10 Business Days of receiving a notice in writing from Us to do so;
- (b) You are unable to pay all Your debts as and when they become due and payable or You fail to comply with a statutory demand within the meaning of sections 459E and 459F of the *Corporations Act 2001* (Cth);
- (c) proceedings are initiated with a view to obtaining an order for Your winding up or any shareholder, member or director convenes a meeting for the purpose of considering or passing of any resolution for Your winding up;
- (d) You come under one of the forms of external administration referred to in Chapter 5 of the *Corporations Act 2001* (Cth) or equivalent provisions in Incorporated Associations legislation of the States and Territories or Parts IV and V of the *Aboriginal Councils and Associations Act 1976* (Cth), or an order has been made for the purpose of placing You under external administration;
- (e) being an individual, You become bankrupt or enter into a scheme of arrangement with creditors;
- (f) in relation to this Agreement, You breach any law of the Commonwealth, or of a State or Territory;
- (g) You cease to carry on business;
- (h) We are satisfied that any statement made in Your application for Funding is incorrect, incomplete, false or misleading in a way which would have affected the original decision to approve the Funding; or
- (i) notice is served on You or proceedings are taken to cancel Your incorporation or registration or to dissolve You as a legal entity,

then, in the case of any one or more of these events, We may immediately terminate the Term of this Agreement by giving written notice to You of the termination.

21.2 Where We terminate the Term of this Agreement under subclause 21.1 We:

- (a) will not be obliged to pay to You any outstanding amount of the Funds except to the extent that those monies have been legally committed for expenditure by You in accordance with this Agreement and payable by You as a current liability (written evidence of which will be required) by the date notice of termination given under subclause 21.1 is deemed to be received in accordance with subclause 35.2 [Notices]; and
- (b) will be entitled to recover from You any part of the Funds which:
 - (i) has not been legally committed for expenditure by You in accordance with this Agreement and payable by You as a current liability (written evidence of which will be required) by the date the notice of termination given under subclause 21.1 is deemed to be received in accordance with subclause 35.2 [Notices]; or

- (ii) has not, in Our opinion, been expended by You in accordance with the terms and conditions of this Agreement,

and all such Funds will be regarded as a debt due to Us capable of being recovered as such in any court of competent jurisdiction.

- 21.3 If You do not repay Us the amount referred to in paragraph 21.2(b) within 10 Business Days of receipt of the notice of termination (or if a different period is stated in the Schedule, that period) You must also pay Us Interest on the outstanding amount which You acknowledge represents a reasonable pre-estimate of the loss incurred by Us as a result of the loss of investment opportunity for, or the reasonable cost of borrowing other money in place of, the amount which should have been repaid. The amount set out in the notice, and Interest owed under this clause will be recoverable by Us as a debt due to Us by You.
- 21.4 Subclause 21.2 does not limit or exclude any of Our other rights, including the right to recover any other amounts from You on termination of this Agreement.

22. SUBCONTRACTING

- 22.1 You must give Us notice in writing no later than 20 Business Days prior to the entering of any subcontracting arrangement that You intend to enter into such an arrangement. We may:
 - (a) prohibit You from proceeding with the subcontracting arrangement;
 - (b) impose such terms and conditions as We think fit on the subcontracting arrangement,by so notifying You in writing no later than 15 Business Days prior to the date you propose to enter the subcontracting arrangement.
- 22.2 Your notice to Us of the proposed subcontracting arrangement must detail:
 - (a) the part of the Activity the subcontractor is to deliver;
 - (b) the name and ABN or ACN of the subcontractor;
 - (c) the date You propose to enter the subcontracting arrangement; and
 - (d) how the subcontractor was selected.
- 22.3 If Our notice under subclause 22.1 is provided to You more than 15 Business Days prior to the date You propose to enter the subcontracting arrangement, it is deemed that Our approval of the subcontracting arrangement has been granted.
- 22.4 You are fully responsible for the performance of Your obligations under this Agreement, even though You may have subcontracted any of them.
- 22.5 Despite any approval given by Us under subclause 22.3, or any conditions imposed by Us under subclause 22.1, You are responsible for ensuring the suitability of a subcontractor for the work proposed to be carried out and for ensuring that such work meets the requirements of this Agreement.
- 22.6 We may revoke Our approval of a subcontractor on any reasonable ground.
- 22.7 Upon receipt of a written notice from Us revoking Our approval of a subcontractor, You must, as soon as practicable (or as We may direct in the notice), cease using that

subcontractor to perform any of Your obligations unless We direct that the subcontractor be replaced immediately, in which case You must comply with the direction.

