



Australian Government

Department of Infrastructure and Regional Development

File Reference:

[insert date]

[insert recipient address]

Dear [insert recipient addressee]

Funding Agreement for [insert description of activity] (the Activity) under the [insert name of program] (the Program)

We refer to [insert reference to previous discussions regarding proposed carrying out of the Activity OR Recipient's application for funding under the Program to enable the carrying out of the Activity] and are pleased to confirm that we would like to proceed on the basis of this letter, and the attached Agreement Details and Standard Conditions of Agreement (together the Agreement).

Please confirm your acceptance of the Agreement by signing and returning the copy of this letter by return mail within [insert 28 OR insert another timeframe] days of the date of this letter.

Yours sincerely

[insert name]

[insert position]

T [insert number] F [insert number]

M [insert number]

[insert e-mail address]

[insert name of Recipient legal entity (and ABN, ACN, ARBN if applicable)] agrees to carry out the Activity in accordance with the Agreement Details and Standard Conditions of the Agreement included with this letter.

Signature of Recipient's Authorised Officer:

Name of Signatory:

Title of Signatory:

Date:

AGREEMENT DETAILS

These Agreement Details need to be read in conjunction with the Standard Conditions of the Agreement.

Agreement name	Agreement for [insert description]
Department	Commonwealth of Australia represented by the Department of Infrastructure and Regional Development ABN 86 267 354 017, 111 Alinga Street, Canberra Australian Capital Territory (Commonwealth)
Recipient	[insert legal name of Recipient] [insert Recipient ABN and ACN/ARBN if applicable] [insert Recipient address]
Contact Details	The Commonwealth's details are as follows: [insert contact name for the Department, position, address, telephone, fax and email] The Recipient's details are as follows: [insert contact name for the Recipient, position, address, telephone, fax and email]
Activity (cl 1.2)	[Insert a detailed description of the Activity]
Activity Period (cl 1.2)	The Activity Period commences on [insert date] and ends on [insert date].
Other Specific Requirements (cl 1.2)	
Specified Personnel (cl 1.4)	
Funding and Payment (cl 2)	The total Funding for the Activity is \$[insert amount] excluding GST.
Management of Funding (cl 4)	
Budget (cl 4)	
Recipient Contributions (cl 6)	
Other Contributions	

(cl 6)	
Commonwealth Material and assistance (cl 7)	
Reports (cl 15)	<p style="text-align: center;">[Example only]</p> <p>Progress Reports</p> <p>1.1. The Recipient must provide the Commonwealth with progress Reports at the following times: [^insert^].</p> <p>1.2. Each progress Report must include:</p> <ul style="list-style-type: none"> 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. a statement of the Funding and Recipient Contributions received to date including the amount spent and the amount remaining; f. a clear summary of the work undertaken in the period to which the Report relates and an analysis of the effectiveness of this work; g. a statement as to whether the Activity is proceeding within Budget. <p>Final Report</p> <p>1.3. The final progress Report must: [^insert the additional information the recipient is required to include in the final Report. See the following examples^].</p> <ul style="list-style-type: none"> a. describe the Recipient's activities during the entire Activity Period; b. discuss in detail the conduct, benefits and outcomes of the Activity as a whole and the Activity's results and findings; and c. evaluate the Activity and include a discussion as to whether the Objectives of the Activity were achieved. <p>[State any other information relevant to the Activity that the recipient is required to include in the final progress Report.]</p>
Policies	

(cl 22.1)	
Applicable law (cl 23)	[Specify the State or Territory whose laws will govern the construction of, and other matters related to, the agreement].

Standard Conditions of the Agreement

1. Term and Conduct of Activity

- 1.1. This Agreement commences on the Date of this Agreement and continues until the Completion Date, unless terminated earlier.
- 1.2. The Recipient agrees to carry out the Activity diligently, efficiently, effectively and to a high standard, within the Activity Period and to comply with any Other Specific Requirements set out in the Agreement Details or otherwise in this Agreement.
- 1.3. The Recipient agrees to liaise with and provide information to the Commonwealth as reasonably notified by the Commonwealth and comply with all of the Commonwealth's reasonable requests, directions, or monitoring requirements.
- 1.4. The Recipient agrees that the Specified Personnel will perform work in relation to the Activity in accordance with this Agreement.

2. Funding and Payment

- 2.1. The Commonwealth agrees to pay the Funding to the Recipient at the times and in the manner specified in the Agreement Details, provided that sufficient funds are available for the Activity and that the Recipient has fully and properly complied with its obligations under this Agreement.
- 2.2. 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. Subcontracting

- 3.1. The Recipient agrees not to subcontract the performance of any obligations under this Agreement without the Commonwealth's prior written approval.
- 3.2. 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. The Recipient agrees to make available to the Commonwealth (if requested) details of all subcontractors engaged in the performance of the Activity.
- 3.3. Notwithstanding any subcontracting, the Recipient remains fully responsible for the performance of the Recipient's obligations under this Agreement.

