



**Australian Government**

**Department of Infrastructure and Regional Development**

**DEED OF AGREEMENT**

FUNDING AGREEMENT IN RELATION TO **[INSERT DETAILS]**

The Commonwealth of Australia as represented by the Department of Infrastructure  
and Regional Development  
ABN 86 267 354 017

**[Insert name of other party]**  
**[insert ABN] [insert ACN]**

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**FUNDING AGREEMENT (LONG FORM)**

**FUNDING AGREEMENT IN RELATION TO [INSERT DETAILS]**

**Parties**

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This Funding Agreement is made between and binds the following parties:

1. **The Commonwealth of Australia** as represented by the Department of Infrastructure and Regional Development  
ABN 86 267 354 017, 111 Alinga Street, Canberra, Australian Capital Territory  
(**Commonwealth**)
2. **[Insert legal name of other party]** [insert ACN] [insert ABN]  
[insert address]  
(**Recipient**)

**Context**

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- A. The Commonwealth is undertaking the [insert name and brief description of the Program. If the funding is not being provided under a Program then paragraphs A and B should be deleted or amended as appropriate].
- B. The Recipient submitted an application to obtain funding under the Program to conduct the Activity. The Activity will help achieve the objectives of the Program.
- C. The Commonwealth has agreed to provide Funding to the Recipient to support the carrying out of the Activity.
- D. The Recipient agrees to accept the Funding for the purposes, and subject to the terms and conditions, set out in this Agreement.

**Operative provisions**

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In consideration of the mutual promises contained in this Agreement, the parties to this Funding Agreement agree as follows:

**1. Interpretation**

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**1.1. Definitions**

1.1.1. In this Agreement, unless the context indicates otherwise:

**Activity** means the activity described in Item A and includes the provision to the Commonwealth of the Activity Material;

**Activity Material** means any Material:

- a. created by the Recipient for the purpose of this Agreement;
- b. provided or required to be provided to the Commonwealth under the Agreement; or
- c. derived at any time from the Material referred to in

paragraphs a or b,

and includes

- d. any Existing Material incorporated in the Material referred to in paragraphs b or c; and
- e. any Reports;

<b>Activity Objectives</b>	means the objectives of the Activity described in Item A;
<b>Activity Period</b>	means the period specified in Item A during which the Activity must be completed;
<b>Agreement</b>	means this document and includes any Schedules and Annexures;
<b>Annexure</b>	means any annexure to Schedule 1;
<b>Approved Auditor</b>	means a person who is: <ul style="list-style-type: none"><li>a. registered as a company auditor under the <i>Corporations Act 2001</i> (Cth) or an appropriately qualified member of the Institute of Chartered Accountants in Australia or of CPA Australia;</li><li>b. not a principal, member, shareholder, officer, agent, subcontractor, employee or related entity of the Recipient or of a related body corporate (the terms 'related entity' and 'related body corporate' have the same meaning as in section 9 of the <i>Corporations Act 2001</i> (Cth)); and</li><li>c. not the Recipient's Qualified Accountant;</li></ul>
<b>Asset</b>	means any item of property, purchased, leased, hired, financed, created or otherwise brought into existence either wholly or in part with use of the Funding, which has a value of over \$5,000 exclusive of GST, but excludes any Intellectual Property Rights;
<b>Auditor-General</b>	means the office established under the <i>Auditor-General Act 1997</i> (Cth) and includes any other entity that may, from time to time, perform the functions of that office;
<b>Australian Accounting Standards</b>	refers to the standards of that name maintained by the Australian Accounting Standards Board created by section 226 of the <i>Australian Securities and Investments Commission Act 2001</i> (Cth);
<b>Australian Auditing Standards</b>	refers to the standards made by the Auditing and Assurance Standards Board created by section 227A of the <i>Australian Securities and Investments Commission Act 2001</i> (Cth);

<b>Australian Privacy Principle</b>	has the same meaning as it has in the Privacy Act 1988 (Cth).
<b>Budget</b>	means the budget set out in Item C;
<b>Business Day (in a place)</b>	means a weekday other than a public holiday in the place specified or, if no place is specified, in the State or Territory specified in Item M;
<b>Commonwealth</b>	where the context permits, includes officers, delegates, employees and agents and successors of the Department of Infrastructure and Regional Development;
<b>Commonwealth Material</b>	means any Material: <ol style="list-style-type: none"><li>provided by the Commonwealth to the Recipient for the purposes of this Agreement; or</li><li>derived at any time from the Material referred to in paragraph a;</li></ol>
<b>Completion Date</b>	means the day after the Recipient has done all that it is required to do under clauses 2 and 6 of this Agreement to the satisfaction of the Commonwealth;
<b>Confidential Information</b>	means: <ol style="list-style-type: none"><li>the information described in Item N; and</li><li>information that the parties agree in writing after the Date of this Agreement is confidential information for the purposes of this Agreement;</li></ol>
<b>Date of this Agreement</b>	means the date written on the execution page of this Agreement, or if no date or more than one date is written there, then the date on which the Agreement is signed by the last party to do so;
<b>Depreciated</b>	means the amount representing the reduction in value of an Asset calculated in accordance with Australian Accounting Standards;
<b>Director</b>	means any of the following: <ol style="list-style-type: none"><li>a person appointed to the position of a director or alternate director and acting in that capacity for a body corporate within the meaning of the <i>Corporations Act 2001</i> (Cth) regardless of the name given to their position;</li><li>a member of the governing committee of an Aboriginal and Torres Strait Islander corporation under the <i>Corporations (Aboriginal and Torres Strait Islander) Act 2006</i> (Cth);</li><li>a member of the committee of an organisation incorporated pursuant to State or Territory laws</li></ol>

relating to the incorporation of associations; or

- d. a member of the board, committee or group of persons (however described) that is responsible for managing or overseeing the affairs of the body corporate;

**Dispose** means to sell, licence, lease or sublease, or otherwise transfer or give up ownership or the right to occupy or use, or to enter into an agreement to do any of the preceding acts and 'Disposal' means the method of so disposing;

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

- a. incorporated in;
- b. supplied with, or as part of; or
- c. required to be supplied with, or as part of, the Activity Material;

**Financial Year** means each period from 1 July to the following 30 June occurring during the Term, or any part of such a period occurring at the beginning or end of the Term;

**Funding** means:

- a. the amount or amounts (in cash or kind) payable by the Commonwealth under this Agreement as specified in Item B, and
- b. any interest earned on the Funding once paid by the Commonwealth to the Recipient;

**GST** has the meaning that it has in the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*;

**Information Officer** means any of the information officers appointed under the *Australian Information Commissioner Act 2010 (Cth)* when performing privacy functions as defined in that Act;

**Intellectual Property** includes:

- a. all copyright (including rights in relation to phonograms and broadcasts);
- b. all rights in relation to inventions, plant varieties, trademarks (including service marks), designs, circuit layouts; and
- c. all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields;

but does not include:

- d. Moral Rights;



	<ul style="list-style-type: none"><li>e. the non-proprietary rights of performers; or</li><li>f. rights in relation to confidential information;</li></ul>
<b>Material</b>	means any thing in relation to which Intellectual Property rights arise;
<b>Milestone</b>	means a milestone or stage of completion of the Activity as set out in Item A;
<b>Moral Rights</b>	includes the following rights of an author of copyright Material: <ul style="list-style-type: none"><li>a. the right of attribution of authorship;</li><li>b. the right of integrity of authorship; and</li><li>c. the right not to have authorship falsely attributed;</li></ul>
<b>Open Access Licence</b>	means a licence to the public on broad open access terms that allows any member of the public to perform a wide range of acts in respect of the material subject to certain restrictions. An Open Access Licence includes any Australian Government open access licence and any Creative Commons Attribution licence (see <a href="http://creativecommons.org.au/learn-more/licences">http://creativecommons.org.au/learn-more/licences</a> );
<b>Other Contributions</b>	means financial or in-kind resources (with in-kind resources valued at cost other than the Funding or the Recipient Contributions, which are specified in Item D and are to be used by the Recipient to perform the Activity;
<b>Personnel</b>	means: <ul style="list-style-type: none"><li>a. in relation to the Recipient - any natural person who is an officer, employee, agent, or professional advisor of the Recipient or its subcontractors; and</li><li>b. in relation to the Commonwealth - any natural person, other than a person referred to in paragraph a, who is an officer, employee, agent or professional advisor of the Commonwealth;</li></ul>
<b>Privacy Act</b>	refers to the <i>Privacy Act 1988</i> (Cth);
<b>Program</b>	means the [insert name of Program] under which the Commonwealth is able to provide the Funding to the Recipient;
<b>Program Guidelines</b>	refers to the guidelines for the Program, if any, as described in Item A;
<b>Program Objectives</b>	means the objectives of the Program, as set out in the Program Guidelines or otherwise in Item A;
<b>Qualified Accountant</b>	means a person who is a member of the Institute of Chartered Accountants in Australia or of CPA Australia;

<b>Recipient</b>	includes, where the context permits, the officers, employees, agents, volunteers and subcontractors, and successors of the Recipient;
<b>Recipient Contributions</b>	means the financial or in-kind resources (with in-kind resources valued at cost, other than the Funding or Other Contributions, which are specified in Item D and are to be used by the Recipient to perform the Activity;
<b>Records</b>	includes documents, information and data stored by any means and all copies and extracts of the same;
<b>Report</b>	means Activity Material that is provided to the Commonwealth for reporting purposes as stipulated in Item E;
<b>Schedule</b>	means the schedule to this Agreement and may include Annexures and incorporate other documents by reference;
<b>Specified Personnel</b>	means the Recipient's Personnel specified in Item J as Personnel required to undertake all or any part of the Activity;
<b>Term</b>	refers to the period described in clause 1.4;
<b>Third Party Interest</b>	means any legal or equitable right, interest, power or remedy in favour of any person other than the Commonwealth or the Recipient in connection with the Agreement, including any right of possession, receivership, control or power of sale, and any mortgage, charge, security or other interest; and
<b>Undepreciated</b>	in relation to the value of an Asset, means the value of the Asset which has not been Depreciated.

