



Australian Government

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

SHORT FORM FUNDING AGREEMENT FOR BETTER REGIONS PROGRAM

Our reference:

[name]
[organisation]
[address]
[address]

Dear [insert name of person representing the funding recipient]

Letter of Offer for [insert short description of services here]

I am pleased to advise you that subject to the attached Schedule 2, I am able to offer you Funding as described in Schedule 1 to this letter.

The Funding is to be used for the Activity as described in Schedule 1, and is subject to your compliance with the requirements of Schedules 1 and 2 to this letter.

Schedule 1 sets out certain details in relation to the proposed funding to you. Schedule 2 sets out our standard terms and conditions for the funding.

If you wish to accept this offer of funding, please sign and date this and the attached copy of this letter and return them to me within 20 Business Days of the date of this letter. The Funding Agreement will commence only once the Commonwealth signs and dates the two copies of the letter. One copy will be returned to you for your records and should be kept with the two Schedules. The date of the Funding Agreement will be the date put on the letters by the Commonwealth it signs.

The Funding Agreement between you and the Commonwealth shall consist of this letter signed and dated by both parties, Schedules 1 and 2 and the Annexures (if any). These documents form the entire agreement relating to the Funding and can only be varied by written agreement.

In the event of any conflict or inconsistency between this letter, Schedule 2, Schedule 1 or any Annexure then the material first mentioned has precedence over later mentioned material to the extent of any conflict or inconsistency.

By signing this agreement, you are accepting the terms and conditions of a legally binding contract. If you are unsure about your legal obligations, we strongly advise you to seek the advice of a legal practitioner. Please contact me or [insert details] if you have any questions.

Yours sincerely

[Name]

[Position]

[Date]

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
by [print full name of delegate] on [insert
date]

.....
sign here

.....
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 ABN] by [insert name of
Signatory] who by signing warrants that
they have the authority to bind [insert
name of Recipient used previously].

.....
Print name of Signatory

.....
Position
.....
sign here

Signed in the presence of:

.....
Print name of Witness

.....
Position
.....
sign here

SCHEDULE 1

1. PROJECT, ACTIVITY AND 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 sub clause 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 the 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 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]**

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 Project, identifying Better Regions contributions and Other Contributions, is at Annexure A. You must provide satisfactory written evidence of the Other Contributions in accordance with item 3 of Schedule 2 of the Funding Agreement.
- 2.3 You must obtain prior written approval from Us for any transfer of funds between the categories of expenditure identified in the Budget, which exceeds 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 item 3.1 of Schedule 2 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 items 2.8 and 2.9 of Schedule 2;
 - (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 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, that have been imposed by Us on this approval of Funding.
 - a)
 - b)
- (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 relevant payment have been received and accepted by Us;
 - (iii) a statement of receipts and expenditure which shows that previous payments have 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.

Bank Account

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

- 2.6 This must be an account that is established solely for the purposes of accounting for, and administering, any Funding which is separate from Your other operational accounts.

Other Contributions

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

You must provide Us with written confirmation of Other Contributions as required under clause 3.1 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 the Milestones that were due to be completed, during the period between Your previous report and the due date of this 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 an Milestone is not met or completed in the manner and/or by the time specified; and
- (c) copies of any published reports, promotional material, media publicity, pamphlets or other documentation relevant to the Project.

3.3 The Progress Report(s) must also include:

- (a) a statement of receipts and expenditure to date in respect of the Funding; and
- (b) a statement of receipts and expenditure to date in respect of Other Contributions (excluding in- kind) identified at Annexure B.

