

*[This is the standard form agreement developed for use for AusLink Strategic Regional Projects under Part 6 of the AusLink (National Land Transport) Act 2005.]*

**FUNDING AGREEMENT**

**BETWEEN**

**COMMONWEALTH OF AUSTRALIA**  
**as represented by the Department of Transport and Regional**  
**Services ABN 86 267 354 017**

**AND**

***[INSERT FUNDING RECIPIENT'S NAME and ABN (note – this must be as specified in the project approval instrument)]***

in relation to funding for *[insert name of Project]* under the AusLink Strategic Regional Programme

## TABLE OF CONTENTS

PARTIES.....	4
PURPOSE .....	4
1. INTERPRETATION.....	4
2. TERM OF THIS AGREEMENT .....	11
3. OTHER COMMONWEALTH FUNDING .....	11
4. NOTIFICATION .....	11
5. PAYMENT .....	12
6. COMPLETION OF PROJECT AND MANAGEMENT OF FUNDING.....	13
7. OTHER CONTRIBUTIONS AND TRANSACTION DOCUMENTS.....	15
8. RECORDS.....	16
9. REPORTING .....	17
10. TAXES, DUTIES AND GOVERNMENT CHARGES.....	18
11. COMMONWEALTH MATERIAL.....	19
12. INTELLECTUAL PROPERTY.....	19
13. DISCLOSURE OF INFORMATION .....	20
14. PROTECTION OF PERSONAL INFORMATION .....	21
15. INDEMNITY AND RELEASE.....	22
16. INSURANCE.....	23
17. CONFLICT OF INTEREST .....	25
18. ACCESS AND AUDIT.....	25
19. DELAY .....	28
20. TERMINATION WITH COSTS .....	29
21. TERMINATION FOR DEFAULT .....	31
22. SUBCONTRACTING .....	33
23. ACKNOWLEDGMENT AND PUBLICITY.....	34
24. SPECIFIED PERSONNEL.....	35
25. COMPLIANCE WITH LAWS AND OUR POLICIES.....	36

26.	NEGATION OF LEGAL RELATIONSHIP OF EMPLOYMENT, PARTNERSHIP AND AGENCY .....	36
27.	ENTIRE AGREEMENT AND SEVERANCE .....	36
28.	WAIVER.....	37
29.	ASSIGNMENT AND NOVATION .....	37
30.	INCORPORATION .....	37
31.	FUNDING PRECONDITION .....	37
32.	DISPUTE RESOLUTION .....	38
33.	APPLICABLE LAW AND JURISDICTION .....	39
34.	LIAISON AND MONITORING .....	39
35.	NOTICES.....	39
36.	CONDITIONS OF APPROVAL .....	40
37.	VARIATION .....	40
38.	RECOVERY OF AMOUNTS AS DEBT DUE TO COMMONWEALTH.....	41
39.	COMPLIANCE WITH THE NATIONAL CODE OF PRACTICE FOR THE CONSTRUCTION INDUSTRY .....	41
40.	EXPENDITURE ON ROADS .....	43
41.	SURVIVAL .....	43
	SCHEDULE 1 .....	44
	SCHEDULE 2 – PROJECT SCHEDULE.....	53
	EXECUTION CLAUSES .....	55
	ANNEXURE A .....	56
	ANNEXURE B .....	57
	ANNEXURE C .....	59
	ANNEXURE D .....	59
	ANNEXURE E.....	59

## PARTIES

**COMMONWEALTH OF AUSTRALIA** (**'Commonwealth'**), represented by and acting through the Department of Transport and Regional Services ABN 86 267 354 017 (**'Us'** or **'We'** or **'Our'** as the case requires)

AND

*[INSERT NAME and DETAILS of FUNDING RECIPIENT including ABN and street address]*, (**'You'** or **'Your'** as the case requires)

## PURPOSE

A. We are committed to the AusLink Strategic Regional Programme, which seeks to advance economic growth in regional Australia through the provision of improved and/or safer transport infrastructure.

B. You are committed to helping achieve the Programme, through Your conduct of the Project and the achievement of the Milestones.

C. The Minister has approved the Project as an AusLink Strategic Regional Project under section 53 of the AusLink Act. In accordance with section 57 of the AusLink Act, the project approval instrument for the Project states that the approval is conditional on a funding agreement being entered.

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 41 of the *A New Tax System (Australian Business Number) Act 1999* (Cth);

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

**'Agreement'** means this Deed and includes any schedules and annexures;

**'Appropriate Auditor'** means:

- (a) in relation to a person or body whose accounts are required by law to be audited by the Auditor-General of a State – the Auditor-General of the State; or

- (b) in relation to a person or body whose accounts are required by law to be audited by the Auditor-General of the Commonwealth – the Auditor-General of the Commonwealth; or
- (c) in relation to any other person or body – a person (other than a director, officer or employee of the person or body) who is:
  - (i) registered as a company auditor or a public accountant under a law in force in a State; or
  - (ii) a member of the Institute of Chartered Accountants in Australia or of the Australian Society of Accountants;

‘**Approved Purposes**’ means the approved purposes specified in Schedule 1;

‘**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 Project 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;

‘**AusLink Act**’ means the *AusLink (National Land Transport) Act 2005*;

‘**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 the budget for expenditure of the Funding for the purposes of conducting the Project or performing obligations under this Agreement, as set out in Schedule 1;

‘**Business Day**’ means any day other than a Saturday, Sunday, or public holiday in Canberra;

‘**Change in Control Event**’, in respect of You, means:

- (a) the person who controls, or group of persons who acting together control, You ceases to have that control (as that term is defined in the *Corporations Act 2001*);

- (b) if You are a subsidiary, You cease to be a subsidiary of the body corporate which is Your holding company at the date of this Agreement;
- (c) a body corporate ceases to be a subsidiary of You;
- (d) a change takes place in Your directors so that, at the time of such change, more than 30% of Your directors will have changed;
- (e) a transfer of shares in You is registered where the transfer results in more than 30% of Your issued shares having changed ownership;
- (f) new shares, convertible notes or options for shares in Your capital are issued where the number of shares issued or to be issued on conversion of notes or exercise of options is more than 30% of Your issued shares immediately before the issue of shares, notes or options; or
- (g) You Dispose of an asset (whether in a single transaction or a series of related or unrelated transactions) which, in Our opinion, would adversely affect Your ability to perform the Project;

**‘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;

**‘Completion Date’** means the day 90 Business Days after the end of the Project Period;

**‘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 undertaking the Project 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;

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

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

the Project Material;

**‘Financial Year’** means a period of 12 months commencing on 1 July;

**‘Force Majeure’** means an act of God, fire, lightning, earthquake, explosions, flood, subsidence, insurrection or civil disorder or military operations or act of terrorism, expropriation, strikes, lock-outs or other industrial disputes of any kind not relating solely to the Party affected, and any other event which is not within the reasonable control of the Party affected (which in Your case includes the reasonable control of Your subcontractors) but does not include any act or omission of the other Party to this Agreement or in Your case the withdrawal of an Other Contribution;

**‘Funding’** or **‘Funds’** means the amount or amounts (in cash or kind) payable under this Agreement by Us as specified in Schedule 1, 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 Programme, if any, as described in Schedule 1;

**‘Implementation Guidelines’** refers to the document contained in Annexure D;

**‘includes’** means includes without limitation;

**‘Industry Guidelines’** refers to the document contained in Annexure E;

**‘Input Tax Credit’** has the same meaning as it has in the GST Act;

**‘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), plus 1%, on a daily compounding basis;

**‘Loss’** means any loss, damage (whether direct or indirect), liability, cost or expense including legal costs and expenses on a solicitor and own client 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 Project set out in Schedule 2;

**‘Minister’** means:

- (a) an Australian Government Minister administering the AusLink Act;
- (b) a Parliamentary Secretary acting on behalf of the Minister; or
- (c) a delegate of the Minister or Parliamentary Secretary;

**‘National Code of Practice for the Construction Industry’** refers to the document contained in Annexure C;

**‘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 database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion;

**‘Principles’** refers to the principles of the Programme, if any, as described in Schedule 1;

**‘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;

**‘Programme’** means the part of Our operations specified in Schedule 1 under which We are able to give the Funding to You;