## 1.2. Interpretation

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

- a. words importing a gender include any other gender;
- b. words in the singular include the plural and words in the plural include the singular;
- c. clause headings are for convenient reference only and have no effect in limiting or extending the language of provisions to which they refer;
- d. words importing a person include a partnership and a body whether corporate or otherwise;
- e. a reference to dollars is a reference to Australian dollars;
- f. a reference to any legislation or legislative provision includes any statutory modification, substitution or re-enactment of that legislation or legislative provision;

- g. if any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- h. the use of the word “includes” or “including” in relation to a right or obligation of a party, does not limit or restrict the scope of that right or obligation;
- i. a reference to a clause is a reference to a clause in this Agreement;
- j. a reference to an Item is a reference to an Item in the Schedule;
- k. the Schedule and any attachments form part of the Agreement;
- l. if any conflict arises between the terms and conditions contained in the clauses of this Agreement and any part of the Schedule (and attachments if any), the terms and conditions of the clauses prevail; and
- m. if any conflict arises between any part of the Schedule and any part of an attachment, the Schedule prevails.

1.3. **Guidance on construction of Agreement**

- 1.3.1. This Agreement records the entire agreement between the parties in relation to its subject matter.
- 1.3.2. As far as possible all provisions of this Agreement will be construed so as not to be void or otherwise unenforceable.
- 1.3.3. If any clause in this Agreement is void or otherwise unenforceable then that clause will be severed to the extent it is void and unenforceable and the rest of the Agreement remains in force.
- 1.3.4. A provision of this Agreement will not be construed to the disadvantage of a party solely on the basis that it proposed or prepared that provision.

1.4. **Duration of Term**

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

**2. Activity**

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2.1. **Conduct of Activity**

- 2.1.1. The Recipient agrees to carry out the Activity:
  - a. to achieve the Activity Objectives;
  - b. to assist the Program to meet the Program Objectives;
  - c. to meet the Milestones;
  - d. within the Activity Period;
  - e. in an efficient, effective, economical and ethical manner;

- f. in accordance with this Agreement; and
- g. diligently and to a high standard.

2.1.2. Where the Commonwealth is satisfied that the Recipient does not have the capacity to adequately:

- a. manage the Funding; or
- b. undertake the Activity in accordance with this Agreement,  
the Commonwealth may by written notice immediately:
  - c. suspend, reduce or cease the release of Funding to the Recipient; and/or
  - d. require the Recipient to refund some or all of the Funding to the Commonwealth; or
  - e. terminate the Agreement in accordance with the provisions of clause 15.2.

## 2.2. **Liaison and monitoring**

2.2.1. The Recipient agrees to:

- a. liaise with and provide information to the Commonwealth as reasonably notified by the Commonwealth; and
- b. comply with all of the Commonwealth's reasonable requests, directions or monitoring requirements.

2.2.2. In relation to conducting a review and final evaluation of the Program, the Recipient agrees to:

- a. provide all reasonable assistance required by the Commonwealth;
- b. respond to all of the Commonwealth's reasonable requests; and
- c. provide any information the Commonwealth reasonably requires.

2.2.3. Each of the parties may nominate, from time to time, a person who has authority to receive and sign notices and written communications for each of them under this Agreement and accept any request or direction in relation to the Activity.

## 2.3. **Subcontractors**

2.3.1. The Recipient agrees not to subcontract the performance of any part of the Activity without the Commonwealth's prior written approval.

2.3.2. The Commonwealth may impose any conditions it considers appropriate when giving its approval under clause 2.3.1.

2.3.3. The Commonwealth has approved the subcontracting of the performance of the parts of the Activity to the persons, and subject to the conditions (if any), specified in Item H.

- 2.3.4. The Recipient agrees to make available to the Commonwealth (if requested) details of all subcontractors engaged in the performance of the Activity.
- 2.3.5. The Recipient acknowledges, and must inform all subcontractors that, the Commonwealth may publicly disclose the names of any subcontractors engaged in the performance of the Activity.
- 2.3.6. The Recipient agrees, in any subcontract placed with a subcontractor, to reserve a right of termination to take account of the Commonwealth's rights of termination under clause 15, and the Recipient agrees, where appropriate, to make use of that right in the event of a termination or revocation by the Commonwealth.
- 2.3.7. The Recipient must not enter into a subcontract under this Agreement with a subcontractor named by the Director of Workplace Gender Equality as an employer currently not complying with the *Workplace Gender Equality Act 2012* (Cth).
- 2.4. **Specified Personnel**
- 2.4.1. The Recipient agrees that the Specified Personnel will perform work in relation to the Activity in accordance with this Agreement.
- 2.4.2. If Specified Personnel are unable to perform the work as required under this clause 2.4, the Recipient agrees to notify the Commonwealth immediately.
- 2.4.3. The Recipient agrees, at the request of the Commonwealth acting in its absolute discretion, to remove Personnel (including Specified Personnel) from work in relation to the Activity.
- 2.4.4. If clause 2.4.2 or clause 2.4.3 applies, the Recipient will provide replacement Personnel acceptable to the Commonwealth at no additional cost and at the earliest opportunity.
- 2.5. **Responsibility of the Recipient**
- 2.5.1. The Recipient is fully responsible for the performance of the Activity and for ensuring compliance with the requirements of this Agreement, and will not be relieved of that responsibility because of any:
- a. involvement by the Commonwealth in the performance of the Activity;
  - b. subcontracting of the Activity;
  - c. acceptance by the Commonwealth of Specified Personnel; or
  - d. payment of any amount of Funding to the Recipient.
- 2.6. **Reports**
- 2.6.1. The Recipient agrees to provide to the Commonwealth written Reports in the manner specified in Item E.

### **3. Funding**

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#### **3.1. Payment of Funding**

- 3.1.1. Subject to sufficient funds being available, and compliance by the Recipient with this Agreement, the Commonwealth agrees to provide the Recipient with the Funding at the times and in the manner specified in Item B.
- 3.1.2. The Commonwealth is not responsible for the provision of additional money to meet any expenditure in excess of the Funding.

#### **3.2. Commonwealth's right to suspend payment or reduce the amount of Funding**

- 3.2.1. Without limiting the Commonwealth's rights, the Commonwealth may suspend any payment in whole or in part until the Recipient has performed its obligations under this Agreement.
- 3.2.2. The Commonwealth may reduce the amount of Funding payable under this Agreement where the Recipient receives or is entitled to receive any other funding from the Commonwealth of Australia or a State, Territory or local government in relation to the Activity or a similar activity. The Recipient agrees to inform the Commonwealth in writing within 20 Business Days of entering into any arrangement (whether contractual or statutory) under which the Recipient is entitled to receive such funding.
- 3.2.3. The Commonwealth may reduce the amount of Funding payable under this Agreement where the Recipient:
- a. owes money to the Commonwealth, or
  - b. has money that the Recipient should have, but has not yet, acquitted under any arrangement with the Commonwealth (whether contractual, statutory or otherwise).
- 3.2.4. Notwithstanding such suspension of any payments or reduction in the amount of the Funding, the Recipient agrees to continue to perform any obligations under this Agreement.

### **4. Taxes, duties and government charges**

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- 4.1.1. Except as provided by clause 4, the Recipient agrees to pay all taxes, duties and government charges imposed or levied in Australia or overseas in connection with the performance of this Agreement.
- 4.1.2. Unless otherwise indicated, any Funding and all other consideration for any supply made under this Agreement is exclusive of any GST imposed on the supply.
- 4.1.3. If one party (the supplier) makes a taxable supply to the other party (the taxable supply recipient) under this Agreement, on receipt of a tax invoice from the

supplier, the taxable supply recipient will pay without setoff an additional amount to the supplier equal to the GST imposed on the supply in question.

