



**Australian Government**

**Department of Regional Australia,  
Local Government, Arts and Sport**

**REGIONAL DEVELOPMENT AUSTRALIA FUND**

**FUNDING AGREEMENT**

**BETWEEN**

**COMMONWEALTH OF AUSTRALIA**

**as represented by the**

**Department of Regional Australia, Local Government, Arts and Sport**

**ABN 37 862 725 624**

**AND**

**DISTRICT COUNCIL OF FRANKLIN HARBOUR**

**ABN 87 245 431 404**

**in relation to the Lucky Bay Harbour Extension**

**REGIONAL DEVELOPMENT AUSTRALIA FUND**

## REGIONAL DEVELOPMENT AUSTRALIA FUND

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## REGIONAL DEVELOPMENT AUSTRALIA FUND

**PARTIES**

**COMMONWEALTH OF AUSTRALIA** ('Commonwealth'), represented by and acting through the Department of Regional Australia, Local Government, Arts and Sport of 140-180 City Walk, Canberra ACT 2601 ABN 37 862 725 624 ('Us' or 'We' or 'Our' as the case requires)

AND

**DISTRICT COUNCIL OF FRANKLIN HARBOUR** of 6 Main Street, Cowell SA 5602 ABN 87 245 431 404 ('You' or 'Your' as the case requires)

**BACKGROUND**

The objective of the Regional Development Australia Fund (the Program) is to fund projects that support the infrastructure needs and the economic and community growth of Australia's regions. The Program funds will maximise outcomes through effective partnerships across all levels of government, and the business and non-profit sectors. The Program will build synergies and increase the scale of investment by ensuring that projects have a broad regional impact and support communities within those regions.

- A. You are committed to helping achieve the objectives of the Program, through the completion of the Project and Your conduct of the Activity.
- B. As a result of this commitment, We have agreed to support the Activity, and therefore the Project, by providing Funding to You for the Activity, subject to the terms and conditions of this Agreement.
- C. The parties agree and rely on GSTR 2012/2 as at the date of this Agreement for no GST being payable in connection with this Agreement on the understanding that, if GSTR 2012/2 is changed in a way which affects their reliance, they will reconsider GST outcomes.
- D. We are required by law to ensure accountability for public money and to be accountable for all Funds provided by Us.
- E. You agree to accept the Funding for the purposes, and subject to the terms and conditions, set out in this Agreement.

**1. INTERPRETATION**

- 1.1 In this Agreement, unless the contrary intention appears:

**ABN** has the meaning set out in section 41 of the *A New Tax System (Australian Business Number) Act 1999* (Cth)

**Activity** has the meaning given in item 1 of the Schedule and includes the completion of the Milestones and the provision of Activity Material

**Activity Completion Date** has the meaning set out at item 1.7 of the Schedule

**Activity Material** means all Material:

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

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and includes the Reports.

**Activity Period** means the period commencing on the Date of this Agreement and ending on the Activity Completion Date.

**Adjustment Note** has the meaning set out in section 195-1 of the GST Act.

**Agreement** means this document and includes any Schedules and Annexures .

**Annexure** means an annexure to the Schedule.

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

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

and subject to any limitation in any relevant state or territory law, includes the Auditor-General of the state or territory in which the Activity is being undertaken.

**Asset** means any item of tangible property that is upgraded, purchased, leased, or otherwise created or brought into existence, either wholly or in part with use of the Funds, which has a value of over \$5,000 inclusive of GST but excludes Intellectual Property Rights and Real Property (including any tangible property once it becomes part of the structure of Real Property).

**Audited Financial Report** means an audited report prepared in accordance with subclause 10.3.

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

**Australian Accounting Standards** means the standards of that name maintained by the Australian Accounting Standards Board created by section 226 of the *Australian Securities and Investments Commission Act 2001* (Cth).

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

**Budget** means the budget for the expenditure of the Funding for the purposes of conducting the Activity or performing obligations under this Agreement set out in Annexure B.

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

**Capital Works** means any part of the Activity that comprises construction and building activities and includes the Capital Works listed at item 5A.



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**Commence Construction** means to begin a continuous program of on-site construction for the Activity's Capital Works. For the purposes of this definition, only significant and continuous site preparation work such as major clearing or excavation or placement, assembly, or installation of facilities or equipment at the site constitute a program of on-site construction.

**Commonwealth Confidential Information** means information provided by the Commonwealth that:

- (a) is by its nature confidential,
- (b) is designated by the Commonwealth as confidential in Item 9 of the Schedule, or
- (c) You know or ought to know is confidential.

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

**Completion Date** means the day after You have done all that You are required to do under this Agreement to Our satisfaction (excluding those obligations that survive the expiration or termination of this Agreement).

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

**Constitution** means (depending on the context):

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

**Cost Estimate** means the estimate for the Project which is the sum of the Funding and Other Contributions specified in Annexure B.

**Cost Item** means an item of expenditure specified in the Budget at Annexure B.

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

**Depreciated** means the amount representing the reduction in value of an Asset calculated in accordance with Australian Accounting Standards.

**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 but does not include an item of tangible property that ceases to be an Asset because it becomes part of the structure of Real Property.

**Electronic Communication** has the same meaning as in the *Electronic Transactions Act 1999* (Cth).

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**Entities** have the same meaning as section 5 in the *Business Names Registration Act 2011* (Cth).

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

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

the Activity Material.

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

**Funding** or **Funds** means the amount or amounts (in cash or in kind) payable under this Agreement by Us to You for the Activity as specified in Item 2 of the Schedule, and includes any interest earned on that amount and any surplus from insurance as specified in clauses 8.9 or 8A.4(c).

**GST** has the meaning set out in section 195-1 of the GST Act.

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

**Information Commissioner** means any of the information commissioners appointed under the *Australian Information Commissioner Act 2010* (Cth) when performing the privacy functions as defined in that Act and includes any other entity that may, from time to time, perform those functions.

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

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

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

**Law** includes:

- (a) Acts of the Commonwealth and the State(s) and Territory(s) in which the Activity will be undertaken, and any other relevant State or Territory
- (b) ordinances, regulations, by-laws, orders and proclamations or other instruments of legal effect made under those Acts referred to in paragraph (a)
- (c) directions by any person exercising statutory powers regarding You or the Activity, including the Real Property and
- (d) all the requirements, standard, approvals, licences, registrations or permits of any government (including local government) department, authority, agency or regulatory body that apply to the Activity, including the Real Property.