3.4 The Project Completion Report must contain:

- (a) a summary of Your performance against the Milestones;
- (b) details of mitigating circumstances and remedial action taken in the event that a Milestone was not met or completed in the manner and/or by the time specified;
- (c) an analysis of the planning, implementation and overall process You followed to deliver the Project;
- (d) any recommendations on improved practice, relevant to Your and Our practices, that may assist in the delivery of future Projects;
- (e) an audited detailed statement of receipts and expenditure that will include the following information:

- i) a list of all budget items identified at Annexure B of this Agreement;
 - ii) total expenditure of Funding against each of the budget items identified at Annexure B of this Agreement;
 - iii) a summary of expenditure of Other Contributions;
 - iv) a definitive statement as to whether the financial accounts are complete and accurate, and a statement of the balance of Your account referred to in item 2.6 (if applicable); and
 - v) an audited statement that the Funding [and Other Contributions (if any)] was expended for the purpose of the Activity and in accordance with 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 Reports.

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 a 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. COMMONWEALTH MATERIAL

4.1 The following Commonwealth Material has been identified as sensitive and must not be disclosed by You during or after the completion of the Activity Period or kept by You after the completion of the Activity Period

a)

4.2 The following conditions apply to the use of the Commonwealth Material listed above:

Conditions

a)

[If no Commonwealth Material is specified, delete items 4.1 and 4.2, and insert 'No Commonwealth Material specified'.]

5. INTELLECTUAL PROPERTY

5.1 In accordance with sub-clause 6.2 the following Existing Material is identified:

a)

[If no Existing Material is specified, delete item 5.1 and insert 'No Existing Material is specified'.]

6. DISCLOSURE OF INFORMATION

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

a)

[If there is no confidential material, delete item 6.1 and insert ‘No confidential material has been identified’.]

7. INSURANCE

7.1 Workers’ compensation insurance as required by law where the recipient carries out activities under this Agreement.

7.2 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.

7.3 **[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].**

8. ACKNOWLEDGEMENT AND PUBLICITY

8.1 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.*”

8.2 You must erect the sign upon the occurrence of one of 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 most appropriate.

8.3 Unless otherwise agreed to by Us, the sign provided by Us and referred to in item 8.1 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).

8.4 Where You cannot attach the sign provided by Us in accordance with Item 8.3:

- (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.

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

- 8.6 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).
- 8.7 All publicity, announcements and media releases relating to the Project must be cleared through the contact officer specified at item 10.1 with appropriate notice, before release to the media.
- 8.8 You must obtain Our agreement in relation to, and prior to, any official opening relating to the Project.
- 8.9 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 10.1.

9. COMPLIANCE WITH LAWS AND POLICIES

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

- *Equal Opportunity for Women in the Workplace Act 1999* (Cth);
- *Racial Discrimination Act 1984* (Cth);
- *Sex Discrimination Act 1984* (Cth);
- *Disability Discrimination Act 1992* (Cth);
- *Crimes Act 1914* (Cth);
- *Criminal Code Act 1995* (Cth);
- **[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].**

9.2 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 9.2 if there are no policies specific to the Activity to be identified]**

10. NOTICES

10.1 A party giving notice or notifying under this Agreement must do so in the manner identified at Clause 20, 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

SCHEDULE 2

1. PAYMENT

- 1.1 Subject to sufficient funds being available for the Program, and compliance by You with this Agreement, We will provide You the Funding at the times and in the manner specified in Schedule 1.
- 1.2 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.
- 1.3 If the completed Project ceases to be Operational within the Operational Period, We reserve the right to recover the Funding from You.

2. MANAGEMENT OF FUNDING

- 2.1 You must carry out the Activity within the Activity Period and in accordance with this Agreement (including any applicable Principles and Guidelines), diligently, effectively and to a high professional standard.
- 2.2 The Funding must be expended by You only for the Activity in accordance with this Agreement.
- 2.3 You must identify the receipt and expenditure of the Funds separately within Your accounting Records so that at all times the Funds are identifiable and ascertainable.
- 2.4 You must 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 and provide Us with written details sufficient to identify this account prior to receipt of any Funds.
- 2.5 If specified in Schedule 1, the account referred to in subclause 2.6 must be established solely for the purpose of accounting for and administering the Funding provided by Us to You under this Agreement, and be separate from Your other operational accounts.
- 2.6 You must keep financial Records relating to the Activity and receipt and expenditure of the Funding so as to enable You to comply with Your obligations under clause 3.2.
- 2.7 If, at any time 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.
- 2.8 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.
- 2.9 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.