- 4.1.4. No party may claim or retain from the other party any amount in relation to a supply made under this Agreement for which the first party can obtain an input tax credit or decreasing adjustment.

## **5. Debt and Interest**

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- 5.1.1. In this clause 5, '**Interest**' means interest calculated at an interest rate equal to the general interest charge rate for a day pursuant to section 8AAD of the *Taxation Administration Act 1953* (Cth), on a daily compounding basis.
- 5.1.2. The Recipient agrees, upon request of the Commonwealth, to pay any amount owed or payable to the Commonwealth or which the Commonwealth is entitled to recover from the Recipient under this Agreement, including if demanded by the Commonwealth any Interest, as a debt due by the Recipient without further proof of the debt by the Commonwealth being necessary. Such payment is without prejudice to any other rights available to the Commonwealth under the Agreement, under statute, at law or in equity.
- 5.1.3. If the Commonwealth notifies the Recipient that an amount is to be refunded or otherwise paid to the Commonwealth and the amount is not refunded or paid within 20 Business Days, or as otherwise notified by the Commonwealth, the Recipient agrees to pay Interest, unless the Commonwealth notifies the Recipient otherwise, on the amount outstanding after the expiry of the date it was due, until the amount is paid in full.
- 5.1.4. In respect to any obligation the Recipient may have under this Agreement to pay the Commonwealth any Interest, the Recipient agrees that the Interest represents a reasonable pre-estimate of the loss incurred by the Commonwealth.

## **6. Management of Funding**

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### **6.1. Use of Funding**

- 6.1.1. The Recipient agrees to spend the Funding only for the Activity in accordance with this Agreement.

### **6.2. Budget**

- 6.2.1. The Recipient agrees to only spend the Funding for the Activity and in accordance with the Budget.
- 6.2.2. Subject to clauses 6.2.3 and 6.2.4, the Recipient may spend the Funding on any separate category of expenditure item within the Budget.
- 6.2.3. The Recipient agrees to obtain prior written approval from the Commonwealth for any transfer of Funding between categories of expenditure items within the Budget which exceed a percentage of the total Budget as specified in Item C.

6.2.4. The total amount of transfers in any Financial Year must also not exceed the percentage of the Budget specified in Item C.

6.3. **Account and financial records**

6.3.1. The Recipient agrees to ensure that the Funding is held in an account in the Recipient's name and which the Recipient solely controls, with an authorised deposit-taking institution authorised under the *Banking Act 1959* (Cth) to carry on banking business in Australia and that is an account that complies with any other requirements specified in Item B in the Schedule.

6.3.2. The Recipient must ensure that the account referred to in clause 6.3.1 is:

- a. established solely for the purposes of the Activity; and
- b. separate from the Recipient's other operational accounts.

6.3.3. The Recipient must, in relation to the account referred to in clause 6.3.1:

- a. notify the Commonwealth, prior to the receipt of any Funding, of details sufficient to identify the account;
- b. on notification from the Commonwealth, provide the Commonwealth and the authorised deposit-taking institution with a written authority for the Commonwealth to obtain any details relating to any use of the account;
- c. if the account changes, notify the Commonwealth within 10 Business Days of the change occurring and provide the Commonwealth with details of the new account; and
- d. unless the Recipient is a sole director company or an individual, ensure that as a minimum, two signatories are required to operate the account.

6.3.4. The Recipient agrees to:

- a. keep financial accounts and records relating to the Funding and the Activity that identify
  - i. all receipts and payments related to the Activity; and
  - ii. all interest earned on the Funding.
- b. unless otherwise notified by the Commonwealth, prepare financial statements for the Activity in accordance with Australian Accounting Standards including:
  - i. an income and expenditure statement for the Financial Year to date compared with the Budget; and
  - ii. a register of the Assets created, acquired, written-off or Disposed of during the Financial Year to date compared with the Budget; and
- c. arrange for the audit of those accounts and records in accordance with Australian Auditing Standards.



6.4. **Use as security**

6.4.1. Except with the prior written approval of the Commonwealth, the Recipient agrees not to 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, or for the preparation of, or in the course of, any litigation:

- a. the Funding;
- b. this Agreement or any of the Commonwealth's obligations under the Agreement; or
- c. any Assets or Intellectual Property Rights in Activity Material.

6.5. **Refunds of unexpended and misspent Funds**

6.5.1. If at any time during the term of this Agreement (including on the Completion Date):

- a. there remains an amount of Funding that has not been spent or legally committed for expenditure in accordance with the Agreement and the period in which that Funding was expected to be spent or legally committed has passed; or
- b. an amount of Funding has been spent in contravention of the Agreement, the Commonwealth may (at its discretion and in addition to any other rights it may have) by notice in writing to the Recipient:
- c. require the Recipient to refund this amount to the Commonwealth within 20 Business Days (or other such period specified in the notice); or
- d. reduce any further payments of Funding to the Recipient (if applicable) by an amount up to this amount.

6.5.2. If clause 6.5.1.a applies, the Commonwealth may by notice in writing require the Recipient to otherwise deal with this amount in accordance with any conditions that the Commonwealth considers appropriate, including conditions relating to the ongoing use and expenditure by the Recipient of that amount for particular goals or objectives associated with the Activity.

6.5.3. The Recipient must immediately notify the Commonwealth in writing if any of the events in clauses 6.5.1.a or 6.5.1.b occurs.

6.5.4. This clause survives termination or expiry of the Agreement.

**7. Recipient Contributions, Other Contributions and Cost Savings**

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7.1. **Recipient Contributions**

7.1.1. The Recipient agrees to provide the Recipient Contributions for the Activity at the times and in the amounts specified in Item D.1 of the Schedule. The Recipient Contributions must not include any amount that has been provided to

the Recipient by the Commonwealth of Australia or a State, Territory or local government.

**7.2. Other Contributions**

7.2.1. The Recipient must ensure that the persons identified in Item D.2 provide the Other Contributions at the times and in the amounts specified in Item D.2.

7.2.2. The Recipient must, within 20 Business Days after a written request from the Commonwealth to do so, provide to the Commonwealth satisfactory written evidence that confirms the persons identified in Item D.2 will provide the Other Contributions, including the amounts to be provided, the due dates for each of these amounts and the terms and conditions of the provision of the Other Contributions.

7.2.3. If, for any reason, the Recipient fails to provide the Recipient Contributions (including any part thereof) or is not able to obtain the Other Contributions (including any part thereof) as required under this Agreement, then the Commonwealth may:

- a. suspend payment of the Funding or an instalment of the Funding until the Recipient Contributions are provided and/or the Other Contributions are obtained (as the case may be);
- b. reduce the total Funding payable under this Agreement by an amount that, in the Commonwealth's opinion, represents an equivalent proportion of the overall reduction in the total value of the Recipient Contribution and/or the Other Contributions (as the case may be) resulting from the failure; or
- c. terminate this Agreement in accordance with clause 15.2.

7.2.4. The Recipient must notify the Commonwealth in writing as soon as possible after it becomes aware of any likely or actual failure (for any reason) to provide the Recipient Contributions (including any part thereof) and/or obtain the Other Contributions (including any part thereof) as required under this Agreement.

7.2.5. The Recipient agrees to notify the Commonwealth within 10 Business Days of entering into any arrangement under which the Recipient is entitled to receive any additional monetary or in-kind contributions in respect of the Activity that are not identified as Other Contributions in Item D.2. Any such additional contribution that the Recipient becomes entitled to receive after the Date of this Agreement constitutes Other Contributions for the purposes of the Agreement (and Schedule 1 is deemed to be varied accordingly) on the date on which the Recipient notifies the Commonwealth of that contribution under this clause 7.2.4.

**7.3. Cost Savings**

7.3.1. Subject to compliance with this Agreement, the Recipient must:

- a. continually identify any costs saving or efficiency measures in carrying out the Activity; and

- b. in consultation with the Commonwealth:
  - i. implement those costs saving or efficiency measures;
  - ii. ensure that any reductions in expenditure for the Activity that result from those costs saving or efficiency measures are accounted for and allocated equitably in proportion to the relative total values of the Funding, the Recipient Contributions and the Other Contributions (as applicable) as committed to the Activity.

## **8. Assets**

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### **8.1. Acquisition of Asset**

- 8.1.1. The Recipient agrees not to use the Funding to acquire or create any Asset, apart from those detailed in the Item F, without obtaining the Commonwealth's prior written approval. Approval may be given subject to any conditions the Commonwealth may impose.
- 8.1.2. Unless it is specified in Item F that the Commonwealth or a third party owns the Asset or the Commonwealth provides written consent to a third party owning the Asset, then the Recipient must ensure that it owns any Asset acquired with the Funding.