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

**Milestone** means a stage of completion of the Activity, as specified in Annexure A to the Schedule.

**Open Access Licence** 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 Department or Australian Government open access licence and any Creative Commons Attribution licence (see <http://creativecommons.org.au/learn-more/licences>).

**Operational** means that the completed Project is operating in a way that enables it to achieve its Purpose.

**Other Contributions** means financial or in-kind resources used by You for the Activity and the Project, other than the Funding, and includes the Other Contributions specified in Annexure B to the Schedule

**Party** means a party to this Agreement.

**Personal Information** has the same meaning as in the *Privacy Act 1988* (Cth), which currently is information or an opinion (including information or an opinion forming part of a data base), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

**Post-Activity Period** has the meaning set out at item 1.8 of the Schedule.

**Program** means the Regional Development Australia Fund.

**Progress Report** means a Report described at item 3.1 of the Schedule.

**Project** has the meaning given in item 1 of the Schedule and includes the Activity.

**Project Completion Date** means the date specified in item 1.2 of the Schedule, which is the date by which You must complete the Project.

**Project Completion Report** means the report described at item 3.3 of the Schedule.

**Purpose** means the purpose of the Project as set out at item 1.4 of the Schedule.

**Records** include documents, information and data stored by any means and all copies and extracts of the same.

**Real Property** means:

- (a) any land, buildings or fixtures including the Capital Works (both during and after completion) and the Works Locations and
- (b) any interest in the property specified in paragraph (a)

that are purchased, leased, upgraded or otherwise created or brought into existence wholly or in part with the use of the Funds and includes the property listed at item 5A.

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



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**Report** means Activity Material that is provided to Us for reporting purposes on matters including the use of the Funding, whether or not Milestones have been achieved, Progress Reports and evaluations of the Activity, Project or obligations in this Agreement, as stipulated in clause 10 and item 3 of the Schedule or as specified by Us at any time.

**Schedule** means the schedule to this Agreement.

**Taxable Supply** has the same meaning as it has in the GST Act.

**Term of this Agreement** means the period described in subclause 2.1.

**Undepreciated** in relation to the value of an Asset, means the value of the Asset which has not been Depreciated.

**Us, We and Our** includes Our officers, delegates, employees and agents, and Our successors.

**Works Location** means a location where the Capital Works are to be undertaken including any premises in, or land on, which those Capital Works are to be undertaken and includes a Works Location listed in item 5A.

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

1.2 In this Agreement, unless the contrary intention appears:

- (a) words in the singular number include the plural and words in the plural number include the singular
- (b) words importing a gender include any other gender
- (c) words importing persons include a partnership and a body whether corporate or otherwise
- (d) all references to 'clauses' are to clauses in this Agreement and all references to numbered 'items' are to items in the Schedule
- (e) all references to dollars are to Australian dollars and this Agreement uses Australian currency
- (f) a reference to the word 'include' or 'including' is to be construed without limitation
- (g) reference to any statute or other legislation (whether primary or subordinate) is to a statute or other legislation of the Commonwealth and, if it has been or is amended, is a reference to that statute or other legislation as amended
- (h) an uncertainty or ambiguity in the meaning of a provision of this Agreement will not be interpreted against a Party just because that Party prepared the provision and
- (i) where any word or phrase is given a defined meaning, any other part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.

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

- (a) the terms and conditions contained in the clauses of this Agreement
- (b) the Schedule

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- (c) the Annexures, or
- (d) documents incorporated by reference, if any,

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

**2. TERM OF THIS AGREEMENT**

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

**3. COMMENCE CONSTRUCTION**

- 3.1 You must Commence Construction required for the Activity within six months of the Date of this Agreement.
- 3.2 You must notify Us that You have Commenced Construction for the Activity, within five Business Days of Commencing Construction.
- 3.3 If You fail to Commence Construction required for the Activity within six months of the Date of this Agreement, We may give You a notice requiring You to repay to Us all or part of the Funding that We previously paid to You within the period specified in the notice.

**4. PAYMENT**

- 4.1 Subject to sufficient funds being available for the Program and Your compliance with this Agreement, We will provide You with the Funding at the times and in the manner specified in item 2 of the Schedule.
- 4.2 Without limiting Our rights, We may withhold or suspend any payment in whole or in part until You have performed Your obligations under this Agreement.
- 4.3 We may defer or suspend any payments under this Agreement if You have outstanding or unacquitted moneys under any arrangement (whether contractual or statutory including this Agreement) between Us and You. If We defer or suspend payment to You, You must continue to perform Your obligations under this Agreement, unless We agree otherwise in writing.
- 4.4 We will only pay You the final instalment of the Funding once You have provided Us with the Activity Completion Report.
- 4.5 The operation of this clause 4 survives the expiration or earlier termination of this Agreement.

**5. MANAGEMENT OF FUNDING, ACTIVITY AND PROJECT**

- 5.1 You must carry out the Activity in accordance with this Agreement diligently, effectively and to a high professional standard. You must complete the Activity by the Activity Completion Date.
- 5.2 You must expend the Funding (other than interest You have earned on the Funding) only for the Activity in accordance with the Budget (including each of its Cost Items) and with this Agreement. Interest You earn on the Funding may only be spent for the Activity in accordance with this Agreement (but does not need to be spent in accordance with the

## REGIONAL DEVELOPMENT AUSTRALIA FUND

Budget). For the avoidance of doubt, You may not spend Funds on any part of the Project other than the Activity.

## 5.3 You must:

- (a) ensure that the Funds are held in an account in Your name, and which You solely control, with an authorised deposit-taking institution authorised under the *Banking Act 1959* (Cth) to carry on banking business in Australia
- (b) ensure that the account in which the Funds are held in Your name enables the Funds to be separately identified
- (c) notify Us, in writing, prior to the receipt of any Funds, of details sufficient to identify the account
- (d) provide Us and the authorised deposit-taking institution with an authority for Us to obtain any details relating to the account
- (e) if the account changes, notify Us in writing of the details of the new account within 10 Business Days of the change occurring
- (f) ensure that two signatories, who have Your authority to do so, are required to operate the account
- (g) identify the receipt and expenditure of the Funds separately within Your accounting Records so that at all times the Funds are identifiable and ascertainable.