4. Management of Funding

- 4.1. The Recipient agrees to:
 - a. spend the Funding only for the Activity in accordance with this Agreement, including the Budget, if any;
 - b. 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;
 - c. identify the receipt and expenditure of the Funding separately within the Recipient's

accounts and records so that at all times the Funding is identifiable; and

- d. keep financial accounts and records relating to the Activity so as to enable all receipts and payments related to the Activity to be identified and reported in accordance with this Agreement.

- 4.2. 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.

- 4.3. If clause 4.2.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.

- 4.4. The Recipient must immediately notify the Commonwealth in writing if any of the events in clauses 4.2.a or 4.2.b occurs.

- 4.5. The Recipient agrees that any amount owed or payable to the Commonwealth or which the Commonwealth is entitled to recover from the Recipient under this Agreement, is 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. Taxes and charges

- 5.1. Unless otherwise indicated, 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.

- 5.2. Unless otherwise indicated, any consideration for a supply made under this Agreement is exclusive of any GST.

- 5.3. If one party (the supplier) makes a taxable supply to the other party (the recipient) under this Agreement, on receipt of a tax invoice from the supplier, the recipient will pay without setoff an additional amount to the supplier equal to the GST imposed on the supply in question.

- 5.4. 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.

6. Recipient and Other Contributions

- 6.1. The Recipient agrees to provide the Recipient Contributions (if any) for the Activity and to use its best endeavours to obtain the Other Contributions (if any). Recipient Contributions (if any) and Other Contributions (if any) are to be used by the Recipient to perform the Activity.
- 6.2. The Recipient Contributions must not include any amount that has been provided by the Commonwealth of Australia or a State, Territory or local government.
- 6.3. If the Recipient does not provide the Recipient Contributions or obtain the Other Contributions (if any) as required in the Agreement Details, in time to enable completion of the Activity, then the Commonwealth may:
- a. suspend payment of the Funding or an instalment of the Funding (as the case may be) until the Recipient Contributions are provided and/or the Other Contributions are obtained; or
 - b. terminate this Agreement in accordance with clause 13.

7. Commonwealth Material

- 7.1. The Commonwealth agrees to provide Commonwealth Material and assistance to the Recipient as specified in the Agreement Details.
- 7.2. Nothing in this Agreement affects the ownership of Commonwealth Material.
- 7.3. The Commonwealth grants the Recipient a licence to use the Intellectual Property in the Commonwealth Material for the sole purpose of performing the Activity in accordance with this Agreement.

8. Intellectual Property

- 8.1. Subject to this clause 8, Intellectual Property in all Activity Material vests or will vest in the Recipient.
- 8.2. Clause 8.1 does not affect:
- a. the position between the Recipient and a third party; or
 - b. the ownership of Intellectual Property in any material in existence on the date this Agreement is made.
- 8.3. The Recipient grants to (or will procure for) the Commonwealth a perpetual, irrevocable, royalty-free, world-wide, non-exclusive licence (including a right of sub-licence) to use, reproduce, adapt, modify, perform, distribute, communicate and exploit Intellectual Property Rights in the Activity Material for any purpose and a right to licence any Intellectual Property to the public under an open access licence (including a Creative Commons Attribution licence).

9. Privacy

- 9.1. The Recipient agrees to comply and ensure that its officers, employees, agents and subcontractors comply with the *Privacy Act 1988* (Cth) and do (or refrain from doing) anything required to ensure that the Commonwealth is able to comply with its obligations under that Act. The Recipient will immediately notify the Commonwealth if the Recipient becomes aware of a breach or possible breach of any of its obligations under this clause 9.1
- 9.2. The provisions of this clause 9 survive termination or expiration of this Agreement.

10. Acknowledgement and publicity

- 10.1. The Recipient agrees, in any publicity in relation to the Funding, to acknowledge the financial or other support the Recipient has received from the Australian Government, in the manner approved by the Commonwealth.

11. Indemnity

- 11.1. The Recipient indemnifies (and agrees to keep indemnified) the Commonwealth against any:
- a. cost or liability incurred by the Commonwealth or the Commonwealth's Personnel;
 - 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. a breach by the Recipient of the Agreement; and
 - e. an act or omission by the Recipient or the Recipient's Personnel, in connection with this Agreement, where there was fault on the part of the person whose conduct gave rise to that cost, liability, loss, damage, or expense.
- 11.2. The Recipient's liability to indemnify the Commonwealth under this clause 11 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.
- 11.3. In this clause 11, 'fault' means any negligent or unlawful act or omission or wilful misconduct.

12. Termination for convenience

- 12.1. The Commonwealth may by notice, at any time and in its absolute discretion, terminate this Agreement or reduce the scope of the Agreement immediately.
- 12.2. In the event of termination under clause 12.1, the Commonwealth will be liable only:
- a. for payments due and owing to the Recipient under the payment provisions of the Agreement as at the date of the notice; and

- b. to reimburse any reasonable costs incurred by the Recipient and directly attributable to the termination of the Agreement or reduction in scope of the Agreement,

but will not be liable to pay amounts under clause 12.2.a and 12.2.b which would, added to any payments already paid to the Recipient under this Agreement, together exceed the Funding set out in the Agreement Details.