### **8.2. Terms applicable to Asset**

- 8.2.1. If the Commonwealth owns the Asset, clauses 8.4, 8.6.2 and 8.7 do not apply.
- 8.2.2. If the Asset is owned by a third party then the Recipient agrees to ensure that the terms of the lease, hire or finance arrangement are consistent with clause 8.3, and clauses 8.4, 8.5, 8.6 and 8.7 do not apply.

### **8.3. Recipient's responsibilities for Asset**

- 8.3.1. Throughout the Term, the Recipient agrees to:
  - a. use any Asset in accordance with this Agreement and for the purposes of the Activity;
  - b. not encumber or Dispose of any Asset, or deal with or use any Asset other than in accordance with this clause 8 without the Commonwealth's prior written approval;
  - c. hold all Assets securely and safeguard them against theft, loss, damage, or unauthorised use;
  - d. maintain all Assets in good working order;
  - e. maintain all appropriate insurances for all Assets to their full replacement cost noting the Commonwealth's interest, if any, in the Asset under the Agreement;
  - f. if required by law, maintain registration and licensing of all Assets;

- g. be fully responsible for, and bear all risks relating to, the use or Disposal of all Assets; and
- h. if specified in Item F, maintain an Assets register in the form and containing the details as described in Item F and as and when requested by the Commonwealth, provide copies of the Assets register to the Commonwealth.

**8.4. Sale or Disposal of Asset during Term**

8.4.1. If the Recipient Disposes of an Asset during the Activity Period, the greater of the following proportions must, unless the Commonwealth otherwise directs, be accounted for as Funding and used for the Activity:

- a. the proportion of the sale proceeds from the Asset; or
- b. the proportion of the Undepreciated value of the Asset,

that is equivalent to the proportion of the cost of the Asset that was funded from the Funding.

**8.5. Loss, damage, etc of Asset**

8.5.1. If any of the Assets are lost, damaged or destroyed, the Recipient agrees to promptly reinstate the Assets including from the proceeds of the insurance, and this clause 8 continues to apply to the reinstated Assets. The proportion of any surplus from the proceeds of the insurance, which reflects the proportion of the cost of the Asset that was funded from the Funding, must be notified to the Commonwealth and accounted for as Funding and used for the Activity.

**8.6. Dealing with Asset**

8.6.1. On expiry of the Activity Period or earlier termination of the Agreement, the Commonwealth may require the Recipient to deal with an Asset as the Commonwealth may, at the sole discretion of the Commonwealth, notify the Recipient.

8.6.2. Subject to clause 8.6.1, if on expiry of the Activity Period or the earlier termination of this Agreement, an Asset has not been fully Depreciated, the Commonwealth may, by written notice, require the Recipient to:

- a. pay to the Commonwealth within 20 Business Days of the expiry of the Activity Period or earlier termination of the Agreement, an amount equal to the proportion of the Undepreciated value of the Asset that is equivalent to the proportion of the cost of the Asset that was funded from the Funding;
- b. sell the Asset for the best price reasonably obtainable and pay to the Commonwealth within 20 Business Days of the sale the proportion of the proceeds of the sale that is equivalent to the proportion of the cost of the Asset (less an amount equal to the reasonable Disposal costs incurred by the Recipient) that was funded from the Funding; or

- c. continue to use the Asset for the purposes, and in accordance with any conditions, notified by the Commonwealth.

8.7. **Failure to make payment**

- 8.7.1. Amounts payable to the Commonwealth under clause 8.6.2 form part of the Funding and are recoverable as such.

**9. Records**

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9.1. **Keeping Records**

- 9.1.1. The Recipient must create and maintain full and accurate accounts and records of the conduct of the Activity including, without limitation, all:
  - a. progress against the Milestones;
  - b. receipt and use of Funding;
  - c. Other Contributions (if any);
  - d. Recipient Contributions (if any); and
  - e. creation, acquisition and Disposal of Assets.

9.2. **Retention of Records**

- 9.2.1. The Recipient agrees to create and maintain records and accounts under clause 9.1.1 and retain them for a period of no less than 7 years after the end of the Term.

**10. Intellectual Property**

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10.1. **Use of Commonwealth Material**

- 10.1.1. The Commonwealth grants a royalty-free, non-exclusive licence for the Recipient to use, reproduce and adapt the Commonwealth Material for the purposes of this Agreement.
- 10.1.2. The Recipient agrees to use the Commonwealth Material strictly in accordance with any conditions or restrictions the Commonwealth may notify to the Recipient.

10.2. **Rights in Activity Material**

- 10.2.1. Subject to this clause 10, Intellectual Property in Activity Material vests or will vest in the Recipient.
- 10.2.2. Clause 10.2.1 does not affect the ownership of Intellectual Property in any Commonwealth Material incorporated into the Activity Material.
- 10.2.3. The Recipient grants to (or will procure for) the Commonwealth a permanent, irrevocable, royalty-free, worldwide, non-exclusive licence (including a right of sublicense) to use, reproduce, exploit, communicate, adapt and distribute the Activity Material for any purpose.

10.2.4. The Recipient agrees that the licence granted in clause 10.2.3 includes a right for the Commonwealth to licence the Activity Material to the public under an Open Access Licence.

10.2.5. The Recipient agrees, on request by the Commonwealth, to create, sign, execute or otherwise deal with any document necessary or desirable to give effect to this clause 10.

10.2.6. The Recipient warrants that:

- a. it is entitled; or
- b. it will be entitled at the relevant time,

to deal with the Intellectual Property in the Activity Material in the manner provided for in this clause 10.

### 10.3. **Moral Rights**

10.3.1. In this clause 10.3:

- Permitted Acts** means any of the following classes or types of acts or omissions:
- c. using, reproducing, adapting or exploiting all or any part of the Activity Material, with or without attribution or authorship;
  - d. supplementing the Activity Material with any other Material;
  - e. using the Activity Material in a different context to that originally envisaged; and
  - f. releasing the Activity Material to the public under an Open Access Licence;

but does not include false attribution of authorship.

10.3.2. Where the Recipient is a natural person and the author of the Activity Material he or she:

- a. consents to the performance of the Permitted Acts by the Commonwealth or any person claiming under or through the Commonwealth (whether occurring before or after the consent is given); and
- b. acknowledges that their attention has been drawn to the Commonwealth's general policies and practices regarding Moral Rights.

10.3.3. Where clause 10.3.1 does not apply, the Recipient agrees:

- a. to obtain from each author a written consent which extends directly or indirectly to the performance of the Permitted Acts by the Commonwealth or any person claiming under or through the Commonwealth (whether occurring before or after the consent is given) and, upon request, will

provide the executed original of any such consent to the Commonwealth;  
and

- b. to ensure that each author's attention is drawn to the Commonwealth's general policies and practices regarding Moral Rights.

10.3.4. This clause 10.3 does not apply to any Commonwealth Material incorporated in the Activity Material.

## **11. Confidential Information**

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### **11.1. Confidential Information not to be disclosed**

11.1.1. Subject to clause 11.2.1, a party must not, without the prior written consent of the other party, disclose any Confidential Information of the other party to a third party.

### **11.2. Written Undertakings**

11.2.1. The Recipient must, on request by the Commonwealth at any time, arrange for:

- a. its Personnel; or
- b. any person with a Third Party Interest,

to give a written undertaking in a form acceptable to the Commonwealth relating to the use and non disclosure of the Commonwealth's Confidential Information.

### **11.3. Exceptions to Obligations**

11.3.1. The obligations on the parties under this clause 11.3 will not be taken to have been breached to the extent that Confidential Information:

- a. is disclosed by a party to its Personnel solely in order to comply with obligations, or to exercise rights, under this Agreement;
- b. is disclosed to a party's internal management Personnel, solely to enable effective management or auditing of Agreement-related activities;
- c. is disclosed by the Commonwealth to the responsible Minister;
- d. is disclosed by the Commonwealth, in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia;
- e. is shared by the Commonwealth (including other agencies), where this serves the Commonwealth of Australia's legitimate interests;
- f. is authorised or required by law to be disclosed; or
- g. is in the public domain otherwise than due to a breach of this clause 11.3.

11.3.2. Where a party discloses Confidential Information to another person pursuant to clauses 11.3.1.a - 11.3.1.e, the disclosing party must notify the receiving person that the information is confidential.

11.3.3. In the circumstances referred to in clauses 11.3.1.a, 11.3.1.b and 11.3.1.e, the disclosing party agrees not to provide the information unless the receiving person agrees to keep the information confidential (subject to the exceptions in this clause 11.3).

11.3.4. The Recipient agrees to secure all of the Commonwealth's Confidential Information against loss and unauthorised access, use, modification or disclosure.

11.4. **Period of Confidentiality**

11.4.1. The obligations under this clause 11.4 will continue, notwithstanding the expiry or termination of this Agreement:

- a. in relation to an item of information described in Item N – for the period set out in respect of that item; and
- b. in relation to any item of information agreed after the Date of this Agreement to be Confidential Information – for the period agreed by the parties in writing in respect of that item, and if no such period is agreed by the parties, in perpetuity.