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

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

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

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

## 5.6 If, at any time during the Term of this Agreement, part of the Funding has been expended other than in accordance with this Agreement or has not been acquitted to Our satisfaction, We may give you a notice requiring You to:

- (a) refund the amount to Us within the period specified in the notice, or
- (b) deal with the amount as directed by Us in the notice.

## 5.7 You must complete the Project by the Project Completion Date.

## 5.8 You must ensure that the Project is Operational during the Post-Activity Period. If the Project ceases to be Operational during the Post-Activity Period, We may give You a notice requiring You to repay all or part of the Funding to Us within the period specified in the notice.



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- 5.9 On completion of the Project, if the cost of the completed Project is less than the Cost Estimate, We may give You a notice requiring You to return any unexpended Funding to Us within the period specified in the notice.
- 5.10 If You provided or obtained (and/or were required to provide or obtain) any Other Contributions and the cost of the completed Project is less than the Cost Estimate, We may give You a notice requiring You to return to Us, within the period specified in the notice, an amount equal to Our Proportion of the Cost Savings. In this subclause 5.10, 'Our Proportion of the Cost Savings' means savings  $\times$  % where:
- (a) savings = (the Cost Estimate – the actual cost of the Project – any Funds previously repaid to Us under this Agreement)
  - (b) % = (the Funding  $\div$  (the maximum Funding + the maximum Other Contributions excluding any in-kind Other Contributions)).
- 5.11 If You receive a notice given by Us under subclause 3.3, 5.6, 5.8, 5.9 or 5.10, You must comply with the notice within the period specified within the notice.
- 5.12 If You do not comply with a notice given by Us under subclause 3.3, 5.6, 5.8, 5.9 or 5.10, within the period specified in the notice, Interest will accrue and be payable on the amount specified in the notice until the amount is paid in full.
- 5.13 Any amount You owe to Us under subclauses 3.3, 5.6, 5.8, 5.9 or 5.10 and any Interest owed under subclause 5.12, will be recoverable by Us as a debt due to Us by You without further proof of the debt by Us being necessary.
- 5.14 You may expend the Funds on any separate category of Cost Item within the Budget, but You must obtain Our prior written approval for any transfer of Funds between categories of Cost Items within the Budget which exceed the percentage of the total Budget specified in item 2.3 of the Schedule. The total amount of transfers in any Financial Year must not exceed the percentage of the Budget specified in item 2.3 of the Schedule.
- 5.15 We are not responsible for the provision of any additional money to meet any expenditure in excess of the Funds.
- 5.16 If there are any funding shortfalls or cost overruns as a result of this Agreement, You are responsible for meeting those costs.
- 5.17 The provisions relating to clause 5 shall survive the termination or expiration of this Agreement.

**6. OTHER CONTRIBUTIONS**

- 6.1 If any Other Contributions are identified at Annexure B to the Schedule, You must:
- (a) within six months of the Date of this Agreement, secure those Other Contributions and
  - (b) within ten Business Days of securing those Other Contributions:
    - i. notify Us that You have secured the required amount of Other Contributions
    - ii. give Us satisfactory written evidence that the Other Contributions have been secured, including the amounts secured, their due dates and the terms and conditions of their provision.
- 6.2 The terms and conditions on which the Other Contributions are to be provided or obtained by You must be consistent with Your obligations under this Agreement and satisfactory to Us.

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- 6.3 If, for any reason, You are not able to provide or obtain:
- (a) an amount of Other Contributions by the date specified in Annexure B for that amount
  - (b) an amount of Other Contributions in time to enable completion of the Activity or the Project, or
  - (c) an amount of Other Contributions on terms and conditions satisfactory to Us,
- then We may, at Our sole discretion:
- (d) suspend payment of the Funds until You provide Us with satisfactory evidence that You have provided or obtained that amount of Other Contributions on terms satisfactory to Us, or
  - (e) terminate this Agreement in accordance with clause 23.
- 6.4 Without limiting Our rights under subclause 6.3, You must take all reasonable steps to enforce any contractual arrangement under which You are entitled to receive any Other Contributions.
- 6.5 Without limiting Our rights under subclause 6.3, You must notify Us in writing within 10 Business Days:
- (a) of entering into any arrangement (whether contractual or statutory) under which You are entitled to receive any Other Contributions not identified in Annexure B
  - (b) of any changes to the Other Contributions identified in Annexure B, or
  - (c) of commencing any action to enforce a contractual arrangement under which You are entitled to receive any Other Contributions.
- 6.6 If at any time We become aware that We have provided You with Funding for any part of the Activity for which You have received Other Contributions that were not specified at Annexure B, We may seek reimbursement from You of that amount of the Funding. Any amount notified by Us to You as being owing under this subclause will be recoverable by Us as a debt due to Us by You without further proof of the debt by Us being necessary.

**7. STATUTORY APPROVAL**

- 7.1 You must obtain all necessary statutory approvals in relation to the Project, including those specified in item 6 of the Schedule, and You must give Us, within six months after the Date of this Agreement, satisfactory written evidence that these statutory approvals have been obtained and that they are sufficient for You to Commence Construction within six months after the Date of this Agreement.
- 7.2 If You do not comply with the requirement in subclause 7.1, We may at Our sole discretion:
- (a) suspend payment of the Funds until the evidence of the statutory approvals referred to in subclause 7.1 has been received, or
  - (b) terminate this Agreement in accordance with clause 23.