- 22.8 If We withdraw Our approval of a subcontractor, You remain liable under this Agreement for the past acts or omissions of Your subcontractors as if they were current subcontractors.
- 22.9 You must, in any subcontract placed with a subcontractor, reserve a right of termination to take account of Our right of termination under clauses 20 or 21, Our right of revocation of approval under subclause 22.6 and the requirement for insurance under clause 16, and You must, where appropriate, make use of that right in the event of a termination or revocation by Us.
- 22.10 You must not enter into a subcontract under this Agreement with a subcontractor named by the Director of the Equal Opportunity for Women in the Workplace Agency as an employer currently not complying with the *Equal Opportunity for Women in the Workplace Act 1999* (Cth).

23. ACKNOWLEDGMENT AND PUBLICITY

- 23.1 You must, in all publications, promotional and advertising materials, public announcements and activities by You or on Your behalf in relation to the Activity or the Project, or any products, processes or inventions developed as a result of it, acknowledge the financial and other support You have received from Us, in the manner, if not set out in the Schedule, then to be approved by Us prior to its use.
- 23.2 We reserve the right to publicise and report on the awarding of Funding to You. We may do this by including in media releases, general announcements about the Funding and in annual reports Your name, the amount of the Funds given to You and the title and a brief description of the Activity and the Project.
- 23.3 This clause 23 applies for the Term of this Agreement and for a period of 7 years from the date of expiration or earlier termination of this Agreement.

24. SPECIFIED PERSONNEL

- 24.1 You must ensure that the Specified Personnel, if any, listed in the Schedule undertake activities in respect of the Activity in accordance with the terms of this Agreement.
- 24.2 Where Specified Personnel are unable to undertake activities in respect of the Activity, You must notify Us immediately. You must, if so requested by Us, provide replacement personnel acceptable to Us without additional payment and at the earliest opportunity.
- 24.3 We may give notice on reasonable grounds related to performance of the Activity requiring You to remove personnel (including Specified Personnel) from work in respect of the Activity. You must, at Your own cost, promptly arrange for the removal of such personnel from work in respect of the Activity and their replacement with personnel acceptable to Us.
- 24.4 If You are unable to provide acceptable replacement personnel We may terminate this Agreement in accordance with the provisions of clause 21 .

25. COMPLIANCE WITH LAWS AND OUR POLICIES

- 25.1 You must, in carrying out Your obligations under this Agreement, comply with the provisions of all relevant statutes, regulations, by-laws and requirements of any Commonwealth, State, Territory or local authority, including those listed in the Schedule. You should note that under the *Criminal Code Act 1995* (Cth) section 137.1 giving false or misleading information is a serious offence.
- 25.2 You must, in carrying out Your obligations under this Agreement, comply with any of Our policies as notified by Us to You in writing, including those listed in the Schedule.
- 25.3 You must, when using Our premises or facilities, comply with all reasonable directions and procedures relating to occupational health, safety and security in effect at those premises or in regard to those facilities, as notified by Us or as might reasonably be inferred from the use to which the premises or facilities are being put.

26. NEGATION OF LEGAL RELATIONSHIP OF EMPLOYMENT, PARTNERSHIP AND AGENCY

- 26.1 You, Your employees, partners and agents will not, by virtue of this Agreement, be or for any purpose be deemed to be Our legal employees, partners or agents.
- 26.2 You must not, and must ensure that Your employees, partners and agents do not, represent Yourself or themselves as being Our employees, partners or agents.

27. ENTIRE AGREEMENT, VARIATION AND SEVERANCE

- 27.1 This Agreement records the entire agreement between You and Us in relation to its subject matter.
- 27.2 Except for action We are expressly authorised to take elsewhere in this Agreement, no variation of this Agreement is binding unless it is agreed in writing and signed by You and Us.
- 27.3 If a court or tribunal says any provision of this Agreement has no effect or interprets a provision to reduce an obligation or right, this does not invalidate any other provision.

28. WAIVER

- 28.1 If either You or We do not exercise (or delay in exercising) any of Your or Our rights, that failure or delay does not operate as a waiver of those rights.
- 28.2 A single or partial exercise by You or Us of any of Your or Our rights does not prevent the further exercise of any right.
- 28.3 Waiver of any provision of, or right under, this Agreement:
- (a) must be in writing signed by the Party entitled to the benefit of that provision or right; and
 - (b) is effective only to the extent set out in the written waiver.
- 28.4 In this clause 28, 'rights' means rights or remedies provided by this Agreement or at law.