**‘Project’** means the project described in Schedule 2, which aims to fulfil one or more of the goals of the Programme, and includes the provision of Project Material;

**‘Project Material’** means all Material:

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

**‘Project Parties’** includes contractors, subcontractors, suppliers, consultants and all employees contracted by You to work on the Project;

**‘Project Period’** means the period specified as such in Schedule 2;

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

**‘Schedule’** refers to a schedule to this Agreement;

**‘Specified Personnel’** means the personnel (whether Your employees or subcontractors), or people with specific skills, specified in Schedule 1 as personnel required to undertake the Project or any part of the work constituting the Project;

**‘Tax Invoice’** has the same meaning as it has in the GST Act;

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

**‘Term of this Agreement’** means the period starting on the Date of this Agreement and, unless terminated earlier, ending on the Completion Date;

**‘Transaction Documents’** means all agreements or other documents entered into by You relating to the Project (other than this Agreement) including:

- (a) agreements relating to Other Contributions and access required to carry out the Project; and
- (b) the transaction documents listed in Schedule 1;

**‘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;

1.2. In this Agreement, unless the contrary intention appears:

words in the singular number include the plural and words in the plural number include the singular;

words importing a gender include any other gender;

words importing persons include a partnership and a body whether corporate or otherwise;

all references to clauses are clauses in this Agreement;

all references to dollars are to Australian dollars and this Agreement uses Australian currency;

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;

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

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

the terms and conditions contained in the clauses of this Agreement;

the Schedules;

the annexures, if any;

documents incorporated by reference, if any;

then the material mentioned in any one of paragraphs (a) to (d) of this clause 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. This Agreement commences on the Date of this Agreement and, unless terminated earlier, expires on the Completion Date.

## **3. OTHER COMMONWEALTH FUNDING**

- 3.1. If You receive other funding from the Commonwealth (including Us), a breach of any other arrangement (whether contractual or statutory) with the Commonwealth under which You receive Commonwealth funding may be regarded by Us as a breach of this Agreement.
- 3.2. You must inform Us in writing within 20 Business Days of entering into any arrangement (whether contractual or statutory) under which You are entitled to receive funding from the Commonwealth.

## **4. NOTIFICATION**

- 4.1. You must not enter into any arrangement which would result in a Change in Control Event occurring without Our prior written consent.
- 4.2. If You wish to enter into any arrangement which would result in a Change in Control Event occurring, You must:
- (a) give Us at least 20 Business Days notice in writing of the proposed Change in Control Event; and
  - (b) immediately provide Us such further information and assurances as are required by Us to demonstrate to Our satisfaction (having regard to all matters relevant to a Commonwealth agency in Our position) that there will be no adverse consequences to the performance of the Project resulting from the occurrence of the Change in Control Event. Without prejudice to the generality thereof, We may impose conditions on You in relation to the Change in Control Event or require information or assurances relating to Your ongoing corporate and management culture, capacity, capability and financial viability.
- 4.3. Despite clause 4.2, We have an absolute discretion whether We give or withhold consent. If We elect to give Our consent, We may, in Our absolute discretion, specify conditions which attach to that consent.
- 4.4. In consideration of the provision of the Funds, You agree that a proportion of the financial proceeds to You or a related body corporate or shareholder resulting from the Change in Control Event occurring which equals the proportion of contribution of the Funds to the aggregate price or value of any Assets must at Our request be repaid to Us.

- 4.5. For the avoidance of doubt, clauses 4.1 to 4.4 do not apply if You are a State, Territory or local government or a State, Territory or local government authority.
- 4.6. In addition to clause 9, You must, during the Term of this Agreement immediately inform Us of:
- (a) any financial event or termination or expiration of, or suspension (including of works, rights or payments) under, a Transaction Document which financial event, termination, expiration or suspension has affected or will or is likely to affect the carrying out of all or any part of the Project; and
  - (b) what action or measures You have taken or propose to take to overcome or minimise the effects of the financial event, suspension, termination or expiration.

## 5. PAYMENT

- 5.1. Subject to sufficient funds being available for the Programme, this Agreement, and compliance by You with this Agreement (including the invoicing requirements, if any, specified in clause 10 and Schedule 1), We will provide You with the Funding at the times and in the manner specified in Schedule 1.
- 5.2. 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.
- 5.3. Without limiting clause 5.2, We may withhold or suspend any payment in whole or in part until You have:
- (a) provided Us in accordance with clause 9 all reports which were due to be provided by the date We would, but for this clause 5.3, have been required to make the payment; and
  - (b) achieved all Milestones which, in accordance with the dates specified in Schedule 2, were due to be achieved by the date We would, but for this clause 5.3, have been required to make the payment.
- 5.4. Despite anything in this Agreement, We are not liable, under any circumstances, to pay You any amount which together with all amounts which We have already paid You under this Agreement would exceed the total funding amount set out in Schedule 1.

- 5.5. 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.
- 5.6. An amount that You are liable to repay to the Commonwealth under the conditions that apply to a payment made under the AusLink Act, the *Australian Land Transport Development Act 1988* or the *Roads to Recovery Act 2000* may be deducted from any payment to You under this Agreement.

Note: see section 92, AusLink Act

## 6. COMPLETION OF PROJECT AND MANAGEMENT OF FUNDING

- 6.1. You must carry out and complete the Project within the Project Period and in accordance with this Agreement (including the Project Schedule in Schedule 2) and any applicable Milestones, Principles and Guidelines, diligently, effectively and to a high professional standard.
- 6.2. You must expend the Funding only:
- (a) on the Approved Purposes in relation to the Project; and
  - (b) in accordance with this Agreement.

Note: see section 64, AusLink Act

- 6.3. 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 Schedule 1, this must be an account which is:
    - established solely for the purposes of accounting for, and administering, any Funding provided by Us to You under this Agreement; and
    - 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) on Our request, provide Us and the authorised deposit-taking institution with an authority for Us to obtain any details relating to any use of 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 and, if We request, comply with clause 6.3(d) in respect to 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.
- 6.4. You must keep financial Records relating to the Project so as to enable:
- (a) all income and expenditure related to the Project to be identified in Your accounts;
  - (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.
- 6.5. 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) Intellectual Property Rights in Project Material.
- 6.6. Without limiting section 67 of the AusLink Act and notwithstanding any other provision in this Agreement, if, at any time, the Minister notifies You that the Minister is satisfied that You have failed to fulfil any condition that applies to the Funding (whether that condition is specified in Subdivision B of Division 3 of Part 6 of the AusLink Act or this Agreement) then You must repay to Us an amount equal to so much of the Funding as the Minister specifies in the notice. For avoidance of doubt the conditions that apply to the Funding in this Agreement are described in clauses 1-41 inclusive.

Note: see section 67, AusLink Act

- 6.7. The Minister may, by notice in writing, vary or revoke a notice given under clause 6.6.
- 6.8. Notwithstanding clause 6.6, if, at any time, 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 of a written notice from Us or, if a different period is stated in Schedule 1 for this purpose, that period, or dealt with as directed in writing by Us.
- 6.9. If We do not direct otherwise in writing and the amount is not refunded to Us within 20 Business Days, or as otherwise stated in Schedule 1, Interest will accrue and be payable on the amount after the expiry of the 20 Business Days, or the period stated in Schedule 1, until the amount is paid in full.
- 6.10. We may, by notice in writing, vary or revoke a notice given under clause 6.8.
- 6.11. If a budget is set out in Schedule 1 then, subject to clause 6.12, You must only expend the Funds in accordance with the Budget.
- 6.12. 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 where the amount being transferred exceeds the percentage of the total Budget specified in Schedule 1. The total amount of transfers of Funds between categories of expenditure items within the Budget in any financial year must not exceed the percentage of the total Budget specified in Schedule 1 without Our prior written approval.
- 6.13. We are not responsible for the provision of additional money to meet any expenditure in excess of the Funds.
- 6.14. We do not own the Assets and have no responsibility for them. You accept all liabilities and risks associated with the use or misuse of, or failure to use, the Assets.
- 6.15. The operation of this clause 6 survives the expiration or earlier termination of this Agreement.