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**8. ASSETS**

- 8.1 You must not use the Funding to acquire or upgrade any Asset, apart from those detailed in item 5.3 of the Schedule, without obtaining Our prior written approval. We may impose conditions on Our approval and You must comply with those conditions.
- 8.2 Unless it is specified in item 5.3 of the Schedule and subject to this clause 8 and the terms of any relevant lease, You own all of the Assets.
- 8.3 If a third party owns an Asset, subclauses 8.6, 8.8 and 8.10 do not apply. If You have leased an Asset from a third party, You must ensure that the terms of the lease are consistent with this clause 8 except for subclauses 8.6, 8.7 and 8.8.
- 8.4 During the Activity Period and the Post-Activity Period, You must:
- (a) unless item 5 of the Schedule provides that You do not own an Asset, obtain good title to Assets
  - (b) not sell, dispose of, encumber or grant any rights to any third party in or over any of the Assets, without Our prior written approval
  - (c) not deal with or use any Asset other than in accordance with this clause 8, without Our prior written approval
  - (d) notify Us of any impending event referred to in paragraphs 8.4(b) or 8.4(c) as soon as possible
  - (e) begin using an Asset for the Activity by no later than 3 months after its acquisition, creation or upgrade
  - (f) hold all Assets securely and safeguard them against theft, loss, damage, or unauthorised use
  - (g) maintain all Assets in good working order
  - (h) maintain all appropriate insurances for all Assets to their full replacement value noting Our interest, if any, in the Asset under this Agreement and provide Us satisfactory evidence of this insurance on request from Us
  - (i) if required by Law, maintain registration and licensing of all Assets
  - (j) be fully responsible for, and bear all risks relating to, the use or disposal of all Assets
  - (k) if specified in item 5 of the Schedule, maintain an Assets register in the form and containing the details as described in the Schedule and
  - (l) as and when requested by Us, provide copies of the Assets register to Us.
- 8.5 You must use the Assets for the Activity during the Activity Period. Throughout the Post-Activity Period, You must use the Assets identified at item 1.8 of the Schedule for the use specified in the Schedule at item 1.4.
- 8.6 You must deal with any Asset as directed by Us in Our sole discretion for the purpose of securing its ongoing use or to give any charge, mortgage or other appropriate form of security in favour of Us over it and on terms specified by Us.



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8.7 Without prejudice to any other rights that arise in the event of a breach of this Agreement, if:

- (a) this Agreement is terminated under clause 23 and some or all of the Funding has been spent on one or more Assets
- (b) You fail to deal with an Asset as directed under clause 8.6
- (c) You fail to or cease to use an Asset Identified in Item 1.8 for the purposes specified in Item 1.8 at any time during the Post-Activity Period
- (d) You fail to or cease to use an Asset for the Activity within three months of its acquisition, upgrade or creation, or

We may give You a notice requiring You to:

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

8.8 If You sell or otherwise dispose of an Asset during the Activity Period or the Post-Activity Period (which must be with Our prior written approval and subject to any conditions We may impose) and, at the time of the sale or disposal, the Asset has not been fully Depreciated, We may give You a notice requiring You to take the action specified in the notice (which may include paying to Us an amount equal to the proportion of the Undepreciated value of the Asset, that is equivalent to the proportion of the purchase price of the Asset that was funded from the Funding). This clause 8.8 does not apply to a disposal to which clause 8.7 applies.

8.9 If any of the Assets are lost, damaged or destroyed during the Activity Period or the Post-Activity Period, You must reinstate the Assets including from the proceeds of the insurance and this clause 8 continues to apply to the reinstated Assets. You must notify Us of any surplus from the proceeds of the insurance and You must use and account for the surplus as Funding under this Agreement.

8.10 At the end of the Activity Period, We may give You a notice requiring You to deal with an Asset that is not specified in Item 1.8 of the Schedule as We may, at Our sole discretion, direct in the notice.

8.11 If We give You a notice under subclause 8.7, 8.8 or 8.10, You must promptly comply with the notice.

8.12 If You fail to make a payment to Us as required by a notice given under subclause 8.7 or 8.8 You must pay Us:

- (a) the interest on the relevant amount from the date it was due, for the period it remains unpaid and
- (b) the relevant amount, and interest owed under this clause 8, will be recoverable by Us as a debt due to Us by You.

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- 8.13 Our approval under subclause 8.1 and paragraphs 8.4(b) and 8.4(c) will not be unreasonably withheld.
- 8.14 We will make a decision as to whether to grant an approval within a reasonable period after receiving Your request.
- 8.15 The provisions relating to clause 8 shall survive the termination or expiration of this Agreement.

**8A. REAL PROPERTY**

- 8A.1 You must obtain Our prior written approval to spend the Funding on any Real Property that is not specifically identified in the Budget. We may grant that approval subject to conditions.
- 8A.2 You must pay all rents, rates, taxes levies and other outgoings of any nature in relation to the Real Property. The funds may not be used to pay rent.
- 8A.3 You must:
- (a) perform the Capital Works:
    - i. In accordance with the designs and plans submitted by You to Us
    - ii. In a good and workmanlike manner by qualified tradespeople and
    - iii. With a minimum of delay.
- 8A.4 Throughout the Term of this Agreement, including the Post-Activity Period, You agree to:
- (a) hold the Real Property securely and safeguard it against theft, loss, damage, or unauthorised use
  - (b) maintain the Real Property in good condition
  - (c) maintain all appropriate Insurances for the Real Property to its full replacement cost and use that Insurance to rectify any damage to or destruction to the Real Property and this clause 8A continues to apply to the Real Property once rectified. You must notify Us of any surplus from the proceeds of this insurance and You must use and account for that surplus as Funding under this Agreement
  - (d) if required by any Law, maintain registration and licensing of the Real Property
  - (e) be fully responsible for, and bear all risks relating to, the use or Disposal of all Real Property
  - (f) if specified in item 5A of the Schedule, maintain a Real Property register in the form and containing the details as described in that item of the Schedule and
  - (g) as and when requested by Us, provide copies of the Real Property register to Us.
- 8A.5 You warrant and agree that the Capital Works (whether undertaken before, on or after the Date of this Agreement) have been (if applicable) and will be carried out in accordance with all applicable Laws including, but not limited to, all necessary planning and regulatory approvals.
- 8A.6 You are responsible for ensuring the proper and efficient completion of the Capital Works and agree to provide Us with satisfactory evidence of the proper completion of the Capital Works on or before the expiration of the Activity Period.

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8A.7 You agree to ensure that:

- (a) the Works Locations comply at all times with all applicable Laws regarding their use as a site for the Capital Works
- (b) the completed Capital Works comply with all Laws relating to their ongoing use in accordance with item 1.8 of the Schedule throughout the Post-Activity Period
- (c) the Real Property is used for, and is fit to be used for, the purposes specified in item 1.8 of the Schedule throughout the Post-Activity Period and
- (d) the use of the Real Property for the purposes specified in item 1.8 of the Schedule throughout the Post-Activity Period, does not infringe any conditions of Your ownership or occupation of the Real Property.

8A.8 Throughout the Post-Activity Period, You must use the Real Property for the purpose specified in item 1.8.

8A.9 If We request, You must take all action necessary to grant Us a security, including in the form of a charge or mortgage, over the Real Property and on terms acceptable to Us.