29. ASSIGNMENT AND NOVATION

- 29.1 You must not assign Your rights under this Agreement without prior written approval from Us.
- 29.2 You agree not to enter into negotiations with any other person for the purposes of entering into an arrangement that will require novation of this Agreement without first consulting Us.

30. INCORPORATION

- 30.1 You warrant that Your Constitution is not, and will not become, inconsistent with this Agreement.
- 30.2 You must provide a copy of Your Constitution to Us upon request.
- 30.3 You must obtain Our written approval to any amendments to Your Constitution which may affect Your eligibility for the Funding or Your capacity to comply with this Agreement. If You alter Your Constitution in breach of this clause We may terminate this Agreement in accordance with clause 21.

31. FUNDING PRECONDITION

- 31.1 You agree that it is a precondition of entitlement to the Funding that You must:
- (a) have an Australian Business Number ("ABN");
 - (b) immediately notify Us if You cease to be registered with an ABN;
 - (c) correctly quote the ABN on all documentation to Us;
 - (d) supply proof of GST status, if requested by Us; and
 - (e) immediately notify Us of changes to Your GST status.

32. DISPUTE RESOLUTION

- 32.1 Subject to subclause 32.3, both You and We agree not to commence any legal proceedings in respect of any dispute arising under this Agreement, which cannot be resolved by informal discussion, until the procedure provided by this clause has been utilised.
- 32.2 Both You and We agree that any dispute arising during the course of this Agreement is dealt with as follows:
- (a) the Party claiming that there is a dispute will send the other a written notice setting out the nature of the dispute;
 - (b) the parties will try to resolve the dispute through direct negotiation by persons who they have given authority to resolve the dispute;
 - (c) the parties have 10 Business Days from the receipt of the notice to reach a resolution or to agree that the dispute is to be submitted to mediation or some alternative dispute resolution procedure; and
 - (d) if:
 - (i) there is no resolution of the dispute;

- (ii) there is no agreement on submission of the dispute to mediation or some alternative dispute resolution procedure; or
- (iii) there is a submission to mediation or some other form of alternative dispute resolution procedure, but there is no resolution within 15 Business Days of the submission, or such extended time as the parties may agree in writing before the expiration of the 15 Business Days,

then, either You or We may commence legal proceedings.

32.3 This clause 32 does not apply to the following circumstances:

- (a) either You or We commence legal proceedings for urgent interlocutory relief;
- (b) action by Us under or purportedly under clauses 4 , 18, 20 or 21; or
- (c) an authority of the Commonwealth, a State or Territory is investigating a breach or suspected breach of the law by You.

32.4 Despite the existence of a dispute, both You and We must (unless requested in writing by the other Party not to do so) continue to perform obligations under this Agreement.

32.5 The operation of this clause 32 survives the expiration or earlier termination of this Agreement.

33. APPLICABLE LAW AND JURISDICTION

33.1 The laws of the Australian Capital Territory apply to this Agreement.

33.2 Both You and We agree to submit to the non-exclusive jurisdiction of the courts of the Australian Capital Territory in respect to any dispute under this Agreement.

34. LIAISON AND MONITORING

34.1 You must:

- (a) liaise with and provide information to Us as reasonably required by Us; and
- (b) comply with all Our reasonable requests, directions, or monitoring requirements.

34.2 You may nominate, from time to time, a person who has authority to receive and sign notices and written communications for You under this Agreement and accept any request or direction in relation to the Activity and the Project.

35. NOTICES

35.1 A Party giving notice or notifying under this Agreement must do so in writing or by Electronic Communication:

- (a) directed to the recipient's address, as varied by any notice; and
- (b) hand delivered or sent by pre-paid post or Electronic Communication to that address.

35.2 The parties' address details are as specified in the Schedule.

35.3 A notice given in accordance with subclause 35.1 is taken to be received:

- (a) if hand delivered, on delivery;

- (b) if sent by pre-paid post, 5 Business Days after the date of posting unless it has been received earlier;
- (c) if sent by Electronic Communication, at the time that would be the time of receipt under the *Electronic Transactions Act 1999* (Cth) if a notice was being given under a law of the Commonwealth, which is currently when the Electronic Communication enters the addressee's Information System.