## **7. OTHER CONTRIBUTIONS AND TRANSACTION DOCUMENTS**

- 7.1. Clauses 7.2 and 7.3 apply only if stated to apply in Schedule 1.
- 7.2. Within 40 Business Days after the Date of this Agreement, You must or must get the people (other than Us) identified for this purpose in Schedule 1 to provide Us with satisfactory written evidence that they will provide the Other Contributions specified in Schedule 1 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 these Other Contributions are to be provided must be satisfactory to Us.

- 7.3. If You do not:
- (a) provide us or arrange for us to be provided with written evidence as required by clause 7.2; or
  - (b) receive the Other Contributions specified in Schedule 1,
- then without limiting Our rights under clauses 5 or 21 We may suspend payment of the Funds or an instalment of the Funds (as the case may be) until the written evidence is provided or the Other Contributions are received.
- 7.4. You must use all reasonable endeavours to provide or obtain Other Contributions sufficient to enable the completion of the Project, including the Other Contributions specified in Schedule 1 (if any).
- 7.5. If You are not able to obtain Other Contributions sufficient to enable the completion of the Project, or obtain them in time to enable completion of the Project within the timeframes specified in this Agreement, then without limiting Our rights under clause 21 We may suspend payment of the Funds or an instalment of the Funds (as the case may be) until the Other Contributions are received.
- 7.6. 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 identified in Schedule 1.
- 7.7. During the Project Period, You must ensure that You have in place all agreements, consents, permissions and approvals required for You to complete the Project (including in relation to access required to carry out the Project).
- 7.8. You must comply with the Transaction Documents.
- 7.9. If We request, You must provide Us with copies of the Transaction Documents.

## **8. RECORDS**

- 8.1. You must keep full and accurate Records of the conduct of the Project including, without limitation, progress against the Milestones, the receipt and use of Funding and Other Contributions (if any), the acquisition of Assets and the creation of Intellectual Property Rights in Project Material.

8.2. Records maintained under clause 8.1 must be retained by You for a period of no less than 7 years after the Completion Date.

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 progress reports at the times and in the manner stated in Schedule 1 detailing Your progress in undertaking the Project.

9.2. For each Financial Year in which You spend or retain any of the Funding, You must give to the Minister as soon as practicable, and in any event within 6 months, after the end of that Financial Year:

(a) a written statement as to:

the amount spent by You during that Financial Year out of the Funding; and

the amount retained by You out of the Funding as at the end of that Financial Year; and

(b) a report in writing and signed by the Appropriate Auditor stating whether, in the Appropriate Auditor's opinion:

(i) the statement is based on proper accounts and records;

(ii) the statement is in agreement with the accounts and records; and

(iii) the expenditure referred to in clause 9.2(a) has been on the Project.

Note: see section 65, AusLink Act

9.3. You are encouraged to submit your final acquittal under clause 9.2 as soon as possible after the end of the Project Period.

9.4. The written statement referred to in clause 9.2(a) must be signed by Your Chief Executive Officer or other person authorised by You to execute documents and legally bind You by their execution.

9.5. The written statement referred to in clause 9.2(a) and the report referred to in clause 9.2(b) must be in the form of the sample report at Annexure B to this Agreement.

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 10, 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 10 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. Subject to clause 10.5, 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.
- 10.5. You and We agree that, if You are a local government body that satisfies paragraph (c) of the definition of the term 'government related entity' as that term is defined in section 195-1 of the GST Act:
  - (a) no GST is included in the Funding; and
  - (b) We are not required to make any payment to You in respect of GST.
- 10.6. You must give Us a Tax Invoice in relation to any Taxable Supply by You to Us in connection with this Agreement prior to payment of Funds by Us.
- 10.7. 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.
- 10.8. 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 the amount of that GST (except any GST for which the payee is entitled to an Input Tax Credit).
- 10.9. 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).
- 10.10. Any refund or repayment by You or amount recovered from You under this Agreement must in addition to the refund, repayment or amount recovered also include an amount for GST and must be accompanied by an Adjustment Note relating to Taxable Supplies for which You previously issued to Us a Tax Invoice.

10.11. You should be aware that, generally:

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;

any capital gain on disposal of an Asset is included in Your assessable income, unless You are specifically exempt from income tax;

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 Schedule 1.

11.2. Upon expiration or termination of this Agreement, You may retain all Commonwealth Material remaining in Your possession, unless otherwise specified in Schedule 1.

11.3. 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 Project 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, adapt and exploit the Intellectual Property Rights in Project Material for any Commonwealth purpose.

12.3. This clause 12 does not affect the ownership of any Intellectual Property Rights in any Existing Material or Commonwealth Material. 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, 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 Project 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 Project Material during the Term of this Agreement.

12.5. For this clause 12, 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 12, 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.

12.6. You warrant or undertake that:

the author of any Project 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

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 Project Material.

12.7. The operation of this clause 12 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 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.

#### 14. PROTECTION OF PERSONAL INFORMATION

- 14.1. This clause 14 applies only where You deal with Personal Information when, and for the purpose of, conducting the Project 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 Project under this Agreement:

- (a) to use or disclose Personal Information obtained during the course of conducting the Project 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 14; 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 14, 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 clause 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 AND RELEASE

15.1. You indemnify (and keep indemnified) Us, Our officers, employees, and agents against any:

Loss incurred by Us;

Loss of or damage to Our property; or

Loss incurred by Us in dealing with any claim against Us, including a cost of time spent, resources used, or disbursements paid by Us;

arising from:

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 Loss;

any breach by You of Your obligations or warranties under this Agreement;

the entry into of or failure to comply with a Transaction Document (including any penalty or damages arising under a Transaction Document);

the use or misuse of, or failure to use, the Assets; or

the use by Us of the Project Material or Existing Material, including any claims by third parties about the ownership or right to use Intellectual Property Rights in Project 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.
- 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 Loss.
- 15.4. You release Us from all claims, demands, debts, accounts, expenses, costs, liens, actions, suits, proceedings and arbitration of any nature whatsoever, which You have or may have against Us, arising from, incidental to, or by virtue of, this Agreement or a Transaction Document, other than those arising directly from a breach of this Agreement by Us or fault on Our part.
- 15.5. In this clause 15, '**fault**' means any negligent or unlawful act or omission, wilful misconduct or breach of duty.
- 15.6. This operation of this clause 15 survives the expiration or earlier termination of this Agreement.

## 16. INSURANCE

- 16.1. Prior to the Date of this Agreement, You must effect or have effected and, subsequent to the Date of this Agreement, must maintain on the terms of this Agreement the insurances and the terms of those insurances specified in Schedule 1.

- 16.2. If requested by Us, You must promptly provide to Us full copies of any or all of the policies of insurance effected and maintained in accordance with this clause 16.
- 16.3. If requested by Us, You must promptly provide to Us certificates of insurance evidencing the policies of insurance required to be effected and maintained in accordance with this clause 16 and such certificates must record the name of the insurer or the insurers, the policy number, the policy expiry date and the amount of cover.
- 16.4. You must:
- (a) not do or omit to do anything which may result in any insurance policy effected and maintained in accordance with this clause 16 being cancelled or terminated or which may entitle any insurer not to pay a claim under any such policy;
  - (b) immediately give notice in writing to Us if any insurer gives You notice of cancellation, non-renewal or variation of material insurance terms in respect of any insurance policy effected and maintained in accordance with this clause 16; and
  - (c) pay all premiums due under or in relation to any insurance policy effected and maintained in accordance with this clause 16 punctually.
- 16.5. If Your subcontractor or agent provides any services or undertakes any work in connection with the Project, You must ensure that the subcontractor or agent effects and maintains valid and enforceable insurance of the types and for the coverage specified in Schedule 1 with respect to such services or work.
- 16.6. If You fail to comply with any obligations under this clause 16, We may effect equivalent insurance cover and may, at Our option:
- (a) deduct the premiums paid in respect of that insurance from any money that may be, or may become, payable to You; or
  - (b) immediately recover the premiums paid in respect of that insurance as a debt due from You to Us.
- 16.7. 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 programmes, if any, specified in Schedule 1.
- 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 of this Agreement in accordance with clause 21.

## 18. ACCESS AND AUDIT

- 18.1. You must, at all reasonable times, permit a person authorised by the Minister:
- to inspect any work involved in the carrying out of the Project; and
  - to inspect and make copies of any documents relating to the Project.