8A.10 If a third party has proprietary or other rights or interests in relation to any Real Property, You agree to:

- (a) enter into legally binding written agreements under which all such third parties agree to:
  - i. the use of the Works Locations to undertake the Capital Works throughout the Activity Period
  - ii. the use of the Works Locations, and completed Capital Works for the purposes specified in item 1.8 of the Schedule throughout the Post-Activity Period and
  - iii. the use of any other Real Property for the Activity throughout the Activity Period and for the purposes specified in item 1.8 of the Schedule throughout the Post-Activity Period.

(b) not do anything that would give any such third party a right to rescind its agreement to one or more of the uses specified in paragraph (a) and

(c) within 10 Business Days of a request from Us, provide evidence to Us that You have complied with the requirements of this subclause 8A.10.

8A.11 If:

- (a) the Agreement is terminated under clause 23 and some or all of the Funding has been provided to You for expenditure on Real Property
- (b) You fail to Commence Construction for the Activity within 6 months of the Date of this Agreement
- (c) You Dispose of any Real Property during the Term of this Agreement, or
- (d) You fail to or cease to use any Real Property for the purposes specified in item 1.8 of the Schedule at any time during the Post-Activity Period

then:



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- (e) You must notify Us at least 20 Business Days prior to the event in paragraph (b), (c) or (d) occurring and
- (f) We may give You a notice requiring You to repay Us some or all of the Funding provided under this Agreement and You must repay the amount specified in any such notice within the period specified in that notice.

8A.12 If You fail to pay Us an amount as required by a notice given under subclause 8A.11:

- (a) You must pay Us the Interest on the unpaid amount from the date it was due, for the period it remains unpaid and
- (b) that amount, and Interest owed under this subclause 8A.12, will be recoverable by Us as a debt due to Us by You.

8A.13 The provisions relating to clause 8A shall survive the termination or expiration of this Agreement.

## 9. RECORDS

- 9.1 You must keep full and accurate Records of the conduct of the Activity and the Project including, progress against the Milestones, the receipt and use of Funding and Other Contributions (if any), the creation, acquisition and upgrading of Assets or Real Property and the creation of Intellectual Property Rights in Activity Material.
- 9.2 You must retain the Records maintained under subclause 9.1 for a period of no less than 7 years after the end of the Activity Period.
- 9.3 The provisions relating to clause 9 shall survive the termination or expiration of this Agreement.

## 10. REPORTING

10.1 You must provide to Us, at the times and in the manner prescribed in item 3 of the Schedule or as requested by Us at any time:

- (a) Progress Reports and other Reports and performance information relating to the Activity and the Project
- (b) financial information (including bank statements, receipts and invoices) and audited financial reports of receipt and expenditure of the Funding and Other Contributions (excluding in-kind).

10.2 You must give Us a Financial Audited Report:

- (a) at the times stated in item 3 of the Schedule
- (b) at other times notified by Us
- (c) If this Agreement is terminated, within 20 Business Days after the termination.

10.3 The Financial Audited Report referred to in subclause 10.2 must contain:

- (a) separate audited statements of receipts and expenditure in respect of the Funding and Other Contributions (excluding in-kind), which must:
  - i. comply with Australian Accounting Standards and Australian Auditing Standards
  - ii. separately identify any interest earned on the Funding

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- iii. Include a definitive statement made by an Approved Auditor as to whether:
  - a) the statements of receipts and expenditure are fair and true
  - b) Funding and Other Contributions (excluding in-kind) were held and expended in accordance with this Agreement
- (b) a certificate, signed by Your Chief Executive Officer, Chief Financial Officer or a person authorised by You to execute documents and legally bind You by their execution, that:
  - i. all Funding and Other Contributions (excluding in-kind) received 'was expended for the purpose of the Activity and Project and expended and held in a manner in accordance with this Agreement
  - ii. salaries and allowances paid to persons involved in the Activity are in accordance with any applicable award or agreement in force under any relevant Law on industrial or workplace relations.
- 10.4 The audited statements referred to in paragraph 10.3(a) and the certificate referred to in paragraph 10.3(b), must comply with the requirements, if any, described in Item 3 of the Schedule.
- 10.5 You must provide to US a report annually during the Post Activity Period (5 years) that confirms that all Assets as per Item 5.3 of the Schedule and all Real Property as per Item 5.A.1 of the Schedule are being used in accordance with the Purpose described at Item 1.4 of the Schedule.
- 10.6 The provisions relating to clause 10 shall survive the termination or expiration of this Agreement.

**11. TAXES, DUTIES AND GOVERNMENT CHARGES**

- 11.1 Subject to this clause 11, all taxes, duties and government charges imposed or levied in Australia or overseas in connection with this Agreement must be borne by You.
- 11.2 Unless otherwise indicated, all consideration for any supply made under this Agreement is exclusive of any GST imposed on the supply.
- 11.3 If one party (supplier) makes a taxable supply to the other party (recipient) under this Agreement, the recipient on receipt of a tax invoice from the supplier must pay without set off an additional amount to the supplier equal to the GST imposed on the supply in question.
- 11.4 No party may claim or retain from the other party any amount in relation to a supply made under this deed for which the first party can obtain an input tax credit or decreasing adjustment.
- 11.5 On the basis that the Funding paid under this Agreement is of a 'funding nature', is paid to a 'government related entity', and is 'specifically covered' by an appropriation, the Parties agree to rely on GSTR 2012/2 as at the Date of this Agreement for no GST being imposed in connection with this Agreement.

**12. COMMONWEALTH MATERIAL**

- 12.1 Ownership of all Commonwealth Material, including Intellectual Property Rights in that Material, remains vested at all times in Us but We grant You a licence to use, copy and



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reproduce that Material only for the purposes of this Agreement and in accordance with any conditions or restrictions specified in Item 7 of the Schedule.

- 12.2 At the end of the Activity Period or on termination of this Agreement, You must return all Commonwealth Material to Us unless otherwise specified by Us.
- 12.3 Subject to clause 12.2, You must keep safely and maintain Commonwealth Material You have been given for the purposes of this Agreement.
- 12.4 The provisions relating to clause 12 shall survive the termination or expiration of this Agreement.