- 12.3. In the event of a reduction in the scope of the Agreement under clause 12.1, the Commonwealth's liability to pay any part of the Funding will reduce in accordance with the reduction in the Activity.

13. Termination for fault

- 13.1. If the Recipient fails to fulfil, or is in breach of any of its obligations under this Agreement, the Commonwealth may by notice terminate this Agreement immediately.

14. Records

- 14.1. The Recipient must create and maintain full and accurate accounts and records of the conduct of the Activity.
- 14.2. The Recipient agrees to retain the records and accounts referred to in clause 14.1 and retain them for a period of no less than 7 years after the end of the Activity Period.

15. Reports

- 15.1. The Recipient agrees to provide the Commonwealth with Reports at the times, in the manner and containing the information specified in the Agreement Details.
- 15.2. Throughout the Activity Period, the Commonwealth may require the Recipient to provide ad hoc Reports within the timeframe notified by the Commonwealth.

16. Audit and access

- 16.1. The Recipient agrees to give the Commonwealth, or any persons authorised in writing by the Commonwealth (including the Auditor-General and the Privacy Commissioner), access to premises where the Activity is being performed and to permit those persons to inspect and take copies of any material relevant to the Activity.

17. Insurance

- 17.1. The Recipient will effect and maintain insurance policies of the types and with the amounts of cover that a prudent operator in the Recipient's industry would consider normal and adequate including when carrying out activities of the kind performed by the Recipient pursuant to this Agreement.

18. Conflict of interest

- 18.1. The Recipient warrants that, at the date of entering into this Agreement, no conflict of interest exists or is likely to arise in the performance of the Activity.
- 18.2. If, during the period of the Agreement a conflict arises, or appears likely to arise, the Recipient agrees:

- a. to notify the Commonwealth; and
- b. to take any steps the Commonwealth reasonably requires to resolve or otherwise deal with the conflict.

19. Relationship of parties

- 19.1. 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.
- 19.2. 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.

20. Variation

- 20.1. A variation of this Agreement is binding only if agreed in writing and signed by the parties.

21. Assignment

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

22. Compliance with laws and policies

- 22.1. The Recipient agrees to comply with all provisions of statutes or subordinate legislation of the Commonwealth, or of a State, Territory or local authority applicable to its performance of this Agreement including without limitation all legislation relating to occupational health and safety, industrial relations and security and the Commonwealth's policies as notified, referred or made available by the Commonwealth to the Recipient, including those listed in the Agreement Details.
- 22.2. Without limiting clause 1.3 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* (Cth) (**WHS Act**)) to comply with the duties imposed on them under the WHS Act.
- 22.3. 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.
- 22.4. The Recipient must not enter into any subcontract for the purpose of directly or indirectly fulfilling its obligations under this Agreement unless such a subcontract obliges the subcontractor to comply with

equivalent provisions to those contained in this clause 22.

23. Applicable law

- 23.1. This Agreement is to be construed in accordance with, and any matter relating to it is to be governed by, the law of the State or Territory specified in the Agreement Details.
- 23.2. The parties submit to the jurisdiction of the courts of that State or Territory.

24. Definitions and Interpretation

- 24.1. In addition to the terms described in the Agreement Details:

Agreement Details means the relevant document headed 'Agreement Details';

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 Reports;

Budget means the budget, if any, specified in the Agreement Details for the expenditure of the Funding;

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

Completion Date means the day after the Recipient has done all that it is required to do under this Agreement to the satisfaction of the Commonwealth;

Date of this Agreement means the date the copy of the letter to which the Agreement Details and the Standard Conditions of the Agreement were attached is signed by the Recipient;

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

Information Privacy Principle has the meaning that it has in the *Privacy Act 1988* (Cth);

Intellectual Property includes all copyright (including rights in relation to phonograms and broadcasts); all rights in relation to inventions, plant varieties, trademarks (including service marks), designs and circuit layouts; and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields, but does not include: moral rights; the non-proprietary rights of performers; or rights in relation to confidential information;

Other Contributions means the financial or in-kind contributions other than the Funding or Recipient's Contributions, which are specified in the Agreement Details;

Personnel means a party's officers, employees, agents, contractor staff or professional advisers engaged in, or in relation to, the performance of the Activity or the management of this Agreement;

Recipient Contributions means the financial or in-kind resources, other than the Funding or Other

Contributions, which are specified in the Agreement Details.

- 24.2. This Agreement comprises:

- a. these Standard Conditions of the Agreement;
- b. the Agreement Details;
- c. any attachments to these Standard Conditions of the Agreement; and
- d. any other document incorporated by reference.

- 24.3. If any conflict arises between the terms and conditions contained in this Agreement, the order of priority will be as set out in clause 24.2.

- 24.4. Clauses 4, 7, 8, 9, 11, 14, 16 and 17 survive the termination or expiry of this Agreement, as well as any other provision which expressly or by implication from its nature is intended to continue.