36. COMPLIANCE WITH THE NATIONAL CODE OF PRACTICE FOR THE CONSTRUCTION INDUSTRY (THE CODE) AND THE AUSTRALIAN GOVERNMENT IMPLEMENTATION GUIDELINES FOR THE NATIONAL CODE OF PRACTICE FOR THE CONSTRUCTION INDUSTRY (THE GUIDELINES)
[OPTIONAL]

You must retain this clause 36 if this Project involves construction, and Our funding contribution is:

- (a) \$5 million or more, and represents at least 50% of the total construction value; or
- (b) \$10 million or more, irrespective of the proportion of Our funding.

Otherwise, you may delete this clause 36.

[Delete this box prior to execution]

36.1 In these clauses:

- (a) **'the Code'** means the National Code of Practice for the Construction Industry. A copy of the Code appears on the Internet at www.workplace.gov.au/building ;
- (b) **'the Guidelines'** means the Australian Government Implementation Guidelines for National Code of Practice for the Construction Industry, Revised September 2005, Reissued June 2006, published by the Department of Education, Employment and Workplace Relations. A copy of the Guidelines appears on the Internet at www.workplace.gov.au/building ;
- (c) **'the Model Tender and Contract Documentation'** means the Australian Government Model Tender and Contract Documentation, Released October 2008, published by the Department of Education, Employment and Workplace Relations. A copy of the Model Tender and Contract Documentation appears on the Internet at www.workplace.gov.au/building;
- (d) **'the Organisation'** means the state/territory department, agency or organisation to which the Commonwealth has directed the Program Expenditure;
- (e) **'the Program Expenditure'** means the funding provided by the Commonwealth for the Project;
- (f) **'the Project Parties'** means all contractors, subcontractors, suppliers, consultants, and employees who perform work in relation to the Project;
- (g) **'the Project'** means the works to be executed through the Program Expenditure.

36.2 Where the Program specifically relates to building and construction activity, subject to the thresholds specified in the Guidelines, the organisation must comply and ensure that the Project Parties comply with the Code and Guidelines.

- 36.3 The Guidelines require the organisation to ensure that:
- (a) all requests for tender, expressions of interest, submissions, and invitations to join Common Use Arrangements in relation to the Project made by it or any of the Project Parties contain the commitment to apply the Code and Guidelines as set out in the Model Tender and Contract Documentation; and
 - (b) all contracts entered into in relation to the Project by it or any of the Project Parties contain the commitment to apply the Code and Guidelines as set out in the Model Tender and Contract Documentation clauses.
- 36.4 The organisation shall maintain adequate records of compliance by it and each of the Project Parties with the Code and Guidelines. The organisation shall permit the Commonwealth and those authorised by the Commonwealth including a person occupying a position in the Office of the Australian Building and Construction Commissioner, full access to the premises and records of the organisation and the Project Parties to:
- (a) inspect any work, material, machinery, appliance, article, or facility;
 - (b) inspect and copy any record relevant to the Project and works governed by this Agreement;
 - (c) interview any person;
- as is necessary to monitor compliance with the Code and Guidelines.
- Additionally, the organisation shall agree that the organisation and each of the Project Parties will agree to a request from the Commonwealth, including a person occupying a position in the Office of the Australian Building and Construction Commissioner, to produce a specified document within a specified period in person, by fax or by post.
- 36.5 The Commonwealth and those authorised by it may publish or otherwise disclose information in relation to compliance by the organisation and the Project Parties with the Code and the Guidelines. The organisation must obtain the consent of the Project Parties to the publication or disclosure of information under this clause.
- 36.6 The organisation shall not appoint a subcontractor, consultant, or material supplier in relation to the Project where the appointment would breach a sanction imposed by the Minister for Employment and Workplace Relations.

37. AUSTRALIAN GOVERNMENT BUILDING AND CONSTRUCTION OHS ACCREDITATION SCHEME [OPTIONAL]

Scheme Background Information – This box must be deleted prior to executing this Agreement

Australian Government Building and Construction OHS Accreditation Scheme

From 1 October 2007, only persons who are accredited under the Australian Government Building and Construction OHS Accreditation Scheme are able to contract for building work that is **indirectly** funded by the Australian Government where:

- The value of the Australian Government contribution to the project is at least \$5 million and represents at least 50 per cent of the total construction project value; or

- The Australian Government contribution to a project is \$10 million or more, irrespective of the proportion of Australian Government funding.