11.5. **No reduction in Privacy Obligations**

11.5.1. This clause 11.5 does not detract from any of the Recipient's obligations under the Privacy Act or under clause 19.1.

**12. Acknowledgement and publicity**

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12.1. **Acknowledgement of support**

12.1.1. Unless otherwise notified by the Commonwealth, the Recipient agrees, in all publications, promotional and advertising materials, public announcements and activities by the Recipient or on the Recipient's behalf in relation to the Activity, or any products, processes or inventions developed as a result of it, to acknowledge the financial and other support the Recipient has received from the Australian Government, in the manner set out in Item I, or as otherwise approved by the Commonwealth prior to its use.

12.1.2. Where the Recipient has been provided with Funding to produce any publication, a copy of the publication must, on request, be provided to the Commonwealth.

12.2. **Right to publicise Funding**

12.2.1. The Commonwealth reserves the right to publicise and report on the awarding of Funding to the Recipient. The Commonwealth may do (but is not limited to doing) this by including the Recipient's name, the amount of the Funding given to the Recipient, the date the Agreement commences and its term, and the title, location, purpose and a brief description of the Activity in media releases, general announcements about the Funding, annual reports or through any other means as determined by the Commonwealth.



12.3. **No restriction on advocacy activities**

12.3.1. The Commonwealth confirms that, subject to clause 12.3.2:

- a. no right or obligation arising under this Agreement should be interpreted as limiting the Recipient's ability to enter into public debate or criticism of the Commonwealth of Australia or its agencies, employees, servants or agents;
- b. the Commonwealth does not require the Recipient to obtain advance approval of any involvement by the Recipient in public debate or advocacy activities.

12.3.2. Nothing in this clause 12.3 limits or derogates from the Recipient's obligations under clauses 11 and 19.1.

**13. Liability**

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13.1. **Proportionate liability regime**

13.1.1. To the extent permitted by law, the operation of any legislative proportionate liability regime is excluded in relation to any claim against the Recipient under or in connection with this Agreement.

13.2. **Indemnity**

13.2.1. The Recipient indemnifies the Commonwealth from and against any:

- a. cost or liability incurred by the Commonwealth;
- b. loss of or damage to property of the Commonwealth; or
- c. loss or expense incurred by the Commonwealth in dealing with any claim against it, including legal costs and expenses on a solicitor/own client basis and the cost of time spent, resources used, or disbursements paid by the Commonwealth,

arising from:

- d. any breach by the Recipient of the Agreement;
- e. any act or omission involving fault by the Recipient in connection with this Agreement;
- f. the use of Assets; or
- g. the use by the Commonwealth of the Activity Material, including any claims by third parties about the ownership or right to use the Intellectual Property in the Activity Material.

13.2.2. The Recipient's liability to indemnify the Commonwealth under clause 13.2.1 will be reduced proportionally to the extent that any act or omission involving fault on the part of the Commonwealth or its Personnel contributed to the relevant cost, liability, loss, damage or expense.

13.2.3. The right of the Commonwealth to be indemnified under this clause 13.2 is in addition to, and not exclusive of, any other right, power or remedy provided by law, but the Commonwealth is not entitled to be compensated in excess of the amount of the relevant cost, liability, loss, damage or expense.

13.3. **Meaning of 'fault'**

13.3.1. In this clause 13, 'fault' means any negligent or unlawful act or omission or wilful misconduct.

**14. Dispute resolution**

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14.1. **Procedure for dispute resolution**

14.1.1. The parties agree that a dispute arising under this Agreement will be dealt with as follows, and that, subject to clause 14.4, neither party will commence legal proceedings in relation to that dispute until this procedure is completed:

- a. the party claiming that there is a dispute will give the other party a notice setting out the nature of the dispute;
- b. within 5 Business Days (or such other period as agreed by the parties in writing) each party will nominate a representative not having any prior involvement in the dispute;
- c. the representatives will try to settle the dispute by direct negotiation between them;
- d. failing settlement within a further 10 Business Days or such other period as agreed by the parties in writing (or failure of one or both parties to nominate a representative within the period set out in clause 14.1.1.b), the parties may agree to refer the dispute to an independent third person with power:
  - i. to intervene and direct some form of resolution, in which case the parties will be bound by that resolution; or
  - ii. to mediate and recommend some form of non-binding resolution;
- e. the parties will co-operate fully with any process instigated under clause 14.1.1.d in order to achieve a speedy resolution; and
- f. if the parties have been unable to agree to refer the dispute to an independent third person, or they have agreed and a resolution is not reached within a further 20 Business Days (or such other period as the parties) may agree in writing), either party may commence legal proceedings.

14.2. **Costs**

14.2.1. Each party will bear its own costs of complying with this clause 14 [Dispute resolution], and the parties will bear equally the cost of any third person engaged under clause 14.1.1.d.

14.3. **Continued performance**

14.3.1. Despite the existence of a dispute, the Recipient will (unless requested in writing by the Commonwealth not to do so) continue to perform the Recipient's obligations under this Agreement.

14.4. **Application of clause**

14.4.1. This clause 14 does not apply to:

- a. legal proceedings by either party for urgent interlocutory relief; or
- b. action by the Commonwealth under or purportedly under clauses 3, 6, 15 and 19.1.

**15. Termination or reduction in scope of Agreement**

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15.1. **Termination for convenience**

15.1.1. The Commonwealth may by notice, at any time and in its absolute discretion, terminate this Agreement or reduce the scope of the Agreement immediately.

15.1.2. The Recipient agrees, on receipt of a notice of termination or reduction, to:

- a. stop or reduce the performance of the Recipient's obligations as specified in the notice;
- b. take all available steps to minimise loss resulting from that termination or reduction;
- c. continue performing any part of the Activity not affected by the notice; and
- d. immediately return to the Commonwealth any Funding in accordance with clause 15.1.5, or deal with any such Funding as directed by the Commonwealth.

15.1.3. In the event of termination under clause 15.1.1, the Commonwealth will be liable only:

- a. to pay Funding due and owing to the Recipient under the payment provisions of the Agreement before the date of the notice of termination; and
- b. to reimburse any expenses the Recipient unavoidably incurs that relate directly and entirely to the Activity and not covered by clause 15.1.3.a.

15.1.4. The Commonwealth will not be liable to pay amounts under 15.1.3.a and 15.1.3.b which would, added to any payments already paid to the Recipient under this Agreement, together exceed the Funding set out in Item B.

15.1.5. The Commonwealth will be entitled to recover from the Recipient any part of the Funding which:

- a. is not legally committed for expenditure by the Recipient in accordance with the Agreement and due and payable by the Recipient by the date that the notice of termination is received; or
  - b. has not, in the Commonwealth's opinion, been spent by the Recipient in accordance with the Agreement.
- 15.1.6. In the event of a reduction in the scope of the Agreement under clause 15.1.1, the Commonwealth's liability to pay any part of the Funding will, unless there is agreement in writing to the contrary, reduce in accordance with the reduction in the Activity.
- 15.1.7. The Commonwealth's liability to pay any compensation under or in relation to this clause 15.1 is subject to:
- a. the Recipient's compliance with this clause 15.1; and
  - b. the Recipient's substantiation of any amount claimed under clause 15.1.3.b.
- 15.1.8. The Recipient will not be entitled to compensation for loss of prospective profits or loss of any benefits that would have been conferred on the Recipient.
- 15.2. **Termination for fault**
- 15.2.1. If the Recipient does not comply with any of its obligations under this Agreement, then the Commonwealth:
- a. *if it considers that the non-compliance is not capable of remedy* - may by notice terminate this Agreement immediately;
  - b. *if it considers that the non-compliance is capable of remedy* - may, by notice require that the non-compliance be remedied within the time specified in the notice, and if not remedied within that time, may terminate the Agreement immediately by giving a second notice.
- 15.2.2. The Commonwealth may also by notice terminate this Agreement immediately if:
- a. the Recipient comes under one of the forms of external administration referred to in Chapter 5 of the *Corporations Act 2001* (Cth) or equivalent provisions in legislation of the States and Territories pertaining to incorporated associations or Chapter 11 of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth) or has an order made against it for the purpose of placing it under external administration;
  - b. the Recipient is unable to pay all its debts as and when they become due and payable or it fails 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 winding up the Recipient, or any shareholder, member or director convenes a meeting

for the purpose of considering or passing of any resolution for winding up the Recipient;

- d. in relation to this Agreement, the Recipient breaches any law of the Commonwealth of Australia, or of a State or Territory;
- e. the Recipient becomes bankrupt or enters into a scheme of arrangement with creditors;
- f. another clause of this Agreement allows for termination under this clause 15.2; or
- g. the Commonwealth is satisfied that any statement made in the Recipient's application for Funding is incorrect, incomplete, false or misleading in a way which would have affected the original decision to approve the Funding.