- 2.10 You must return the proportion of cost savings referred to in subclause 2.9 to Us within 20 Business Days of the completion of the Project, or any other time period as advised by Us in writing.
- 2.11 Any amount owed to Us under subclauses 2.7, 2.8 and 2.9 will be recoverable by Us as a debt due to Us by You without further proof of the debt by Us being necessary.
- 2.12 You must only expend Funding in accordance with the Budget set out at Annexure A.
- 2.13 You may expend the Funding on any separate category of expenditure item within the Budget, but You are to 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 Schedule 1. The total amount of transfers must not exceed the percentage of the Budget specified in Schedule 1.

3. OTHER CONTRIBUTIONS [optional clause]

- 3.1 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.
- 3.2 It is a condition precedent to the payment of Funding under this Agreement that You must get people (other than Us) as identified in Annexure A, to provide Us with satisfactory written evidence that they 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 upon which those Other Contributions are to be provided must be satisfactory to Us.
- 3.3 If You are not able to obtain Other Contributions or obtain them in time to enable completion of the Project, then we may:
- (a) suspend payment of the Funding until the evidence of the Other Contributions referred to in subclause 3.2 has been received; or
 - (b) terminate this Agreement in accordance with clause 22.
- 3.4 You must inform Us in writing within 10 Business Days of entering into any arrangement (whether contractual or statutory) under which You are entitled to receive any Other Contributions not specified in Annexure A.

3A. STATUTORY APPROVAL

- 3A.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.
- 3A.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.
- 3A.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.

4. RECORDS AND REPORTS

- 4.1 You must make full and accurate Records of the conduct of the Activity and the Project and retain them for a period of no less than 7 years after the end of the Activity Period.
- 4.2 You must provide to Us reports at the times and in the manner stated in Schedule 1.

5. TAXES, DUTIES AND GOVERNMENT CHARGES

- 5.1 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.
- 5.2 The provisions of this clause in respect of GST apply if You are registered or are required to be registered for GST.
- 5.3 We are registered in accordance with the GST Act and will notify You of any change in Our GST registration status.
- 5.4 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.
- 5.5 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.
- 5.6 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.
- 5.7 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 the Agreement) gives rise to a liability to pay GST, the payer must also pay, and indemnify the payee against, the amount of that GST (except any GST for which that payee is entitled to an input tax credit).
- 5.8 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).
- 5.9 Any refund under subclause 2.7 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.
- 5.10 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; and

- (b) You may be required, in respect to an employee, 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.

6. COMMONWEALTH MATERIAL

- 6.1 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 Commonwealth Material only for the purposes of this Agreement and in accordance with any conditions or restrictions specified in Schedule 1.

7. INTELLECTUAL PROPERTY

- 7.1 Subject to this clause 7, 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.
- 7.2 You grant to Us a permanent, irrevocable, free, world wide, non-exclusive licence (including a right of sublicense) to use, reproduce, adapt and exploit the Intellectual Property Rights in Activity Material, and any Existing Material specified in Schedule 1, for any Commonwealth purpose.

8. MORAL RIGHTS

- 8.1 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.
- 8.2 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.

9. DISCLOSURE OF INFORMATION

- 9.1 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.

- 9.2 You are permitted to disclose Commonwealth Material, except to the extent, if any, specified in Schedule 1. 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.