The Scheme is established by the *Building and Construction Industry Improvement Act 2005* and specified in the Building and Construction Industry Improvement (Accreditation Scheme) Regulations 2005.

Building work is considered **indirectly** funded where it is funded by the Commonwealth (Australian Government) or a Commonwealth authority through grants and other programmes. This includes building projects where the Australian Government provides money through a funding agreement or grants to a person, for example, a state or territory government who then may contract with persons who will undertake the building work or persons who will arrange for the building work to be carried out.

Indirectly funded building work also includes building projects that the person, who receives Australian Government funding, facilitates by agreement (for example pre-commitment lease, Build Own Operate (BOO) and Build Own Operate Transfer (BOOT) arrangements).

If a project meets the above threshold amounts, the requirement that accredited builders carry out the building work only applies to contracts for building work that are valued at \$3 million or more as defined in the Building and Construction Industry Improvement (Accreditation Scheme) Regulations 2005.

37.1 This project is bound by the application of the Australian Government Building and Construction OHS Accreditation Scheme (the Scheme) and the following conditions:

- (a) All head contracts for building work under this project that are valued at \$3 million or more must:
 - (i) be notified to the Office of Federal Safety Commissioner at the earliest possible opportunity (that is, when approaching the market);
 - (ii) contain a requirement that the builder:
 - A. is accredited under the Scheme;
 - B. maintains Scheme accreditation for the life of the contract; and
 - C. must comply with all conditions of the Scheme accreditation.

EXECUTION CLAUSES

Executed by the parties as evidence of their agreement.

SIGNED for and on behalf of the
COMMONWEALTH OF AUSTRALIA
represented by and acting through the
**Department of Infrastructure,
Transport, Regional Development and
Local Government** ABN 86 267 354 017
on the day of
by

.....
sign here

.....
insert date

.....
print name of delegate

in the presence of:

.....
print name of witness

.....
witness sign here

Executed on behalf of
[insert name of Funding Recipient] ABN
[insert] on the day of
This Signatory warrants that they have the
authority to bind **[insert name of
Recipient used previously]**.

.....
Print name of Signatory

.....
sign here

.....
Position

.....
insert date

Signed in the presence of:

.....
Print name of Witness

.....
Position

.....
sign here

SCHEDULE

1. PROJECT, ACTIVITY & PURPOSE

Project

- 1.1 The Project to be undertaken by You is **[insert description of the project based on the Ministerial decision minute]**. The Project will include the Activity that Better Regions will fund, defined in more detail in item 1.4.
- 1.2 The Purpose for which the completed Project is required to be used is: **[List Purpose below. You may include more than one Purpose - add or delete rows as required]**

Purpose

- 1.3 The Operational Period commences on the date We accept the Project Completion Report, to Our satisfaction. The duration of the Operational Period is dependent on the amount of Funding provided by Us under this Agreement. The thresholds are set out in the table below:

Amount of Funding	Duration of Operational Period
Up to \$249,999	1 year
\$250,000 to \$999,999	3 years
\$1,000,000 and over	5 years

Activity

- 1.4 The Activity to be undertaken by You is **[insert description of what the Better Regions funding must be used for, including any deliverables that are required]**.
- 1.5 As part of the Activity You must achieve the Milestones specified in the table at Annexure A
- 1.6 The Activity Period commences on the Date of this Agreement and ends on **[insert date which reflects when the Activity must be completed by. Note this date may occur before the Project is completed]**

Use of Assets or Upgraded Item

- 1.7 You must continue to use the following Assets or Upgraded Item in the manner and within the timeframe as specified in the following table: **[You may add or delete cells in the table as required]**

Asset or Upgraded Item	Use	Timeframe

2. FUNDING AND PAYMENT

[Delete whichever item 2.1 is not applicable]