15.2.3. Where the Commonwealth terminates this Agreement under clause 15.2 the Commonwealth:

- a. will be liable only to pay Funding due and owing to the Recipient under the payment provisions of the Agreement before the date of the notice of termination; and
- b. will be entitled to recover from the Recipient any part of the Funding which:
  - i. is not legally committed for expenditure by the Recipient in accordance with the Agreement and payable by the Recipient by the date that the notice of termination is received; or
  - ii. has not, in the Commonwealth's opinion, been spent by the Recipient in accordance with the Agreement.

15.3. **Preservation of other rights**

15.3.1. Clause 15.2 does not limit or exclude any of the Commonwealth's other rights under this Agreement.

**16. Notices**

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16.1. **Format, addressing and delivery**

16.1.1. A notice under this Agreement is only effective if it is in writing, and addressed as follows:

- a. *if given by the Recipient to the Commonwealth* - addressed to the Commonwealth at the address specified in Item L, or other address as notified by the Commonwealth; or
- b. *if given by the Commonwealth to the Recipient* - given by the Commonwealth and addressed as specified in Item L, or other address as notified by the Recipient.

16.1.2. Any such notice must be delivered to the other party by hand, prepaid post or transmitted electronically (via email or facsimile) and be signed by the sending

party. For the avoidance of doubt, an electronic signature on an email will be taken to be a signed notice for the purpose of this clause 16.

**16.2. When received**

16.2.1. Subject to clause 16.2.2, a notice is deemed to be received:

- a. *if delivered by hand* - upon delivery to the relevant address;
- b. *if sent by prepaid post* - upon delivery to the relevant address; or
- c. *if transmitted electronically* - upon receipt by the sender of either an electronic receipt notification (generated by the system transmitting the notice) or an acknowledgement from the other party that it has received the notice (whichever is earlier).

16.2.2. If a notice is received:

- a. after 5.00 pm on any Business Day; or
- b. on a day that is not a Business Day,

it is deemed to be received at 9:00am on the next Business Day for the purposes of this clause 16.

**17. Compliance with the Building Code**

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**17.1. Interpretation of Clause**

17.1.1. In this clause 17:

- the Building Code** means the Building Code 2013. The Building Code can be downloaded from [www.deewr.gov.au/BuildingCode](http://www.deewr.gov.au/BuildingCode).
- the Supporting Guidelines** means the Supporting Guidelines for Commonwealth Funding Entities. The Supporting Guidelines can be downloaded from [www.deewr.gov.au/BuildingCode](http://www.deewr.gov.au/BuildingCode).
- Project Parties** means all contractors, subcontractors, consultants and employees who perform on site work in relation to the Activity.

**17.2. Compliance with Building Code**

17.2.1. Where the Funding specifically relates to building and construction activity, subject to the thresholds specified in the Building Code, the Recipient must comply and ensure that the Project Parties comply with the Building Code.

17.2.2. The Building Code requires the Recipient to ensure that:

- a. all requests for tender, expressions of interest, submissions and invitations to join Common Use Arrangements in relation to the Activity made by it, or any of the Project Parties, contain the commitment to apply the Building

Code as set out in the model tender documents in the Supporting Guidelines; and

- b. all contracts entered into in relation to the Activity by it, or any of the Project Parties, contain the commitment to apply the Building Code as set out in the model contract clauses in the Supporting Guidelines.

17.3. **Recipient must maintain Records and permit access**

17.3.1. The Recipient must maintain adequate records of compliance by it, and each of the Project Parties, with the Building Code. The Recipient must permit the Commonwealth and those authorised by the Commonwealth, including a person occupying a position in the Fair Work Building Industry Inspectorate, full access to premises and records of the Recipient and the Project Parties to:

- a. inspect any work, material, machinery, appliance, article or facility;
- b. inspect and copy any record relevant to the Activity and works governed by this Agreement;
- c. interview any person,

as is necessary to monitor compliance with the Building Code.

Additionally, the Recipient undertakes that it, and each of the Project Parties will agree to a request from the Commonwealth, including a person occupying a position in the Fair Work Building Industry Inspectorate, to produce a specified document within a specified period, in person, by fax, or by post.

17.3.2. The Commonwealth and those authorised by it, may publish or otherwise disclose information in relation to compliance by the Recipient and the Project Parties with the Building Code. The Recipient must obtain the consent of the Project Parties to the publication or disclosure of information under this clause.

17.4. **Appointment of subcontractors**

17.4.1. While acknowledging that value for money is the core principle underpinning decisions on Government procurement, when issuing tenders the Recipient may preference contractors, subcontractors and consultants that have a demonstrated commitment to:

- a. adding and/or retaining trainees and apprentices;
- b. increasing the participation of women in all aspects of the industry; or
- c. promoting employment and training opportunities for Indigenous Australians in regions where significant indigenous populations exist.

17.4.2. The Recipient must not appoint a contractor, subcontractor or consultant in relation to the Activity where:

- a. the appointment would breach a sanction imposed by the Minister for Employment and Workplace Relations; or

- b. the contractor, subcontractor or consultant has had a judicial decision against them in relation to employee entitlements, not including decisions under appeal, and has not paid the claim.

**18. Work Health and Safety**

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**18.1. Use of Commonwealth's premises**

- 18.1.1. The Recipient agrees, when using the Commonwealth's premises or facilities, to comply with all reasonable directions and procedures relating to work health and safety and security in effect at those premises or in regard to those facilities, as notified by the Commonwealth or as might reasonably be inferred from the use to which the premises or facilities are being put.

**18.2. Assistance to the Commonwealth**

- 18.2.1. Without limiting clause 2.2 of this Agreement, the Recipient agrees to, on request, give all reasonable assistance to the Commonwealth, by way of provision of information and documents, to assist the Commonwealth and its officers (as defined in the *Work Health and Safety Act 2011* (WHS Act)) to comply with the duties imposed on them under the WHS Act.
- 18.2.2. The Recipient acknowledges that the Commonwealth may direct the Recipient to take specified measures in connection with the Recipient's work under this Agreement or otherwise in connection with the Activity that the Commonwealth considers reasonably necessary to deal with an event or circumstance that has, or is likely to have, an adverse effect on the health or safety of persons. The Recipient must comply with the direction. The Recipient agrees that it is not entitled to an adjustment to the Funding merely because of compliance with the direction.

**18.3. Australian Government Building and Construction OHS Accreditation Scheme**

- 18.3.1. In this clause 18.3:

<b>BCII Act</b>	means the <i>Building and Construction Industry Improvement Act 2005</i>
<b>Building Work</b>	has the meaning given to it by section 5 of the BCII Act
<b>Scheme</b>	means the Australian Government Building and Construction OHS Accreditation Scheme established by the BCII Act.

- 18.3.2. Subject to the exclusions specified in the *Building and Construction Industry Improvement (Accreditation Scheme) Regulations 2005*, the Recipient must ensure that all of its subcontracts valued at \$3 million or more and requiring Building Work related to the Activity:



- a. are notified to the Office of the Federal Safety Commissioner at the earliest possible opportunity; and
- b. contain a requirement that the contractor:
  - i. is accredited under the Scheme;
  - ii. maintains Scheme accreditation for the life of the contract; and
  - iii. must comply with all conditions of the Scheme accreditation.

## **19. General Provisions**

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### **19.1. Obligations of Recipient in relation to privacy**

19.1.1. The Recipient agrees, in conducting the Activity:

- a. not to do any act or engage in any practice which, if done or engaged in by the Commonwealth, would be a breach of an Australian Privacy Principle; and
- b. to comply with any directions, guidelines, determinations or recommendations of the Commonwealth, to the extent that they are consistent with the Australian Privacy Principles.

19.1.2. The Recipient agrees to notify the Commonwealth immediately if it becomes aware of a breach or possible breach of any of its obligations under this clause 19.1.

19.1.3. The provisions of this clause 19.1 survive termination or expiration of this Agreement.

### **19.2. Audit and Access**

19.2.1. The Recipient agrees:

- a. to give the Commonwealth, or any persons authorised in writing by the Commonwealth, access to premises where obligations under this Agreement are being carried out; and
- b. to permit those persons to inspect and take copies of any Material relevant to this Agreement.

19.2.2. The rights referred to in clause 19.2.1. are subject to:

- a. the Commonwealth providing reasonable prior notice; and
- b. the reasonable security procedures in place at the premises.

19.2.3. The Auditor-General and Information Officer (and their delegates) are persons authorised for the purposes of clause 19.2.1.

19.2.4. This clause 19.1 does not detract from the statutory powers of the Auditor-General or Information Officer.

19.3. **Access to Documents**

19.3.1. In this clause 19.3, 'document' and 'Commonwealth contract' have the same meaning as in the *Freedom of Information Act 1982* (Cth). This clause 19.3 only applies if this Agreement is a 'Commonwealth contract', as defined in the *Freedom of Information Act 1982* (Cth).