Note: see section 66, AusLink Act

- 18.2. 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 Project is undertaken at all reasonable times and allow those permitted to inspect and copy Records and Material in Your custody, possession or control, for purposes associated with this Agreement or any audit or review of performance under this Agreement, or for the purpose of fulfilling a statutory function or power. You must also give those permitted access to any Assets, wherever they may be located, and reasonable access to Your employees and subcontractors, for the same purposes.

- 18.3. You must provide all reasonable assistance requested by a person authorised by the Minister or those permitted when they exercise the rights under clauses 18.1 or 18.2.
- 18.4. In the case of documents or records stored on a medium other than in writing, You must make available on request at no additional cost to Us such reasonable facilities as may be necessary to enable a legible reproduction to be created.
- 18.5. The rights referred to in clause 18.2 are subject to:  
  
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  
  
Your reasonable security procedures.
- 18.6. The requirement for access as specified in this clause 18 does not in any way reduce Your responsibility to perform Your obligations in accordance with this Agreement.
- 18.7. You must ensure that any subcontract entered into for the purpose of this Agreement contains an equivalent clause allowing a person authorised by the Minister and those permitted to have access as specified in this clause 18.
- 18.8. We may conduct audits of:
- (a) Your practices and procedures as they relate to this Agreement, including security procedures;
  - (b) the manner in which You perform Your obligations under this Agreement (including any performance indicators);
  - (c) Your compliance with all Your obligations under this Agreement and in particular the compliance of Your invoices and reports with Your obligations under this Agreement; and
  - (d) any other matters determined by Us to be relevant to the performance of Your obligations under this Agreement.
- 18.9. We may appoint an independent person to assist in audits.
- 18.10. You must participate in audits at the frequency and in relation to the matters specified by Us (including on an ad hoc basis if We request) for the purpose of ensuring that this Agreement is being properly performed and administered. You must participate promptly and cooperatively in any audits conducted by Us or our appointee.

- 18.11. Except for those circumstances in which notice is not practicable or appropriate (including where caused by a regulatory request with shorter notice or investigation of theft or breach of this Agreement), and without limiting any other right, recourse or remedy of Ours, We must give You reasonable notice of an audit and where reasonably practicable an indication of which documents or class of documents the auditor may require.
- 18.12. Each party must bear its own costs of any audits.
- 18.13. Subject to clause 18.14, the requirement for, and participation in, audits does not in any way reduce Your responsibility to perform Your obligations in accordance with this Agreement.
- 18.14. We must use reasonable endeavours to ensure that audits do not unreasonably delay or disrupt in any material respect Your performance of Your obligations under this Agreement.
- 18.15. You must promptly take, at no additional cost to Us, corrective action to rectify any error, non-compliance or inaccuracy identified in any audit in the way You have under this Agreement:
- performed the Project; or
- claimed or calculated Funding.
- 18.16. If in exercising the rights granted under this clause 18 We unreasonably interfere with Your performance of Your obligations under this Agreement in a material respect and that interference substantially delays You in performing Your obligations You may request an extension of time to perform Your obligations.
- 18.17. We must not unreasonably refuse a request pursuant to clause 18.16 where You substantiate the request, within a reasonable time, to Our satisfaction, provided that:
- (a) You advised Us of the delay with 14 days after the exercise of the rights and the delay occurring;
  - (b) the delay could not have been reasonably contemplated or allowed for by You before entering this Agreement; and
  - (c) You have taken or take all reasonable steps to minimise any delay.
- 18.18. In no circumstances will any extension of time pursuant to clause 18.17 exceed the amount of any delay directly arising from the exercise of the rights.

- 18.19. In no circumstances will You be entitled to any delay costs or other costs or expenses of whatever nature relating in any to the exercise of any rights under this clause 18.
- 18.20. Nothing in this Agreement reduces, limits or restricts in any way any function, power, right or entitlement of the Auditor-General or the Privacy Commissioner. Our rights under this Agreement are in addition to any other power, right or entitlement of the Auditor-General or the Privacy Commissioner.
- 18.21. This clause 18 survives the expiration or earlier termination of this Agreement.

## **19. DELAY**

- 19.1. You must take all reasonable steps to minimise delay in completion of the Project.
- 19.2. If You become aware that You will be delayed in progressing or completing the Project in accordance with this Agreement, 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 and without limiting our rights under clause 21, We may at Our option:
- notify You in writing of a period of extension to complete the Project and vary this Agreement accordingly; or
- notify You in writing of a reduction in the scope of the Project and any adjustment to the Funds for You to complete the reduced Project and vary this Agreement accordingly.
- 19.4. Unless We take action under clause 19.3, You are required to comply with the time frame for progressing and completing the Project as set out in this Agreement.
- 19.5. Neither Party is liable to the other Party in respect of the results of any delay or failure to perform its obligations pursuant to this Agreement if and to the extent such delay or failure is caused by an event of Force Majeure provided that the non-performing Party is without fault in causing the failure or delay, and the failure or delay could not have been prevented by reasonable precautions and cannot reasonably be circumvented by the non-performing Party at its expense through the use of alternate sources, work around plans or other means.
- 19.6. When a Force Majeure event has occurred, the non-performing Party will be excused from further performance of the obligations affected for as long as

the circumstances prevail provided the non-performing Party continues to use its best endeavours to recommence performance whenever and to whatever extent possible without delay. Any Party so delayed in its performance will immediately notify the Party to whom performance is due and describe at a reasonable level of detail the circumstances causing the delay.

19.7. You will not have the right to any additional payment or Funding from Us as a result of any Force Majeure event.

19.8. If Your delay or failure to perform Your obligations due to an event of Force Majeure that is not caused by Us exceeds 45 Business Days, We may immediately terminate this Agreement by notice to You.

19.9. If this Agreement is terminated under clause 19.8, 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 which are payable by You as a current liability (written evidence of which will be required) by the date notice of termination given under clause 19.8 is deemed to be received in accordance with clause 35; 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 which is payable by You as a current liability (written evidence of which will be required) by the date the notice of termination given under clause 19.8 is deemed to be received in accordance with clause 35; or

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

19.10. The failure of a subcontractor or Your suppliers to perform an obligation owed to You will only constitute a Force Majeure event with respect to Your performance of the Project if and to the extent that the failure by the subcontractor or supplier is caused by an event of Force Majeure in accordance with clause 19.5.

## **20. TERMINATION WITH COSTS**

20.1. We may, at any time by written notice to You, terminate 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 clauses 20.3 and 20.4, payments under the payment provisions of this Agreement; and
- (b) subject to clauses 20.5 and 20.6, any reasonable costs incurred by You and directly attributable to the termination 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 clause 20.3(b) or deal with any such Funds as We may direct in writing.

20.3. Where We terminate this Agreement under clause 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 which are payable by You as a current liability (written evidence of which will be required) by the date notice of termination given under clause 20.1 is deemed to be received in accordance with clause 35; 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 which is payable by You as a current liability (written evidence of which will be required) by the date the notice of termination given under clause 20.1 is deemed to be received in accordance with clause 35; or
  - (ii) has not, in Our opinion, been expended by You in accordance with the terms and conditions of this Agreement.

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 clause 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.

20.7. For the avoidance of doubt, We have an unfettered discretion to terminate this Agreement in accordance with this clause 20.

## 21. TERMINATION FOR DEFAULT

21.1. If:

- (a) You fail to:
  - (i) commence work under this Agreement;
  - (ii) take action to remedy a default by You of another obligation to be performed or observed under this Agreement;
  - (iii) progress at a rate to facilitate the due and proper completion of the Project within the timeframes specified in this Agreement; or
  - (iv) without limiting clauses 21.1(a)(i), (ii) or (iii), comply with clause 7,

within 10 Business Days after receiving a notice in writing from Us to do so or, where action is taken within the 10 Business Days, You fail to remedy the default within the period specified in the notice;

- (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 or local government 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 this Agreement by giving written notice to You of the termination.