- 2.1 The Funding is \$**[insert amount]** (GST Inclusive).
- 2.1 The Funding is \$**[insert amount]**. This Funding does not include a GST component as You are GST exempt or not a GST registered organisation.
- 2.2 The Budget for the Activity, identifying Better Regions contributions and Other Contributions, is at Annexure B.
- 2.3 You must obtain written approval from Us for any transfer of Funds between cost items identified in the Budget, which exceed 10% of the Funding. The total amount of such transfers in any financial year must not exceed 20% of the Funding.
- 2.4 Subject to conditions at item 2.5, the Funding will be paid in accordance with the table at Annexure A.
- 2.5 (a) The first payment of Funding specified in the table at Annexure A will not be made until:
- (i) This Funding Agreement has been executed by all Parties;
 - (ii) The written confirmation of Other Contributions referred to in subclause 6.1 has been provided to Us and is to Our Satisfaction;
 - (iii) You have provided Us with an initial cost estimate for the Project, as referred to in clauses 5.7 and 5.8;
 - (iv) all Milestones specified in the table at Annexure A that relate to the first payment have been achieved to Our satisfaction;
 - (v) all Reports identified at item 3.1 as being due on or before the due date for the first payment have been received and accepted by Us;
 - (vi) a properly rendered tax invoice for the amount of the payment is received by Us; and
 - (vii) **[Optional Item – delete if not required]** We are satisfied that You have met the following pre-conditions, additional to those identified at clause 3.1, that have been imposed by Us on this approval of Funding.
- (b) The second and subsequent payments specified in the table at Annexure A will not be made until:
- (i) all Milestones specified in the table at Annexure A that relate to the relevant payment have been achieved to Our satisfaction;
 - (ii) all Reports identified at item 3.1 as being due on or before the due date for the relevant payment have been received and accepted by Us;
 - (iii) a statement of receipts and expenditure which shows that previous Funding has been expended, or evidence that previous payments will be expended in the near future is received and accepted by Us; and
 - (iv) a properly rendered tax invoice for the amount of the payment is received by Us.

2.6 Bank Account [Delete the following, if not applicable, and insert ‘Not Applicable’]

You must establish an account which is separate from Your other operational accounts, and used solely for the purposes of accounting for, and administering, any Funding.

2.7 Other Contributions

[Delete the following, if not applicable, and insert 'Not Applicable']

You must provide Us with written confirmation of Other Contributions as required under clause 6.1 within 10 Business Days of Your securing the Other Contributions.

3. REPORTS

3.1 You must provide to Us the Reports required by the times specified in the table below. **[You may add or delete cells as required]**

Report	Milestone(s) covered by the Report	Due Date for Report
Progress Report 1		
Progress Report 2		
Project Completion Report		

3.2 Each Progress Report must contain:

- (a) details of progress and performance against the Activity and Milestones that were completed, and that were due to be completed, during the period between Your previous Progress Report and the due date of this Progress Report (or in the case of the first Progress Report, the period between the Date of this Agreement and the due date of this report);
- (b) details of mitigating circumstances and remedial action undertaken in the event a Milestone is not met or completed in the manner and/or by the time specified;
- (c) copies of any published reports, promotional material, media publicity, pamphlets or other documentation relevant to the Project; and
- (d) evidence that you have obtained in-kind contributions.

3.3 The Progress Report(s) must also include:

- (a) a statement of receipts and expenditure to date in respect of the Funding;
- (b) a statement of receipts and expenditure to date in respect of Other Contributions (excluding in-kind) identified at Annexure B; and
- (c) an Assets register as specified in item 4 or Upgraded Items register as specified in item 4A of this Schedule.

3.4 The Project Completion Report must contain:

- (a) evidence that the Project specified in item 1.1, the Activity specified at item 1.4 of this Schedule, and the Milestones specified at Annexure A have been completed;
- (b) an analysis of the planning, implementation and overall process You followed to deliver the Project;
- (c) any recommendations on improved practice, relevant to Your and Our practices, that may assist in the delivery of future Projects;

- (d) an Assets register as specified in item 4 or Upgraded Items register as specified in item 4A of this Schedule;
- (e) evidence that You obtained in-kind contributions;
- (f) audited statements of receipt and expenditure, and certification in accordance with clause 9.2 of this Agreement;
- (g) copies of any published reports, promotional material, media publicity, pamphlets or other documentation relevant to the Project, not already included in the Progress Report/s; and
- (h) **[If you have any additional requirements on the audit and certificate in accordance with clause 3, insert the words “In accordance with clause 9.3...” and list your requirements. If you do not have any requirements, you may delete this paragraph];**

3.5 You may also be required by Us during the progress of the Activity and the Project, to provide interim Reports, in addition to those Reports identified in the table at item 3.1, in the manner specified by Us.

3.6 You must, at any time required by Us during the Operational Period, provide evidence satisfactory to Us that the Project is Operational.