### 13. INTELLECTUAL PROPERTY

- 13.1 Subject to this clause 13, as between Us and You (but without affecting the position between You and a third party) Intellectual Property Rights in Activity Material vest immediately in You.
- 13.2 You grant to (or must procure for) Us a permanent, irrevocable, free, world-wide, non-exclusive licence (including a right of sublicense) to use, reproduce, communicate, adapt, modify and exploit the Intellectual Property Rights in Activity Material for any Commonwealth purpose.
- 13.3 You agree that the licence granted in clause 13.2 includes a right for Us to licence the Activity Material to the public under an Open Access Licence.
- 13.4 This clause 13 does not affect the ownership of any Intellectual Property Rights in any Existing Material, which is specified in Item 8 of the Schedule. You, however, grant to Us or must procure for Us of a permanent, irrevocable, free, world-wide, non-exclusive licence (including a right of sublicense) to use, reproduce, communicate, adapt, modify and exploit the Intellectual Property Rights in Existing Material for any Commonwealth purpose.
- 13.5 You:
  - (a) must, if requested by Us to do so, bring into existence, sign, execute or otherwise deal with any document which may be necessary or desirable to give effect to this clause 13
  - (b) warrant that You are entitled, or will be entitled at the relevant time, to deal with the Intellectual Property Rights in the Activity Material and the Existing Material in accordance with this clause 13
  - (c) except as expressly provided for in this Agreement, must not deal with the Intellectual Property Rights in the Activity Material during the Term of this Agreement.
- 13.6 The provisions relating to clause 13 shall survive the termination or expiration of this Agreement.

### 14. MORAL RIGHTS

- 14.1 For this clause 14, the 'Specified Acts' means the following classes or types of acts or omissions by or on behalf of Us:
  - (a) those which would, but for this clause 14 infringe the author's right of attribution of authorship or the author's right of integrity of authorship



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but does not include:

- (b) those which would infringe the author's right not to have authorship falsely attributed.

14.2 You warrant or undertake that:

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

14.3 The provisions relating to clause 14 shall survive the termination or expiration of this Agreement.

## 15. DISCLOSURE OF INFORMATION

15.1 You acknowledge that We may be required to provide information in relation to the Funding or this Agreement, as required by the operation of any Law, judicial or parliamentary body or governmental agency and accordingly We cannot undertake to treat any of Your Information or this Agreement as confidential information.

15.2 You acknowledge and agree that We will publish the following information on Our website:

- (a) Your name
- (b) the purpose for which the Funding is being provided
- (c) the total amount of the Funding
- (d) the Date of this Agreement
- (e) the Term of this Agreement
- (f) the State or Territory, suburb and postcode at which the Activity will primarily take place.

15.3 You are permitted to disclose Commonwealth Material, except to the extent that it is Commonwealth Confidential Information. If We require You to keep any Commonwealth Confidential Information, We may permit You to disclose it subject to compliance with any conditions on that disclosure that We may impose.

## 16. PROTECTION OF PERSONAL INFORMATION

16.1 This clause 16 applies only where You deal with Personal Information when, and for the purpose of, conducting the Activity under this Agreement.

16.2 You agree to be treated as a 'contracted service provider' within the meaning of section 6 of the Privacy Act 1988 (Cth) (the Privacy Act), and agree in respect to the conduct of the Activity under this Agreement:

- (a) to use or disclose Personal Information obtained during the course of conducting the Activity under this Agreement, only for the purposes of this Agreement

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- (b) not to do any act or engage in any practice that would breach an Information Privacy Principle (IPP) contained in section 14 of the Privacy Act, which if done or engaged in by an agency, would be a breach of that IPP
  - (c) to carry out and discharge the obligations contained in the IPPs as if You were an agency under that Act
  - (d) to notify individuals whose Personal Information You hold, that complaints about Your acts or practices may be investigated by the Information Commissioner who has power to award compensation against You in appropriate circumstances
  - (e) not to use or disclose Personal Information or engage in an act or practice that would breach section 16F (direct marketing), a National Privacy Principle (NPP) (particularly NPPs seven to ten) or an Approved Privacy Code (APC), where that section, NPP or APC is applicable to You, unless:
    - i. in the case of section 16F - the use or disclosure is necessary, directly or indirectly, to discharge an obligation under this Agreement, or
    - ii. in the case of an NPP or an APC - where the activity or practice is engaged in for the purpose of discharging, directly or indirectly, an obligation under this Agreement, and the activity or practice which is authorised by this Agreement is inconsistent with the NPP or APC
  - (f) to disclose in writing to any person who asks, the content of the provisions of this Agreement (if any) that are inconsistent with an NPP or an APC binding a Party to this Agreement
  - (g) to immediately notify Us if You become aware of a breach or possible breach of any of the obligations contained in, or referred to in, this clause 16, whether by You or any subcontractor
  - (h) to comply with any directions, guidelines, determinations or recommendations of the Information Commissioner to the extent that they are not inconsistent with the requirements of this clause 16
  - (i) to ensure that any of Your employees who are required to deal with Personal Information for the purposes of this Agreement are made aware of Your obligations set out in this clause 16.
- 16.3 You must ensure that any subcontract entered into for the purpose of fulfilling Your obligations under this Agreement contains provisions to ensure that the subcontractor has the same awareness and obligations as You have under this clause, including the requirement in relation to subcontracts.
- 16.4 You indemnify Us in respect of any loss, liability or expense suffered or incurred by Us which arises directly or indirectly from a breach of any of Your obligations under this clause 16, or from a subcontractor's breach of the subcontract provisions referred to in subclause 16.3.
- 16.5 In this clause 16, the terms 'agency', 'Approved Privacy Code' (APC), 'Information Privacy Principles' (IPPs), and 'National Privacy Principles' (NPPs) have the same meaning as they have in section 6 of the Privacy Act, and 'subcontract' and other grammatical forms of that word has the meaning given in section 95B(4) of the Privacy Act.
- 16.6 The provisions relating to clause 6 shall survive the termination or expiration of this Agreement.

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**17. LIABILITY**

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

17.2 You Indemnify (and keep Indemnified) Us, Our officers, employees, and agents against any:

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

arising from:

- (d) any act or omission by You, or any of Your employees, agents, volunteers, or subcontractors in connection with this Agreement, where there was fault on the part of the person whose conduct gave rise to that liability, loss, damage, or expense
- (e) any breach by You of Your obligations or warranties under this Agreement
- (f) the use of the Assets or Real Property by You or any of Your employees, agents, volunteers or subcontractors, or
- (g) the use by Us of the Activity Material or Existing Material, including any claims by third parties about the ownership or right to use Intellectual Property Rights in Activity Material or Existing Material.