10. PROTECTION OF PERSONAL INFORMATION

10.1 You agree to:

- (a) comply, and ensure that any subcontractors (as defined in section 95B(4) of the *Privacy Act 1988* (Cth) (the Privacy Act), also comply, with the Information Privacy Principles (IPPs) contained in section 14 of the Privacy Act and National Privacy Principles (NPPs, as defined in section 6) 7 to 10 to the extent that the content of those principles apply to the types of activities You, and any subcontractors, are undertaking under this Agreement, as if You, and any subcontractors, were (in respect to the IPPs) an “agency”, or (in respect to NPPs 7 to 10) an “organisation” as defined in the Privacy Act;
- (b) not transfer Personal Information held in connection with this Agreement outside Australia, or allow parties outside Australia to have access to it, without Our prior approval;
- (c) be treated as a ‘contracted service provider’ within the meaning of section 6 of the Privacy Act;
- (d) not use or disclose Personal Information collected under the Agreement for direct marketing; and
- (e) disclose in writing to any person who asks, the content of the provisions of this Agreement (if any) which are inconsistent with an NPP or an Approved Privacy Code (as defined in section 6 of the Privacy Act) binding a Party to this Agreement.

11. INDEMNITY

11.1 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; or
- (f) 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.

- 11.2 Your liability to indemnify Us under this clause 11 will be reduced proportionally to the extent that any fault on Our part contributed to the relevant loss, damage, expense, or liability.
- 11.3 Our right to be indemnified under this clause 11 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.
- 11.4 In this clause 11, “fault” means any negligent or unlawful act or omission or wilful misconduct.

12. INSURANCE

- 12.1 You must have insurance as specified in Schedule 1.
- 12.2 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.

13. CONFLICT OF INTEREST

- 13.1 You warrant that, at the Date of this Agreement, no Conflict exists or is likely to arise in the performance of Your obligations under this Agreement, and You must seek to ensure that no Conflict arises during the Term of this Agreement, but if a Conflict does arise 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.
- 13.2 If You fail to notify Us under this clause 13, or are unable or unwilling to resolve or deal with the Conflict as required, We may by notice to You terminate the Term of this Agreement in which case subclauses 15.2 and 15.3 will apply.

14. ACCESS TO PREMISES AND RECORDS

- 14.1 You must give the Auditor-General, the Privacy Commissioner and any persons authorised by Us (referred to in this clause 14 collectively as ‘those permitted’) access to premises at which Material and Records associated with the Agreement is stored or work under the Activity is undertaken at all reasonable times and the right to inspect and copy Material and Records, in Your possession or control, for purposes associated with this Agreement or any review of performance under this Agreement.
- 14.2 You must provide all reasonable assistance requested by those permitted when they exercise the rights under subclause 14.1.
- 14.3 The rights referred to in subclause 14.1 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.

14.4 You must ensure that any subcontract entered into for the purpose of this Agreement contains an equivalent clause permitting Us, and other persons authorised by Us, to have access as specified in this clause 14.

15. TERMINATION

15.1 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 after receiving 10 Business Days notice in writing from Us to do so;
- (b) You come under one of the forms of external administration referred to in Chapter 5 of the *Corporations Act 2001* (Cth), or an order has been made for the purpose of placing You under external administration;
- (c) 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;
- (d) We consider it appropriate in the circumstances to do so;
- (e) being an individual, You become bankrupt or enter into a scheme of arrangement with creditors,

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

15.2 Where We terminate the Term of this Agreement under subclause 15.1 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 15.1 is deemed to be received in accordance with subclause 20.2; 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 15.1 is deemed to be received in accordance with subclause 20.2; 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.

15.3 Subclause 15.2 does not limit or exclude any of Our other rights, including the right to recover any other amounts from You on termination of the Term of the Agreement.

15.4 Where We terminate the Term of this Agreement under subclause 15.1(d) You will be entitled to any reasonable costs incurred by You and directly attributable to the termination of the Term of this Agreement subject to:

- (a) Your strict compliance with this clause 15; and
- (b) Your substantiation of any amount claimed under this subclause 15.4.

15.5 We will not be liable to pay compensation for loss of prospective profits for termination under this clause 15 or loss of any benefits that would have been conferred on You had the termination not occurred.