3.7 Unless otherwise agreed by Us, all Reports must be:

- (a) supplied in hard copy or electronic form;
- (b) supplied in a format that is acceptable to Us; and
- (c) signed by Your Chief Executive Officer, Chief Financial Officer or other person authorised by You to execute documents and legally bind You by their execution.

4. ASSETS

4.1 You must maintain a register of all Assets in accordance with item 4.2 below. If an Asset is partly purchased using Funds provided under this Agreement, You must record the proportion purchased with these Funds in the Assets register.

4.2 The Assets register must include the following items (where applicable):

- Asset description;
- Purchase price or total lease cost;
- Date of purchase or lease;
- Type and term of lease;
- Location of Asset;
- Date of disposal approval;
- Disposal date; and
- Disposal method;

4.3 For the purposes of clause 7.1, the following Assets may be purchased without Our prior written approval:

[List here the Assets that the Department has determined the Recipient may purchase with the use of Funding, without having to obtain the Department’s prior written approval]

[Delete whichever item 4.4 is not applicable]

4.4 For the purposes of clause 7.2, We do not own any Assets.

4.4 For the purposes of clause 7.2, We own the following Assets:

[List here the Assets that are owned by the Department, and relevant to this Agreement]

4.5 You must seek Our prior written approval in accordance with clause 7 in relation to any relevant action (relating to use of the Assets) for a period of **[insert]** years from the Date of this Agreement.

4A. UPGRADED ITEMS

4A.1 For the purposes of clause 7A.1, the following items may be upgraded without Our prior written approval:

[insert here a description of the Upgraded Items which the Department has determined the Recipient may upgrade with the use of Funding, without having to obtain the Department's prior written approval]

[Delete whichever item 4A.2 is not applicable]

4A.2 For the purposes of paragraph 7A.2 (m), no Upgraded Items register is required.

4A.2 For the purposes of paragraph 7A.2 (m), You must maintain a register of all Upgraded Items in accordance with item 4A.3 below.

4A.3 The Upgraded Items register must include the following items (where applicable):

- Upgraded Item description;
- Purchase price or total lease cost;
- Date of purchase or lease;
- Type and term of lease;
- Location of Upgraded Item;
- Date of disposal approval;
- Disposal date;
- Disposal method; and
- The proportion of Funds used to upgrade the Upgraded Item.

[Delete subitem 4A.4 if You DO NOT wish paragraphs 7A.2(b) and (d), and subclauses 7A.3, 7A.5 and 7A.7 to apply to this Agreement.]

4A.4 For the purposes of subclause 7A.11, subclause 7A.2(b) and (d), and clauses 7A.3, 7A.5 and 7A.7 apply to this Agreement.

4A.5 You must seek Our prior written approval in accordance with clause 7A in relation to any relevant action for a period of **[insert]** years from the Date of this Agreement.

5. COMMONWEALTH MATERIAL

5.1 The following Commonwealth Material has been identified as sensitive and must not be kept by the Recipient after the completion of the Activity Period

a) [insert]

5.2 In accordance with sub-clause 11.1 the following conditions apply to the use of the corresponding listed Commonwealth Material:

Conditions

a) [insert]

[If no Commonwealth Material is specified, delete items 5.1 and 5.2 and insert 'No Commonwealth Material specified'.]

6. INTELLECTUAL PROPERTY

6.1 For the purpose of subclause 12.3, the following Existing Material is specified:

a)

[If no Existing Material is specified, delete item 6.1 and insert 'No Existing Material specified'.]

7. DISCLOSURE OF INFORMATION

7.1 The following material is confidential and must not be disclosed:

(a) **[insert description of any material provided by the Commonwealth that you do not want disclosed];**

(b)

[If there is no confidential material, delete item 7.1 and insert 'No confidential material has been specified'.]

8. INSURANCE

8.1 Workers' compensation insurance as required by law where You carry out activities under this Agreement.

8.2 Public liability insurance to the value of \$10 million per claim, or occurrence giving rise to a claim, in respect to activities undertaken under this Agreement, where occurrence means either a single occurrence or a series of occurrences if these are linked or occur in connection with one another from one original cause, as the case may be.

8.3 Insurance over any Asset or Upgraded Item for its full replacement value.

8.4 **[Insert reference to any insurance of specific relevance to the Activity, or delete this item if there is no other insurance specific to the Activity.]**

9. CONFLICT OF INTEREST

9.1 In accordance with sub-clause 17.2 You must, during the Term of this Agreement, ensure that no conflict arises through Your involvement with the following parties or programs:

a)

[If there is no conflict of interest, delete item 9.1 and insert ‘No conflict of interest has been identified.’]