17.3 Your liability to indemnify Us under this clause 17 will be reduced proportionally to the extent that any fault on Our part contributed to the relevant loss, damage, expense, or liability.

- (a) Our right to be indemnified under this clause 17 is in addition to, and not exclusive of, any other right, power, or remedy provided by law, but We are not entitled to be compensated in excess of the amount of the relevant liability, damage, loss, or expense.

17.4 In this clause 17, "fault" means any negligent or unlawful act or omission or wilful misconduct.

17.5 The provisions relating to clause 17 shall survive the termination or expiration of this Agreement.

**18. INSURANCE**

18.1 Subject to paragraph 8.4(h) and clause 8A, You must have insurance as specified in Item 10 of the Schedule until the end of the Post-Activity Period.

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

18.3 The provisions relating to clause 18 shall survive the termination or expiration of this Agreement.



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**19. CONFLICT OF INTEREST**

- 19.1 You warrant that, to the best of Your knowledge after making diligent inquiry, at the Date of this Agreement no Conflict exists or is likely to arise in the performance of Your obligations under this Agreement.
- 19.2 Without limiting the operation of this clause 19, during the Term of this Agreement, You must ensure that no Conflict arises through Your involvement with the parties or programs, if any, specified in Item 11 of the Schedule.
- 19.3 If a Conflict arises during the Term of this Agreement, You must:
- (a) immediately notify Us in writing of that Conflict and of the steps You propose to take to resolve or otherwise deal with the Conflict
  - (b) make full disclosure to Us of all relevant information relating to the Conflict
  - (c) take such steps as We may, if We choose to, reasonably require to resolve or otherwise deal with that Conflict.
- 19.4 If You fail to notify Us under this clause 19, or are unable or unwilling to resolve or deal with the Conflict as We require, We may terminate this Agreement in accordance with clause 23.

**20. ACCESS TO PREMISES AND RECORDS**

- 20.1 You must give the Auditor-General, the Information Commissioner and persons authorised by Us (referred to in this clause 20 collectively as 'those permitted') access to premises at which Records and Material associated with this Agreement are stored or work under the Activity is undertaken at all reasonable times and allow those permitted to inspect and copy Records and Material, in Your possession or control, for purposes associated with this Agreement or any review of performance under this Agreement. You must also give those permitted access to any Assets or Real Property, wherever they may be located, and reasonable access to Your employees for the same purpose.
- 20.2 You must provide all reasonable assistance requested by those permitted when they exercise the rights under subclause 20.1.
- 20.3 The rights referred to in subclause 20.1 are subject to:
- (a) the provision of reasonable prior notice by those permitted (except where they believe that there is an actual or apprehended breach of the law) and
  - (b) Your reasonable security procedures.
- 20.4 The requirement for access as specified in subclause 20.1 does not in any way reduce Your responsibility to perform Your obligations in accordance with this Agreement.
- 20.5 You must ensure that any subcontract entered into for the purpose of this Agreement contains an equivalent clause allowing those permitted to have access as specified in this clause 20.
- 20.6 This clause 20 applies for the Term of this Agreement and for a period of 7 years from the date of expiration or earlier termination of this Agreement.

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**21. DELAY**

- 21.1 You must take all reasonable steps to minimise delay in completion of the Activity and the Project.
- 21.2 If You become aware that You will be delayed in progressing or completing the Activity in accordance with this Agreement or the Project generally, You must immediately notify Us in writing of the cause and nature of the delay. You must describe in the notice the steps You will take to reduce the delay.
- 21.3 On receipt of a notice of delay, We may, at Our sole discretion:
- (a) notify You in writing of a period of extension to complete the Activity and vary this Agreement accordingly
  - (b) notify You in writing of reduction in the scope of the Activity and any adjustment to the Funds for You to complete the reduced Activity and vary this Agreement accordingly;
  - (c) terminate this Agreement under clause 23, or
  - (d) take such other steps as are available under this Agreement.
- 21.4 Unless We take action under subclause 21.3, You must comply with the time frame for progressing and completing the Activity and the Project set out in this Agreement.

**22. TERMINATION WITH COSTS**

- 22.1 We may, at any time by written notice to You, terminate or reduce the scope of this Agreement without prejudice to the rights, liabilities, or obligations of either Party accruing prior to the date of termination. If We terminate this Agreement under this clause 22, We will only be liable:
- (a) to pay Funding due and owing to You under the payment provisions of this Agreement, as at the date of the notice of termination
  - (b) subject to subclauses 22.5, 22.6 and 22.7, to reimburse You any expenses You have unavoidably incurred that relate directly and entirely to the Activity and are not covered by paragraph 22.1(a).
- 22.2 Upon receipt of a notice of termination or reduction in scope You must:
- (a) cease or reduce the performance of Your obligations under this Agreement in accordance with the notice
  - (b) immediately do everything possible to mitigate all losses, costs, and expenses, arising from the termination or reduction in scope contained in the notice
  - (c) continue performing any part of the Activity not affected by the notice if requested to do so by Us
  - (d) immediately return to Us any Funds in accordance with paragraph 22.3 or deal with any such Funds as We may direct in writing.
- 22.3 If We terminate this Agreement under subclause 22.1, We will be entitled to recover from You any part of the Funding which:
- (a) is not legally committed for expenditure by You in accordance with this Agreement and payable by You (written evidence of which will be required) by the date the

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notice of termination given under subclause 22.1 is deemed to be received in accordance with subclause 40.3 [Notices], or

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

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

22.4 If We reduce the scope of Your obligations under this Agreement, Our liability to pay any part of the Funding will, in the absence of agreement to the contrary, abate proportionately to the reduction in the obligations under this Agreement.

22.5 Our liability to pay You any compensation under or in relation to this clause 22 is subject to:

(a) Your strict compliance with this clause 22

(b) Your substantiation of any amount claimed under paragraph 22.1 (b).

22.6 We will not be liable to pay You compensation for loss of prospective profits for a termination or reduction in scope under this clause 22 or loss of any benefits that would have been conferred on You had the termination or reduction not occurred.