21.2. Where We terminate this Agreement under clause 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 which are payable by You as a current liability (written evidence of which will be required) by the date notice of termination given under clause 21.1 is deemed to be received in accordance with clause 35; 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 which is payable by You as a current liability (written evidence of which will be required) by the date the notice of termination given under clause 21.1 is deemed to be received in accordance with clause 35; or

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

21.3. If you do not repay Us the amount referred to in clause 21.2(b) within 10 Business Days after receipt of the notice of termination (or if a different period is stated in Schedule 1 for this purpose, 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.

21.4. Clause 21.1 and 21.2 do not limit or exclude any of Our other rights at common law or otherwise, including the right to recover any other amounts from You.

## **22. SUBCONTRACTING**

22.1. You are fully responsible for the performance of Your obligations under this Agreement, even though You may have subcontracted any of them.

22.2. 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.

22.3. We may notify You that We disapprove of a subcontractor used by You.

22.4. Upon receipt of a written notice from Us in accordance with clause 22.3, 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.

22.5. If We notify you in accordance with clause 22.3, You remain liable under this Agreement for the past acts or omissions of Your subcontractors as if they were current subcontractors.

22.6. 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 and our right of disapproval under this clause 22, and You must, where appropriate, make use of that right in the event of a termination or disapproval by Us.

22.7. 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).

- 22.8. You must, in engaging a subcontractor for the performance of any obligations under this Agreement:
- (a) have regard to any Commonwealth Procurement Guidelines then in force under regulation 7 of the *Financial Management and Accountability Regulations 1997* (Cth); and
  - (b) ensure that the subcontract represents value for money.
- 22.9. If the estimated total cost of the Project as set out in Schedule 2 is greater than \$1 million, then without limiting any obligation you have at law, You must call for public tenders for all work on the Project other than:
- (a) work that is maintenance of a road or railway;
  - (b) work that is to be carried out by a public utility; or
  - (c) work that the Minister has, by a written exemption relating to the Project, exempted from this clause 22.9 because, in the Minister's opinion, the work:
    - (i) is urgently required because of an emergency;
    - (ii) is of such a minor nature that the invitation of tenders for the work would involve undue additional cost;
    - (iii) is of a kind for which it is not practicable to prepare adequate tender specifications;
    - (iv) is of a kind for which competitive tenders are unlikely to be received; or
    - (v) will contribute to employment in a region.
- 22.10. For the avoidance of doubt, You may bid in the tender process for all or part of the work referred to in clause 22.9, but You must comply with appropriate probity processes in doing so.

## **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 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 Schedule 1, then to be approved by Us prior to its use.

- 23.2. You must not make any public announcement or any issue any publication, or promotional or advertising materials in relation to the Project without Our prior written approval.
- 23.3. At least 15 Business Days before the release of any public announcement, publication or promotional or advertising materials by You or on Your behalf in relation to the Project, You must provide Us with a copy or transcript of the proposed public announcement, publication, or promotional or advertising material.
- 23.4. We may approve or refuse to approve the public announcement, publication or promotional or advertising material, or require You to make changes to the public announcement, publication or promotional or advertising material.
- 23.5. You must erect signs promoting the Programme in accordance with the requirements set out for this purpose in Schedule 1, and in locations and in the form approved by Us.
- 23.6. You must ensure that the signs referred to in clause 23.5 remain in place for the period specified for this purpose in Schedule 1.
- 23.7. You must not erect any sign promoting the Project without Our prior written approval.
- 23.8. 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 Project.
- 23.9. This clause 23 applies for the Term of this Agreement and for a period of 7 years after the expiration or termination of this Agreement.

#### **24. SPECIFIED PERSONNEL**

- 24.1. You must ensure that the Specified Personnel, if any, listed in Schedule 1 undertake activities in respect of the Project in accordance with the terms of this Agreement.
- 24.2. Where Specified Personnel are unable to undertake activities in respect of the Project, 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 Project requiring You to remove personnel (including Specified Personnel) from work in respect of the Project. You must, at Your own cost, promptly

arrange for the removal of such personnel from work in respect of the Project 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 Schedule 1. You should note that under section 137.1 of the *Criminal Code* (Cth) 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 Schedule 1.

- 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, agents or joint venturers.

- 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, agents or joint venturers.

## **27. ENTIRE AGREEMENT AND SEVERANCE**

- 27.1. This Agreement records the entire agreement between You and Us in relation to its subject matter.

- 27.2. 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:  
  
must be in writing signed by the Party entitled to the benefit of that provision or right; and  
  
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. This clause 30 applies only if stated to apply in Schedule 1.
- 30.2. You warrant that Your Constitution is not, and will not become, inconsistent with this Agreement.
- 30.3. You must provide a copy of Your Constitution to Us upon request.
- 30.4. 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 30 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:  
  
have an ABN;

immediately notify Us if You cease to be registered with an ABN;  
correctly quote the ABN on all documentation to Us;  
supply proof of GST status, if requested by Us; and  
immediately notify Us of changes to Your GST status.

## **32. DISPUTE RESOLUTION**

32.1. Subject to clause 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 32 has been utilised.

32.2. Both You and We agree that any dispute arising during the course of this Agreement will be dealt with as follows:

the Party claiming that there is a dispute will send the other a written notice setting out the nature of the dispute;

the parties will try to resolve the dispute through direct negotiation by persons who they have given authority to resolve the dispute;

the parties have 10 Business Days after 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

if:

there is no resolution of the dispute;

there is no agreement on submission of the dispute to mediation or some alternative dispute resolution procedure; or

there is a submission to mediation or some other form of alternative dispute resolution procedure, but there is no resolution within 15 Business Days after 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 or the Minister under or purportedly under clauses 4, 5, 6, 7, 18, 19, 20, 21, 22 or 37 or the AusLink Act;
- (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:

liaise with and provide information to Us as reasonably required by Us; and  
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 Project.

### **35. NOTICES**

35.1. A Party giving notice or notifying under this Agreement must do so in writing (including by facsimile or email):

directed to the recipient's address, as varied by any notice; and  
hand delivered or sent by pre-paid post, facsimile or email to that address.

The parties' address details (until varied) are as specified in Schedule 1.

35.2. Subject to clause 35.4, a notice given in accordance with clause 35.1 is taken to be received:

if hand delivered, on delivery;

if sent by pre-paid post, 5 Business Days after the date of posting unless it has been received earlier; and

if sent by fax, when the sender's fax machine produces a report that the fax was sent in full to the address.

35.3. Subject to clause 35.4, if a notice is emailed, a delivery confirmation report received by the sender which records the time that the email was delivered to the addressee's email address is prima facie evidence of its receipt by the addressee, unless the sender receives a delivery failure notification, indicating that the email has not been delivered to the addressee.

35.4. If a notice is given after 5.00 pm in the place of receipt or on a day which is not a Business Day in the place of receipt, it is taken as having been given at 9.00 am on the next Business Day in that place.

## **36. CONDITIONS OF APPROVAL**

36.1. Despite anything else in this Agreement, you must comply (or ensure that the relevant person complies) with the conditions set out in Schedule 1 for the purpose of this clause 36.

## **37. VARIATION**

37.1. You acknowledge that, under section 59 of the AusLink Act, the Minister may vary or revoke the project approval instrument for the Project.

37.2. Subject to this clause 37, except for action We are expressly authorised to take elsewhere in this Agreement or the Minister is entitled to take under the AusLink Act, no variation of this Agreement is binding unless it is agreed in writing and signed by You and Us.

37.3. The Minister may vary or revoke the project approval instrument for the Project:

- (a) with Your prior written agreement;
- (b) if, after 20 Business Days after the Minister gives You a notice requiring You to show cause in writing why the Minister should not vary or revoke the project approval instrument for the Project as set out in the notice, the Minister, taking into account any response provided by You within the 20 Business Days, is satisfied that the project approval instrument should be varied or revoked; or
- (c) if, after 20 Business Days after the Minister gives You a notice requiring You to show cause in writing why the Minister should not vary or revoke the project approval instrument for the Project as set out in the notice, You do not provide a response.

37.4. If the Minister varies the project approval instrument for the Project, We may, by written notice to you:

vary this Agreement accordingly; or

terminate this Agreement, if that is required to give full effect to the variation to the project approval instrument (including where the project approval instrument is varied to change the eligible funding recipient to which funding will be paid).