16. ACKNOWLEDGMENT AND PUBLICITY

16.1 You must, in any publicity in relation to the Activity and the Project, acknowledge the financial and other support You have received from Us, in the manner, if not set out in Schedule 1, then to be approved by Us prior to its use.

17. COMPLIANCE WITH LAWS AND OUR POLICIES

17.1 You must, in carrying out Your obligations under this Agreement, comply with all relevant legislation and government requirements, including those notified in Schedule 1. You should note that under the *Criminal Code Act 1995 (Cth)* section 137.1 giving false or misleading information is a serious offence.

18. ASSIGNMENT

18.1 You must not assign Your rights under this Agreement without prior written approval from Us.

19. APPLICABLE LAW AND JURISDICTION

19.1 The laws of the Australian Capital Territory apply to this Agreement and the courts of the Australian Capital Territory shall have non-exclusive jurisdiction in respect to any dispute under this Agreement.

20. NOTICES

20.1 Giving of notices

A Party giving notice or notifying under this Agreement must do so in writing:

- (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.

The parties' address details are as specified in Schedule 1.

20.2 Receipt of notice

A notice given in accordance with subclause 20.1 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.

21. SURVIVAL

- 21.1 The operation of clauses 1, 2, 4, 6, 7, 8, 10, 11, 12, 14 and 16 inclusive survive the expiration or earlier termination of the Term of this Agreement.

22. INTERPRETATION

- 22.1 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 Schedule 1 and includes the completion of the Milestones and the provision of the Activity Material;

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

- (i) brought into existence for the purpose of performing the Activity;
- (ii) incorporated in, supplied or required to be supplied along with the Material referred to in paragraph (i); or
- (iii) copied or derived from Material referred to in paragraphs (i) or (ii);

'**Activity Period**' means the period specified in Schedule 1 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**' and '**Funding Agreement**' refers to the Letter of Offer from Us as signed and dated by You and Us, Schedules 1 and 2 and any Annexures;

'**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;

'**Budget**' refers to the budget for expenditure of the Funding for the purposes of conducting the Activity or performing obligations under this Agreement.

'**Business Day**' in relation to the doing of any action in a place, means 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 Schedule 1, 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 providing the Activity to Us fairly and independently;

‘Date of this Agreement’ means the date written on the Letter of Offer by Us when signed by Us (after signature by You), and if no date is written there, then the date on which the Letter of Offer is signed by Us (after signature by You);

‘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;

‘Funding’ or **‘Funds’** means the amount or amounts (in cash or kind) payable under this Agreement, 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);

‘Guidelines’ refers to the guidelines for the Program, if any, as described in Schedule 1;

‘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;

‘Letter of Offer’ refers to the letter We sent You offering You the Funding;

‘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 Project set out in Schedule 1;

‘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 Schedule 1;

‘Operational Period’ means the period during which the completed Project must remain Operational during the Operational Period. The Operational Period commences 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 Schedule 1;

‘Other Contributions’ means financial or in-kind resources (with in-kind resources valued at market rates) used by You for 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;

‘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 Schedule 1;

‘Project’ means the project identified in Schedule 1 and includes the Milestones,

‘Project Completion Report’ means the report as set out at item 3.4 of Schedule 1;

‘Purpose’ means the purpose for which the completed Project is required to be used, as set out in item 1.2 of Schedule 1;

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

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

‘Term of this Agreement’ refers to the period between the Date of this Agreement and the Completion Date, unless this Agreement is terminated prior to the Completion Date, in which case it is the period between the Date of this Agreement and the date of termination;

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

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



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 of the Project as referred to in clauses 2.8 and 2.9 of Schedule 2]

Number	Milestone	Completion Date	Payment Amount (GST Inclusive)
1	The provision of the final Project budget, including the initial cost estimate of the Project as referred to in clauses 2.8 and 2.9 of Schedule 2		