10. SUBCONTRACTORS

10.1 The following subcontractors and the terms and conditions relating to their use have been approved by Us at the Date of this Agreement:

a)

[If there is no subcontracting arrangement in place, delete item 10.1 and insert ‘No subcontracting arrangement has been approved by Us at the Date of this Agreement’.]

11. ACKNOWLEDGEMENT AND PUBLICITY

11.1 You must acknowledge the financial and other support You have received from Us by erecting and maintaining a sign, provided by Us, which contains the words: *“This project is supported by funding from the Australian Government.”*

11.2 You must erect the sign upon the occurrence of one of the following events (which We may nominate and advise You of in advance):

(a) on completion of the Project; or

(b) at the official opening of the Project,

whichever is more appropriate.

11.3 Unless otherwise agreed to by Us, the sign provided by Us and referred to in item 11.1 must be displayed in public view on the site or location of the Project and maintained by You for a period of two years from the date it was erected, or for any longer period of time (which We may nominate and advise You of in advance)

11.4 Where You cannot attach the sign provided by Us in accordance with item 11.3:

(a) You may nominate other signage options, which must be approved by Us prior to display; or

(b) We may nominate other steps, with which You must comply, to publicise Our contribution to the Project.

11.5 We may advise You that Our logo must be included in all publications and promotional activities.

11.6 You must not use Our logo without Our approval. If We provide approval for Your use of Our logo, You must use it in accordance with Our branding guidelines (to be advised by Us).

11.7 All publicity, announcements and media releases relating to the Project must be cleared through the contact officer specified at item 14 with appropriate notice, before release to the media.

- 11.8 You must obtain Our agreement in relation to, and prior to, any official opening relating to the Project.
- 11.9 Requests for Australian Government representation at official openings relating to the Project must be coordinated through the contact officer with appropriate notice specified at item 14.

12. SPECIFIED PERSONNEL

12.1 The following Specified Personnel must undertake activities in respect of the Activity in accordance with the terms of this Agreement;

a)

[If there are no Specified Personnel, delete item 12.1, and insert ‘No Specified Personnel have been identified’.]

13. COMPLIANCE WITH LAWS AND POLICIES

13.1 In carrying out the Activity You must comply with all relevant legislation including the following:

- *Equal Opportunity for Women in the Workplace Act 1999;*
- *Racial Discrimination Act 1984;*
- *Sex Discrimination Act 1984;*
- *Disability Discrimination Act 1992;*
- *Crimes Act 1914;*
- *Criminal Code Act 1995;*
- **[insert reference to any legislation of specific relevance to the Activity (eg *Trade Practices Act 1974*) or delete this line if there is no legislation specific to the Activity to be identified].**

13.2 You must comply with the following policies in carrying out the Activity:

- **[list any specific policies, (eg application of Protective Security Manual) or delete this item 13.2 if there are no policies specific to the Activity to be identified]**

14. NOTICES

14.1 A Party giving notice or notifying under this Agreement must do so in the manner identified at Clause 35, to the following appropriate addressees:

a) Our contact details

Name:

Position:

Address:

Telephone:

Fax:

E-mail:

b) Your contact details

Name:

Position:

Address:
Telephone:
Fax:
E-mail:

DRAFT

ANNEXURE A

Table of Milestones relating to the Activity [you may add or delete cells as required; however, the first milestone should always be “The provision of the final Project budget, including the initial cost estimate for the Project as referred to in clauses 5.7 and 5.8”.]

Number	Milestone [insert description of Milestone in this column]	Milestone Completion Date	Payment amount (GST inclusive)	Due date for payment
1	The provision of the final Project budget, including the initial cost estimate for the Project, as referred to in clauses 5.7 and 5.8.			

ANNEXURE B

BUDGET		
Cost Item	Description	Amount (GST exclusive)
		\$
		\$
		\$
		\$
		\$
		\$
		\$
		\$
		\$
		\$
		\$
	Our Funding (GST Exclusive)	\$
	GST Component	\$
	Our Funding(GST Inclusive)	\$

OTHER CONTRIBUTIONS (FINANCIAL)		
Cost Item	Name of Contributor	Amount
		\$
		\$
		\$
		\$
	Other Contributions (Financial)	\$

OTHER CONTRIBUTIONS (IN-KIND)	
Description of Other Contribution (In-kind)	Name of Contributor

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