37.5. If the Minister revokes the project approval instrument for the Project, We may, by written notice to you, terminate this Agreement under clause 20, unless an event to which clause 21 applies has occurred and we elect to terminate under clause 21, in which case clause 21 will apply.

### **38. RECOVERY OF AMOUNTS AS DEBT DUE TO COMMONWEALTH**

38.1. Any amount that You are liable to pay, repay, refund or return to Us under this Agreement or a condition that applies to a payment under the AusLink Act:

may be recovered by Us as a debt in a court of competent jurisdiction; or

may be deducted from any future payment to You under this Agreement or the AusLink Act.

Note: see section 92, AusLink Act

### **39. COMPLIANCE WITH THE NATIONAL CODE OF PRACTICE FOR THE CONSTRUCTION INDUSTRY**

39.1. This clause 39 applies only if stated to apply in Schedule 1.

39.2. Where this Agreement results in construction and building activity, You must comply, apply and ensure that the Project Parties comply, in the performance of this Agreement, with the requirements of the National Code of Practice for the Construction Industry, the Implementation Guidelines and the Industry Guidelines.

39.3. Compliance with the National Code of Practice for the Construction Industry, the Implementation Guidelines or the Industry Guidelines will not relieve You from responsibility to perform Your obligations under this Agreement.

39.4. You must:

ensure that the National Code of Practice for the Construction Industry, the Implementation Guidelines and the Industry Guidelines are applied

to the Project by ensuring that all contracts, subcontracts, tendering processes, expressions of interest or marketing proposals entered into for the Project comply with all elements of the Code, the Implementation Guidelines and the Industry Guidelines, and ensure that compliance with the National Code of Practice for the Construction Industry, the Implementation Guidelines and the Industry Guidelines is made a condition of all contracts and subcontracts;

report any breach of the National Code of Practice for the Construction Industry, Implementation Guidelines and Industry Guidelines to Us and in accordance with the National Code of Practice for the Construction Industry, Implementation Guidelines and Industry Guidelines;

address any National Code of Practice for the Construction Industry, Implementation Guidelines and Industry Guidelines issues that arise in relation to the Project in accordance with the National Code of Practice for the Construction Industry, the Implementation Guidelines and the Industry Guidelines;

maintain adequate records of compliance by Yourself and the Project Parties with the National Code of Practice for the Construction Industry, the Implementation Guidelines and the Industry Guidelines;

permit Us, the Building Industry Taskforce or any person authorised by Us to have access to these records and to Your premises, as is necessary to allow validation of Your progress in complying with the National Code of Practice for the Construction Industry, the Implementation Guidelines or the Industry Guidelines; and

ensure that all Project Parties maintain and provide access for Us, the Building Industry Taskforce or any person authorised by Us to the Project Parties' records and premises.

39.5. You acknowledge that the Commonwealth, its agencies and Ministers must be able to disclose information concerning compliance with the National Code of Practice for the Construction Industry, the Implementation Guidelines and the Industry Guidelines in order to facilitate compliance with the National Code of Practice for the Construction Industry, the Implementation Guidelines and the Industry Guidelines and for the exercise of their statutory and portfolio responsibilities (in this clause referred to as '**the Purposes**'), and agree to its disclosure for the Purposes.

39.6. You must obtain from each of the Project Parties consent to the disclosure by the Commonwealth, its agencies and Ministers of information concerning the Project Parties' compliance with the National Code of Practice for the

Construction Industry, the Implementation Guidelines and the Industry Guidelines, and whether or not a sanction has been imposed on the Project Party, for the Purposes.

**40. EXPENDITURE ON ROADS**

- 40.1. If You are a ‘local government authority’ as defined in the AusLink Act, You must maintain your level of expenditure on roads, so far as that expenditure comes from sources other than Commonwealth, State or Territory funding.

Note: see section 62, AusLink Act

**41. SURVIVAL**

Expiry or termination of this Agreement for any reason does not extinguish or otherwise affect the provisions of this Agreement which are expressed to or which by their nature survive expiry or termination, including provisions dealing with records, reports, intellectual property, confidentiality, privacy, indemnity, insurance, audit, recovery of Funds or debts, dispute resolution and all provisions required to give effect to these provisions.

## SCHEDULE 1

[When completing the Schedules:

*continue to use 'You' to describe the recipient, and 'We' to describe the Commonwealth/Department;*

*use terms defined in clause 1.1 where appropriate; and*

*include definitions for new terms, if required.]*

### 1. PROGRAMME

<b>Programme</b> (clause 1.1)	The Programme is the AusLink Strategic Regional Programme.  The Programme goals are: <i>[describe goals of Programme or delete this paragraph].</i>
<b>Guidelines and Principles</b> (clause 1.1)	National Code of Practice for the Construction Industry, Implementation Guidelines and Industry Guidelines. <i>[Delete if not relevant.]</i>  <i>[Describe any other Guidelines and Principles for the Programme. Clause 6.1 requires the recipient to carry out the Project in accordance with the Guidelines and Principles. If there are no relevant Guidelines and Principles, insert 'not applicable'.]</i>

### 2. FUNDING AND PAYMENT

<b>Funding</b> (clauses 1.1, 5.1 and 5.4)	<p>The total funding amount for the Project is \$<i>[insert amount (note – this must not be more than the maximum funding amount specified in the project approval instrument, see sections 57 and 58 of the AusLink Act)]</i> (<b>'total funding amount'</b>) which represents:</p> <p>(a) \$<i>[insert amount]</i>, being the funding to be provided by Us for the Project; and</p> <p>(b) \$<i>[insert amount. Note – for local government entities, this should be zero.]</i>, being the total GST payable in accordance with clause 10.</p> <p>The Funding will be paid electronically to Your nominated bank account as follows:</p> <p><i>[If an initial payment is to be made (see page 7 of the Programme Guidelines), insert the following:</i></p>
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**First instalment:** The first instalment of \$[insert amount of first instalment] (including GST, if any) will be paid within [30 days] of the Date of this Agreement.

**Subsequent instalments:]**

*[If all or further instalments are to be paid as set out on page 7 of the Programme Guidelines, insert the following:*

(a) Each [subsequent] instalment will be paid within [30 days] after receipt by Us of a progress report which is satisfactory to Us for a quarter (**‘the relevant quarter’**) in accordance with clause 9.1.

(b) Subject to paragraph (c) below, the amount of each subsequent instalment will be **the lesser of:**

(i) an amount, being:

(A) the total funding amount specified above;

less

(B) the aggregate of all amounts We have paid You under this Agreement; and

(ii) the amount calculated according to the formula:

$$AE + FE - P$$

where:

(A) “AE” is the amount of Funding expended by You up to the end of the relevant quarter;

(B) “FE” is the amount of Funding You (acting reasonably) estimate that You will expend on the Project during the quarter following the relevant quarter; and

(C) “P” is the aggregate of all amounts We have paid You under this Agreement.

(c) We may reduce the amount of an instalment if, by the end of the relevant quarter, You did not substantially achieve the events and milestones that You identified would be achieved in the relevant quarter in Your progress report in accordance with clause 9.1 for the quarter immediately

	preceding the relevant quarter.
<b>Approved purposes</b> (clause 1.1)	The approved purposes are the purposes forming part of the Project, including payment of GST [ <i>if required insert other examples of approved purposes</i> ], but excluding payment of penalties or damages to third parties in relation to the entry into of or performance or failure to perform the Transaction Documents [ <i>if required insert purposes excluded by the project approval instrument from being purposes on which funding may be expended</i> ].
<b>Other Contributions</b> (clause 7)	[ <i>If Other Contributions are critical to the Project, include the following:</i>  Clauses 7.2 and 7.3 apply.  <i>Then describe the Other Contributions the recipient must obtain (including identifying the person who will provide the Other Contribution and the timing of the receipt). If the recipient does not obtain them, the Commonwealth may suspend payment.</i> ]

**Budget** (clause 1.1)

[*Insert Budget relevant to meeting Approved Purposes if required or delete the table and insert 'not applicable'. The following table is an example only. The Budget must be clear as to categories of expenditure and total budget.*]

<b>Budget Item</b>	<b>Our Funding</b>	<b>Other Contributions</b> (money)	<b>Other Contributions</b> (in-kind)	<b>Source of Other Contributions</b>	<b>Total</b>
<b>Total</b>					