19.3.2. Where the Commonwealth has received a request for access to a document created by, or in the possession of, the Recipient or any subcontractor that relates to the performance of this Funding Agreement (and not to the entry into the Funding Agreement), the Commonwealth may at any time by written notice require the Recipient to provide the document to the Commonwealth and the Recipient must, at no additional cost to the Commonwealth, promptly comply with the notice.

19.3.3. The Recipient must include in any subcontract relating to the performance of this Agreement provisions that will enable the Recipient to comply with its obligations under this clause 19.3.

19.4. **Insurance**

19.4.1. The Recipient agrees:

- a. to effect and maintain the insurance specified in Item G and
- b. on request, to provide proof of insurance acceptable to the Commonwealth.

19.4.2. This clause 19.3 continues in operation for so long as any obligations remain in connection with this Agreement.

19.5. **Extension of provisions to subcontractors and Personnel**

19.5.1. In this clause 19.5:

**Requirement** means an obligation, condition, restriction or prohibition binding on the Recipient under this Agreement.

19.5.2. The Recipient agrees to ensure that:

- a. its subcontractors and Personnel comply with all relevant Requirements; and
- b. any contract entered into in connection with this Agreement imposes all relevant Requirements on the other party.

19.5.3. The Recipient agrees to exercise any rights it may have against any of its subcontractors, Personnel or third parties in connection with a Requirement in accordance with any direction by the Commonwealth.

19.6. **Conflict of interest**

19.6.1. In this clause 19.6:

**Conflict** means any matter, circumstance, interest or activity involving or affecting the Recipient, its Personnel or subcontractors which may or may appear to impair the ability of the Recipient to perform the Activity diligently and independently.

19.6.2. The Recipient warrants that, to the best of its knowledge after making diligent inquiry, at the Date of this Agreement no Conflict exists or is likely to arise in the performance of the Recipient's obligations under the Agreement.

19.6.3. If during the Term a Conflict arises, the Recipient agrees to:

- a. notify the Commonwealth immediately;
- b. make full disclosure of all relevant information relating to the Conflict; and
- c. take any steps the Commonwealth reasonably requires to resolve or otherwise deal with that Conflict.

19.7. **Relationship of parties**

19.7.1. The Recipient is not by virtue of this Agreement an officer, employee, partner or agent of the Commonwealth, nor does the Recipient have any power or authority to bind or represent the Commonwealth.

19.7.2. The Recipient agrees:

- a. not to misrepresent its relationship with the Commonwealth; and
- b. not to engage in any misleading or deceptive conduct in relation to the Activity.

19.8. **Waiver**

19.8.1. A failure or delay by a party to exercise any right or remedy it holds under this Agreement or at law does not operate as a waiver of that right.

19.8.2. A single or partial exercise by a party of any right or remedy it holds under this Agreement or at law does not prevent the party from exercising the right again or to the extent it has not fully exercised the right.

19.9. **Variation of Agreement**

19.9.1. No variation of this Agreement is binding unless it is agreed in writing and signed by both parties.

19.10. **Assignment**

19.10.1. The Recipient cannot assign its obligations, and agrees not to assign its rights, under this Agreement without the Commonwealth's prior written approval.

19.10.2. The Recipient agrees 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 the Commonwealth.

19.11. **Survival**

19.11.1. Unless the contrary intention appears, the expiry or earlier termination of this Agreement will not affect the continued operation of any provision relating to:

- a. Intellectual Property;
- b. confidentiality;
- c. security;
- d. privacy;
- e. dealing with copies;
- f. books and records;
- g. audit and access;
- h. an indemnity;
- i. acknowledgement and publicity;
- j. rights or obligations following termination or expiry of the Agreement; or
- k. any other provision which expressly or by implication from its nature is intended to continue.

19.12. **Compliance with Legislation and Policies**

19.12.1. In this clause 19.12:

**Legislation** means a provision of a statute or subordinate legislation of the Commonwealth of Australia, or of a State, Territory or local authority.

19.12.2. The Recipient agrees to comply with any Legislation applicable to its performance of this Agreement.

19.12.3. The Recipient agrees, in carrying out its obligations under this Agreement, to comply with any of the Commonwealth's policies as notified, referred or made available by the Commonwealth to the Recipient (including by reference to an internet site), including those listed in Item K.

19.13. **Applicable law and jurisdiction**

19.13.1. This Agreement is to be construed in accordance with, and any matter related to it is to be governed by, the law of the State or Territory specified in Item M.

19.13.2. The parties submit to the jurisdiction of the courts of that State or Territory.

**SCHEDULE 1 PARTICULARS**

**A. Program and Activity**  
(Recital A, clauses 1.1.1 and 2.1.1)

**A.1. Program**  
[insert description of the Program, including a reference to any Program Guidelines, and the relevant website etc where they can be obtained]

**A.2. Activity**  
The Activity Period commences on the Date of this Agreement and ends on [insert date which provides sufficient time for completion of all Milestones and Reports].

The Activity is [insert detailed description of the Activity]

**A.3 Activity Objectives**  
[insert detailed description of the Objectives of the Activity - i.e. what the Department hopes the Activity will achieve]

**A.3 Milestones**  
[insert list of Milestones and dates they are to be performed]

**B. Funding and Payment**  
(clauses 1.1.1, 3.1, 6)

The total Funding for the Activity is \$[insert amount] GST exclusive. The Funding will be paid as follows:

Invoicing [specify any invoice requirements]

Account [specify any extra requirements for the bank account in which the Funding is to be held.]

**C. Budget**  
(clause 6.2)

Expenditure Item	Funding	Recipient Contributions	Other Contributions	Total Cost
e.g. Assets				

The percentage of the Budget (Total Cost) below which Funding may be transferred between expenditure items without the Commonwealth's approval is [insert] %.

The percentage of the Budget (Total Cost) which must not be exceeded in total transfers between expenditure items per Financial Year is [insert]%.

**D. Recipient Contributions and Other Contributions**

(clause 7)

**D.1. Recipient Contributions**

Recipient Contributions are specified in the following table. Any financial or in-kind assistance that the Recipient has received from the Commonwealth of Australia or a State, Territory or local government and which the Recipient intends to, or is required to, use to perform the Activity must not be included in Recipient Contributions.

Table - Recipient Contributions

Recipient Contribution	Purpose of Contributions	Due Date
[Identify GST excl amount of each financial contribution that the recipient is required to make to the Activity]	[State purpose of contribution]	[Specify the date on which the Recipient must make each contribution]
[Identify the type and value of each in-kind contribution that the Recipient is required to make to the Activity]		

**D.2. Other Contributions**

The Other Contributions for the Activity are specified in the following table.

Table - Other Contributions

Source of each Other Contribution	Purpose of each Other Contribution	Amount of each Other Contribution GST excl	Due date for each Other Contribution
Any other Commonwealth financial or in-kind contributions that are not part of the Funding [insert the relevant Department, Agency and Program]	[insert purpose of each Other Contribution that is to be made]	[insert amount of each Other Contribution that is to be made]	[insert due date for each Other Contribution]
State or Government funding or in-kind assistance [insert the relevant State and Department or Agency]			
Local Government			

funding or in-kind assistance [insert Name]			
Industry funding or in-kind assistance [insert Name, ABN]			

**E. Reporting**

(clauses 1.1.1, 2.6)

**E.1. Progress Reports**

The Recipient must provide the Commonwealth with progress Reports at the following times: [insert timeframes for provision of progress reports].

Each progress Report must include, but need not be limited to, the following information for the Reporting period:

- a. the Recipient's name;
- b. the names of all the Recipient's subcontractors;
- c. the full Activity title;
- d. the amount of Funding payable under the Agreement;
- e. any interest earned on the Funding;
- f. a statement of the Funding, Recipient Contributions and Other Contributions received to date including the amount spent and the amount remaining in the account referred to in clause 6.3.1;
- g. the part of the Term to which the Report relates;
- h. a description and analysis of the progress of the Activity to date, including detail of the Activity Objectives and Program Objectives achieved during the period to which the Report relates and reasons why any Activity Objectives and, if applicable, Program Objectives have not been met;
- i. a clear summary of the work undertaken in the period to which the Report relates and an analysis of the effectiveness of this work;
- j. a discussion and statement as to whether the timeframes and any Milestones for the Activity (and specifically during the Report period) are being met and an explanation of any delays that have occurred, including the reasons for those delays and the action the Recipient proposes to take to address the delay and the expected effects (if any) the delay will have on the Activity (including any subsequent Milestones and the overall completion of the Activity);
- k. a statement as to whether the Activity is proceeding within Budget, and if it is not, an explanation of why the Budget is not being met and the action the Recipient proposes to take to address this; and

- I. an accompanying statement as set out in item E.4.

## **E.2. Annual Report**

The Recipient must provide the Commonwealth with Annual Reports for each Financial Year in which the Recipient:

- a. receives or uses a payment of Funding;
- b. contributes Recipient Contributions; or
- c. receives any Other Contributions,

except the Financial Year in which the Final Report is to be provided pursuant to item E.3.

Annual Reports must be provided within 60 Business Days of the end of the Financial Year to which the Annual Report relates.

Each Annual Report must include the following information for the previous year:

- a. audited financial statements prepared in accordance with Australian Accounting Standards in respect of the Funding, Recipient Contributions and the Other Contributions (if any) (separately and in the context of the Recipient's overall financial position), which must include a definitive statement as to whether the financial information for the Activity represents the financial transactions fairly and is based on proper accounts and Records;
- b. a written statement prepared by a Qualified Accountant of:
  - i. the Recipient's financial position (assets and liabilities by class), which must include, under assets, the balance of the Recipient's account referred to in clause 6.3.1;
  - ii. how much money the Recipient needs to meet current liabilities under legal commitments entered into by the Recipient pursuant to this Agreement;
- c. an accompanying statement as set out in item E.4; and
- d. a copy of a letter to the Recipient from the Approved Auditor, or a report from the Approved Auditor, including:
  - i. specific comment on the adequacy of financial controls being maintained by the Recipient;
  - ii. specific comment on the Recipient's financial position as it relates to any issues affecting the Recipient's ability to repay surplus Funding or complete the Activity with available Funding;
  - iii. specific comment on the Recipient's ability to meet the Recipient's taxation liabilities and any costs associated with any court or tribunal orders made against the Recipient or involving the Recipient;



- iv. specific comment on the Recipient's compliance with the Recipient's obligations to pay superannuation entitlements;
- v. where there are any qualifications or limitations on the audit, an outline of the reason(s) for the qualifications or limitations and the remedial action recommended; and
- vi. an itemised list of fees paid to Directors, stating how much was paid, to whom, when and what travel costs were involved.

### **E.3. Final Report**

Within 60 Business Days of completion of the Activity Period or the termination or expiry of this Agreement, whichever is the earlier, the Recipient must provide the Commonwealth with a Final Report.

The Final Report must be a stand-alone document that can be used for public information dissemination purposes.

The Final Report must contain the matters identified in Item E.2.

In addition, the Final Report must also: [Insert the additional information the recipient is required to include in the final Report. See the following examples].

- a. discuss in detail the operation, mechanisms and processes employed by the Recipient to perform the Activity and achieve the Activity Objectives;
- b. describe the Recipient's activities during the Term;
- c. discuss in detail the conduct, benefits and outcomes of the Activity as a whole and the Activity's results and findings; and
- d. evaluate the Activity and include a detailed discussion as to whether the Activity Objectives were achieved, and if not, an explanation of why any Activity Objectives were not met. [insert any additional criteria against which the recipient is required to evaluate the Activity].
- e. [Insert any other information relevant to the Activity that the recipient is required to include in the final progress Report.]

The Recipient must also include in the Final Report a discussion of any other matters relating to the performance of the Activity, which the Commonwealth notifies the Recipient is required to be included in the Final Report. Any such requirement will be notified to the Commonwealth at least 20 Business Days before the Final Report is due.

### **E.4. Accompanying statement**

E.4.1. Each Progress Report and Annual Report, and the Final Report must be accompanied by a statement that:

- a. all Funding, Other Contributions and Recipient Contributions received were spent for the purpose of the Activity and in accordance with this Agreement, and that the Recipient has complied with the Agreement;

- b. salaries and allowances paid to persons involved in the Activity are in accordance with any applicable award or agreement in force under any relevant law on industrial or workplace relations;
- c. unless the Activity Period has expired or the Agreement has been terminated, the unspent portion of the Funding (if any) is available for use within the next reporting period;
- d. the financial information is presented in accordance with any other financial Reporting requirements the Commonwealth may notify to the Recipient;
- e. where an Asset has been created or acquired with the Funding, that clauses 8.3.1.e and 8.3.1.h have been complied with in respect to the Asset; and
- f. at the time the Report or financial statement is provided to the Commonwealth, the Recipient is able to pay all the Recipient's debts as and when they fall due and the Recipient has sufficient resources to discharge all the Recipient's debts at the end of the current Financial Year.

E.4.2. The statement referred to in item E.4.1 must be provided:

- a. if the Recipient is an incorporated body, by the Recipient's Chairperson, Chief Executive Officer, Chief Financial Officer or a person authorised by the Recipient to execute documents and legally bind the Recipient by their execution. Satisfactory evidence of the authorisation is to be provided to the Commonwealth before the statement is made;
- b. if the Recipient is an unincorporated association or partnership, by:
  - i. a majority of the members; or
  - ii. a person or persons authorised by a majority of the members to act on behalf of the members in accordance with the Recipient's Constitution. Satisfactory evidence of the authorisation is to be provided to the Commonwealth before the statement is made;
- c. if the Recipient is a joint venture, the Chief Executive Officer or Chief Financial Officer of each joint venturer must certify the one statement; or
- d. if the Recipient is an individual, by that individual.

## **E.5. Audit and certification**

E.5.1. The Annual Report and Final Report must be accompanied by a copy of a letter to the Recipient from the Approved Auditor, or a report from the Approved Auditor, that includes:

- e. specific comment on the adequacy of financial controls being maintained by the Recipient;
- f. specific comment on the Recipient's financial position as it relates to any issues affecting the Recipient's ability to repay surplus Funding or complete the Activity with available Funding;

- g. specific comment on the Recipient's ability to meet the Recipient's taxation liabilities and any costs associated with any court or tribunal orders made against the Recipient or involving the Recipient;
- h. specific comment on the Recipient's compliance with the Recipient's obligations to pay superannuation entitlements;
- i. where there are any qualifications or limitations on the audit, an outline of the reason(s) for the qualifications or limitations and the remedial action recommended; and
- j. an itemised list of fees paid to Directors, stating how much was paid, to whom, when and what travel costs were involved.

**E.6. Other Reports**

Throughout the Term, the Commonwealth may require the Recipient to provide ad-hoc Reports concerning:

- a. any significant developments concerning the Activity; and
- b. any significant delays or difficulties encountered in performing the Activity in accordance with the Agreement.

The Recipient must provide any such ad-hoc Reports within the timeframe notified by the Commonwealth.

**F. Assets**

(clauses 1.1.1 and 8)

Asset number	Description of Asset	Creation, acquisition or total lease cost	Date of creation, acquisition or lease	Term of lease or other arrangement	Location of Asset	Method of, and date, which Asset was written off or Disposed of

**G. Insurance**

(clause 19.4)

The Recipient must maintain:

- a. workers compensation insurance as required by law where the Recipient carries out activities under this Agreement;
- b. public liability insurance to the value of at least \$[insert amount]million for each and every claim, or occurrence giving rise to a claim, in respect to activities undertaken under this Agreement, where occurrence means either a single occurrence or a series of occurrences if these are linked or occur in connection with one another from one original cause, as the case may be; and

- c. insurance against any loss or damage to an Asset for its full replacement cost including where relevant the costs of demolition and removal of debris and the cost of architects, engineers and other consultants.

**H. Subcontracting**  
(clause 2.3)

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**I. Acknowledgement and publicity**  
(clause 12)

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**J. Specified Personnel**  
(clauses 1.1.1 and 2.4)

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**K. Compliance with policies**  
(clause 19.12)

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The Recipient must comply with the following policies in carrying out the Activity:

**L. Notices**  
(clause 16.1)

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The Commonwealth's details for notices are as follows:

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

The Recipient's details for notices are as follows:

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

**M. Applicable Law**  
(clause 19.13)

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**N. Confidential Information**  
(clause 11)

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**Commonwealth's Confidential Information**

Agreement Provisions/Schedules/Attachments

Item	Period of Confidentiality
[insert relevant items]	

Agreement related material

Item	Period of Confidentiality
[insert relevant items]	

**Recipient's Confidential Information**

Agreement Provisions/Schedules/Attachments

Item	Period of Confidentiality
[insert relevant items]	

Agreement related material

Item	Period of Confidentiality
[insert relevant items]	

**Executed as a deed**

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This Funding Agreement is made on [insert day(numeric) month(name) year(numeric) in full].

SIGNED SEALED AND DELIVERED )  
for and on behalf of the )  
**COMMONWEALTH OF** )  
**AUSTRALIA**, as represented by the )  
**Department of Infrastructure and** )  
**Regional Development:**

---

Name of signatory

---

*Signature*

In the presence of:

---

Name of witness

---

*Signature of witness*

SIGNED SEALED AND DELIVERED )  
for and on behalf of **[INSERT NAME** )  
**OF OTHER PARTY]** by its authorised )  
signatory: )

---

Name of authorised signatory

---

*Signature*

In the presence of:

---

Name of witness

---

*Signature of witness*