<b>Transfers between categories of expenditure items within the Budget</b> (clause 6.12)	<p>The percentage specified for clause 6.12 for transfer of Funds between categories of expenditure items within the Budget is:</p> <p>The percentage specified for clause 6.12 for total amount of transfers in any financial year is:</p> <p>[<i>See clause 6.12. Insert percentages or delete text and insert 'not applicable'. If the recipient wants to transfer funding between categories over the percentage specified, then the</i>]</p>
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	<i>Commonwealth's approval is needed.]</i>
<b>Bank account</b> (clause 6.3(b))	<i>[If the recipient is required to keep the Funding in a separate account, insert the following:</i>  You must hold the funds in an account which is established solely for the purposes of accounting for, and administering, any Funding provided by Us to You under this Agreement and which is separate from Your other operational accounts.]
<b>Invoicing requirements</b> (clause 5.1)	<i>[Specify any invoice requirements, noting that clause 10 already requires the recipient to provide a tax invoice.]</i>
<b>Different period for repayment of funding</b> (clauses 6.8, 6.9 and 21.3)	For the purpose of clauses 6.8 and 6.9, the period is <i>[insert period for repayment of funds or delete this paragraph.]</i>  For the purpose of clause 21.3, the period is <i>[insert period for repayment of funds or delete this paragraph.]</i>

### 3. TRANSACTION DOCUMENTS

*[List any particular agreements relating to the Project with which the recipient is required to comply.]*

### 4. REPORTS

<b>Progress reports</b> (clause 9.1)	<p>Within <i>[insert '10 Business Days' or other period for reports]</i> after:</p> <ul style="list-style-type: none"> <li>(a) the end of each quarter of each Financial Year during the Project Period; and</li> <li>(b) the end of the Project Period or earlier termination of this Agreement,</li> </ul> <p>You must provide to Us a progress report, which includes the information required by and is in the form of the sample progress report at Annexure A to this Agreement.</p> <p>You must provide the reports required by the National Code of Practice for the Construction Industry, the Implementation Guidelines and the Industry Guidelines including reporting alleged breaches or matters related to National Code of Practice for the Construction Industry, the Implementation Guidelines to the Industry Guidelines. <i>[Delete if Code is not</i></p>
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	<i>to apply.]</i>
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## **5. COMMONWEALTH MATERIAL (clauses 11 and 13)**

If the Commonwealth Material includes any AusLink or Commonwealth logo or symbol (**Logo**):

- (a) You must only use the Logo for the following purposes:

*[insert approved purposes]*

- (b) You must obtain Our prior written consent to each use of a Logo. We may impose conditions on Our consent, including requiring You to include the following, wherever the Logo is used:

© Commonwealth of Australia 2005

This work is copyright. Apart from any use as permitted under the Copyright Act 1968, no part may be reproduced by any process without prior written permission from the Commonwealth. Requests and inquiries concerning reproduction and rights should be addressed to the Commonwealth Copyright Administration, Attorney General's Department, Robert Garran Offices, National Circuit, Barton ACT 2600 or posted at <http://www.ag.gov.au/cca>

- (c) You must not give an electronic copy of the Logo to any other person without Our prior written approval; and
- (d) You must return all copies of the Logo to Us at the end of the Term of this Agreement, unless we instruct you to destroy the copies.

*[If any other Commonwealth Material is to be provided, insert:*

- *any conditions and restrictions on use (clause 11.1);*
- *whether the Applicant is required to return the Commonwealth at the end of the Term (clause 11.2); and*
- *any restrictions on disclosure (clause 13.2).]*

## **6. INSURANCE (clause 16)**

*[The amount of insurance required will depend on the nature of the Project and the amount of funding to be made available. There are notes in some of the paragraphs below to guide selection of the type of insurance required. For example, if a Project involves no design elements, it may be appropriate to dispense with the need for professional indemnity insurance. If a Project involves the acquisition or application of technology, (ie does not involve design or construction) it may be appropriate to also dispense with the need for contract works insurance.]*

- 6.1 Contract works insurance for the full reinstatement value of the Project on terms approved by Us (such terms to be those commercially available and

such approval not to be unreasonably withheld). [*Contract works insurance should be considered when the Project is to fund the construction of something – eg a road or railway.*]

- 6.2 General public liability insurance, covering legal liability to pay for personal injury and/or property damage arising out of or in any way connected with the Project, for the sum of \$[10 million] any one occurrence. The general public liability insurance must be on terms approved by Us (such terms to be those commercially available and such approval not to be unreasonably withheld).
- 6.3 Professional indemnity insurance, covering liability for any act, error or omission arising out of or in any way connected with the design elements of the Project. The professional indemnity insurance policy must have a limit of indemnity of \$[10 million] each and every claim and in the aggregate. [*Professional indemnity insurance should be considered when the Project may or will involve some design elements, which would engage professional duties which may be breached.*]
- 6.4 Motor vehicle insurance, complying with all relevant statutory requirements, covering legal liability to pay for personal injury and/or property damage arising out of or in any way connected with the use of any motor vehicles or other mobile equipment in connection with a Project.
- 6.5 To the extent required by law, workers compensation insurance in respect of Your liability for any loss or claim by a person employed or otherwise engaged, or deemed to be employed or otherwise engaged, by You in connection with the Project.
- 6.6 The policies of insurance effected and maintained in accordance with paragraphs 5.1 and 5.2 above [*amend if required – should refer to contract works and public liability insurance*] must:
  - (a) include Us as a named insured;
  - (b) to the extent permitted by law, be primary and without any right of contribution from any insurance effected or maintained by Us;
  - (c) include provisions to the effect that:
    - (i) all insuring provisions and endorsements operate as if there was a separate policy of insurance covering each insured (cross-liability clause);
    - (ii) failure by any insured to observe or fulfil the terms of the policy does not prejudice the entitlement to insurance of any other insured;
    - (iii) subject to the ability to reasonably obtain the term, the insurer waives all rights, remedies or relief to which it might become entitled by way of subrogation against any insured (waiver of subrogation clause).
- 6.7 The policy of insurance effected and maintained in accordance with

paragraph 5.3 [*amend if required – should refer to professional indemnity insurance*] above must:

- (a) cover claims under the *Trade Practices Act 1974* (Cth), *Fair Trading Acts* and any similar legislation in any State or Territory;
- (b) be maintained for a period of seven years after the completion of the Project;
- (c) include at least one automatic right of reinstatement of the sum insured.

## **7. CONFLICT OF INTEREST (clause 17.2)**

[*insert names of parties or programmes for the purpose of clause 17.2.*]

## **8. ACKNOWLEDGMENT AND PUBLICITY (clause 23)**

<b>Acknowledgment</b> (clause 23.1)	Not applicable.
<b>Signs</b> (clauses 23.5 and 23.6)	[ <i>insert details of signage requirements</i> ]  For the purpose of clause 23.6, the period is [2 years] from the end of the Project Period.

## **9. SPECIFIED PERSONNEL (clauses 1.1 and 24.1)**

[*list any named personnel or describe skills*]

## **10. COMPLIANCE WITH LAWS AND POLICIES (clauses 25.1 and 25.2)**

Without limiting your obligations to comply with all relevant laws, You must comply with the following laws in carrying out the Project:

*Equal Opportunity for Women in the Workplace Act 1999;*

*Racial Discrimination Act 1975;*

*Sex Discrimination Act 1984;*

*Disability Discrimination Act 1992;*

*Crimes Act 1914;*

*Criminal Code;*

*Environment Protection and Biodiversity Conservation Act 1999;*

GST law, within the meaning of the *A New Tax System (Goods and Services Tax) Act 1999;*

*AusLink (National Land Transport) Act 2005;*

any legislation of the State or Territory in which the Project is located which deals with heritage issues;

*[insert reference to any legislation of specific relevance to the Project].*

You must comply with the following policies in carrying out the Project:

*[list any specific policies, eg application of Protective Security Manual, Charter of Public Service in a Culturally and Linguistically Diverse Society]*

## **11. INCORPORATION**

*[Insert either 'Clause 30 applies.' or 'Clause 30 does not apply.']*

## **12. NOTICES (clause 35.1)**

Our address details are as follows:

*[specify name, position, address, telephone, fax and e-mail]*

Your address details are as follows:

*[specify name, position, address, telephone, fax and e-mail]*

## **13. CONDITIONS OF APPROVAL (clause 36)**

For the purpose of clause 36, the conditions are:

*[Insert conditions specified in the project approval instrument (see section 59 of the AusLink Act). You should consider whether the conditions specified:*

*are already covered by this Agreement;*

*could be more appropriately covered elsewhere in this Agreement; and*

*are inconsistent with any other part of the Agreement.*

*You may wish to seek legal advice on incorporating the conditions specified in the project approval instrument into this Agreement.]*

## **14. COMPLIANCE WITH THE NATIONAL CODE OF PRACTICE FOR THE CONSTRUCTION INDUSTRY (clause 39)**

*[Insert either 'Clause 39 applies.' or 'Clause 39 does not apply.' Clause 39 should be specified to apply where either the value of the Australian Government contribution to the Project is at least \$5 million and represents at least 50% of the total construction project value or the Australian Government contribution to the*

*Project is \$10 million or more, irrespective of the proportion of Australian Government funding. See the Programme Guidelines for more information.]*

## SCHEDULE 2 – PROJECT SCHEDULE

<p><b>Project Period</b> (clause 1.1)</p>	<p>The Project Period commences on the Date of this Agreement and ends on [<i>insert date for end of Project Period. This is the date by which the recipient must complete the Project.</i> ].</p>
<p><b>Project</b> (clause 1.1)</p>	<p>[<i>Describe the Project. The ‘Project’ is what the funding agreement requires the recipient to do (clause 6.1). The recipient can only expend the funding in relation to the ‘Project’ (clause 6.2). Accordingly, it is important to describe the Project comprehensively and accurately. The emphasis should be on requiring the recipient to perform and achieve, rather than simply to undertake or carry out activity. The effectiveness of clauses 6.1 and 6.2 (the recipient’s primary obligations in the funding agreement) depends on how well the Project is described.</i></p> <p><i>The Project must be the project identified in the project approval instrument (section 57, AusLink Act), but you should include more detail.</i></p> <p><i>If you would like to refer to plans, design specifications etc, you should include them in an annexure. However, you should consider whether reference to particular plans would inappropriately restrict the recipient making changes.]</i></p> <p><i>[If required, describe how the Project seeks to achieve programme goals.]</i></p> <p><i>[If the Department requires the recipient to provide any particular Project Material (other than reports under clause 9), insert ‘The Project includes the provision of the following Project Material’, then list the required Project Material.]</i></p> <p><i>[If the recipient is required to achieve any outputs, these must be included here.]</i></p> <p>The Project includes meeting the Milestones.</p>
<p><b>Milestones</b> (clauses 1.1 and 5.3)</p>	<p>[<i>Describe the Milestones for the Project. You must include a due date for achievement of each Milestone. For example:</i></p> <p>(a) Finalise tender process and award construction contract – due to be achieved by 30 June 2005.</p> <p><i>The Milestones are relevant to records and reporting requirements. The Commonwealth can withhold or suspend</i></p>

	<i>payments until Milestones have been achieved (see clause 5.3). The Milestones are the key method of measuring the progress of the Project. Include as much detail as possible.]</i>
<b>Estimated total cost of Project</b> (clause 22.9)	<i>[Insert estimated total cost of Project. This will determine whether clause 22.9 applies to require the recipient to call public tenders for work on the Project.]</i>

**THIS DEED** is made on the **[insert]** day of **[insert]**

**EXECUTION CLAUSES**

Executed as a deed.

SIGNED SEALED AND DELIVERED  
for and on behalf of the  
COMMONWEALTH OF AUSTRALIA  
represented by and acting through the  
**Department of Transport and Regional  
Services** ABN 86 267 354 017 by *[insert  
full name of delegate]*  
in the presence of:

.....  
*sign here*

.....  
print name of witness

.....  
*witness sign here*

*[Please note that the following execution clause may not be the appropriate one for this Deed. You will need to insert the appropriate execution clause for the recipient, which varies depending on what type of entity it is.]*

SIGNED SEALED AND DELIVERED  
on behalf of  
**[insert name of Funding Recipient]**  
ABN **[insert]** by **[insert name of  
Signatory]** who by signing warrants that  
they have the authority to bind **[insert  
name of Recipient used previously]** in  
the presence of:

Signatory

.....  
*sign here*

Witness

.....  
*sign here*

Name and occupation of Witness

.....  
please print

**ANNEXURE A**

***AusLink Strategic Regional Programme***

***[insert project name and name of funding recipient] Progress Report for the period*** \_\_\_/\_\_\_/\_\_\_ **to** \_\_\_/\_\_\_/\_\_\_

[1]	[2]	[3]	[4]	[5]	[6]	[7]	[8]	[9]	[10]
Details of project:									
Project reference number	Estimated Start Date (d/m/y)	Estimated Completion Date (m/y)	Current Status of Project (inc work undertaken since last report) Attach separately, if necessary	Approved Project Cost (\$)	Actual Expenditure to date (\$)	Estimated Project Expenditure First Quarter (\$)	Estimated Project Expenditure Second Quarter (\$)	Other Contributions received (Attach separately, if necessary)	Upcoming Events/Milestones and Other (Attach separately, if necessary)
				<b>Total</b>	<b>Total</b>	<b>Total</b>	<b>Total</b>		

By ticking the box, I confirm that, except as set out in this report, the funding recipient identified above currently complies with all Transaction Documents:

(tick box and provide details of any non-compliance)

By ticking the box, I confirm that, except as set out in this report, the funding recipient identified above currently has in place all agreements, consents, permissions and approvals as required by clause 7.7:

(tick box and provide details of any non-compliance)

Contact Person    Signature:  
                          Name:  
                          Position:

Phone:

Email:

## ANNEXURE B

### *AusLink Strategic Regional Programme*

#### **Statement by funding recipient**

The following statement is a true statement of the receipts and expenditure of the funds received by *[insert name of funding recipient]* under the *AusLink Strategic Regional Programme* in the financial year *[200x-0x]* for *[insert name of project, approved on ...]*

[1]	[2]	[3]	[4]	[5]
Amount of funding brought forward from previous financial year \$	Amount of funding received in report year \$	Total amount of funding available for expenditure in report year \$	Amount of funding spent in report year \$	Amount of funding retained as at end of report year \$
		[1]+[2]		[3]-[4]

\_\_\_\_\_  
(signature)

\_\_\_\_\_  
(date)

\_\_\_\_\_  
(name)

\_\_\_\_\_  
(position)

Note: This statement must be signed by the funding recipient's CEO or other person authorised by the funding recipient to execute documents and legally bind the funding recipient by his or her execution.

## Auditor's report

In my opinion:

the statement above is based on proper accounts and records;  
the statement is in agreement with the accounts and records; and  
the amount of funding spent by [insert name] during the report year has been  
expended on the project named above.

\_\_\_\_\_  
(signature of auditor)

\_\_\_\_\_  
(date)

\_\_\_\_\_  
(name of auditor)

\_\_\_\_\_  
(name of auditor's firm, if any)

\_\_\_\_\_  
(qualification of auditor)

Note: The auditor must be the appropriate auditor for the funding recipient. That is:

- (a) in relation to a person or body whose accounts are required by law to be audited by the Auditor-General of a State – the Auditor-General of the State; or
- (b) in relation to a person or body whose accounts are required by law to be audited by the Auditor-General of the Commonwealth – the Auditor-General of the Commonwealth; or
- (c) in relation to any other person or body – a person (other than a director, officer or employee of the person or body) who is:
  - (i) registered as a company auditor or a public accountant under a law in force in a State; or
  - (ii) a member of the Institute of Chartered Accountants in Australia or of the Australian Society of Accountants.

## **ANNEXURE C**

*[insert National Code of Practice for the Construction Industry if applicable]*

## **ANNEXURE D**

*[insert Implementation Guidelines for the National Code of Practice for the Construction Industry if applicable. Where the South Australian Implementation Guidelines apply these should be inserted instead.]*

## **ANNEXURE E**

*[insert Industry Guidelines for the Industrial Relations and Occupational Health and Safety components of the National Code of Practice for the Construction Industry if applicable]*