22.7 Notwithstanding anything in this Clause 22, We will not be liable to pay You any amounts which would, when added to any payments already paid to You under this Agreement, exceed the Funding set out in Item 2.1 of the Schedule

### 23. TERMINATION FOR DEFAULT

23.1 We may immediately terminate this Agreement by giving written notice to You of the termination if:

(a) You fail to fulfil, or are in breach of any of Your obligations under this Agreement and we consider that this failure or breach is not capable of remedy

(b) You fail to fulfil, or are in breach of any of Your obligations under this Agreement, and do not rectify the omission or breach within 10 Business Days of receiving a notice in writing from Us to do so

(c) You are unable to pay all Your debts as and when they become due and payable or You fail to comply with a statutory demand within the meaning of sections 459E and 459F of the *Corporations Act 2001* (Cth)

(d) proceedings are initiated with a view to obtaining an order for Your winding up or any shareholder, member or director convenes a meeting for the purpose of considering or passing of any resolution for Your winding up

(e) You come under one of the forms of external administration referred to in Chapter 5 of the *Corporations Act 2001* (Cth) or equivalent provisions in Incorporated Associations legislation of the States and Territories or Chapter 11 of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth), or an order has been made for the purpose of placing You under external administration

(f) in relation to this Agreement, You breach any Law of the Commonwealth, or of a State or Territory

(g) You cease to carry on business



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- (h) We are satisfied that any statement made in Your application for Funding is incorrect, incomplete, false or misleading in a way which would have affected the original decision to approve the Funding
- (i) notice is served on You or proceedings are taken to cancel Your incorporation or registration or to dissolve You as a legal entity
- (j) another clause of this Agreement provides for termination under this clause 23

23.2 If We terminate the Term of this Agreement under subclause 23.1 We will:

- (a) be liable only to pay Funding due and owing to You under this Agreement as at the date of the notice of termination
- (b) be entitled to recover from You any part of the Funding which:
  - i. is not legally committed for expenditure by You in accordance with this Agreement and payable by You (written evidence of which will be required) by the date the notice of termination given under subclause 23.1 is deemed to be received in accordance with subclause 40.3 [Notices] or
  - ii. has not, in Our opinion, been expended by You in accordance with the terms and conditions of this Agreement.

23.3 If You do not repay Us the amount referred to in paragraph 23.2(b) within 10 Business Days of receipt of the notice of termination, You must also pay Us Interest on the outstanding amount which You acknowledge represents a reasonable pre-estimate of the loss incurred by Us as a result of the loss of investment opportunity for, or the reasonable cost of borrowing other money in place of, the amount which should have been repaid. The amount set out in the notice, and Interest owed under this subclause 23.3 will be recoverable by Us as a debt due to Us by You.

23.4 Subclause 23.2 does not limit or exclude any of Our other rights, including the right to recover any other amounts from You on termination of this Agreement.

## 24. SUBCONTRACTING

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

24.2 Unless We agree otherwise, You must have a written contract with each of Your subcontractors (subcontract) and ensure that each subcontract is consistent with, and allows You to give effect to, Your obligations under this Agreement. If requested by Us, You must notify Us of any subcontractors appointed to carry out any of Your obligations under this Agreement. You must notify Us no later than 20 Business Days after the request from Us.

24.3 You are responsible for ensuring the suitability of a subcontractor for the work proposed to be carried out and for ensuring that such work meets the requirements of this Agreement. We may direct You to terminate a subcontracting arrangement by notifying You in writing.

24.4 Upon receipt of a written notice from Us directing You to terminate a subcontracting arrangement, You must, as soon as practicable (or as We may direct in the notice), cease using that subcontractor to perform any of Your obligations unless We direct that the subcontractor be replaced immediately, in which case You must comply with the direction.

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- 24.5 If We direct You to terminate a subcontracting arrangement, You remain liable under this Agreement for the past acts or omissions of Your subcontractors as if they were current subcontractors.
- 24.6 You must, in any subcontract placed with a subcontractor, reserve a right of termination to take account of:
- (a) Our right to direct you to terminate that subcontract under subclause 24.3
  - (b) Our right of termination under clauses 22 and 23
- and You must make use of that right in the event of a termination by Us.
- 24.7 You must, in any subcontract placed with a subcontractor, include a requirement for insurance that is consistent with the requirement for insurance under clause 18.
- 24.8 You must not enter into a subcontract under this Agreement with a subcontractor named by the Director of the Equal Opportunity for Women in the Workplace Agency as 'an employer currently not complying with the *Equal Opportunity for Women in the Workplace Act 1999* (Cth)'.
- 24.9 For the purpose of this Agreement, 'subcontractor' includes any other member of Your consortium who is involved in the performance of the Activity.

**25. ACKNOWLEDGMENT AND PUBLICITY**

- 25.1 You must acknowledge the financial and other support You have received from Us in all of Your publications, signage and promotional material (such as brochures, flyers, fact sheets, web pages and media releases) regarding the Project by including wording that We have approved You to use for that purpose.
- 25.2 If You erect or maintain any signage in relation to the Project, the signage must be approved by Us prior to use and contain an acknowledgement of the Funding as required by this clause 25. Any such signage should remain for as long as the Asset or Real Property to which it is attached is used for the purposes specified in item 1.8 of the Schedule. Signage for the Activity may be paid from the Budget if approved by Us. Signage for any other part of the Project must be at Your own cost.
- 25.3 If a Federal, State or Local Government election is announced, You must cover any sign that is displayed within 100 metres of a polling place with an opaque (impenetrable to sight), durable and water repellent material from a period not less than 48 hours before the commencement of polling at that polling place until the polls close.
- 25.4 You must include Our logo in all Your signage, publications and promotional activities related to the Activity.
- 25.5 You must not use Our logo without Our approval. If We provide approval for Your use of Our logo, You must use it in accordance with Our branding guidelines (to be advised by Us).
- 25.6 All Your publicity, announcements and media releases relating to the Activity must be cleared through Our contact officer specified at item 14 of the Schedule with at least ten [10] Business Days' notice, before release.

## REGIONAL DEVELOPMENT AUSTRALIA FUND

- 25.7 We reserve the right to publicise and report on the provision of Funding to You, including Your progress on completing the Activity and the Project. We may do this by including the information specified in subclause 15.2 in media releases, general announcements about the Funding and in annual reports and on Our website.
- 25.8 You must conduct an official opening of the completed Activity and Project unless otherwise agreed by Us.
- 25.9 You must provide to us at least 3 options for dates for the official opening, or any other milestone events that You choose to conduct (e.g. stage completion), for the Activity and the Project. These dates must be provided at least 45 days prior to the first proposed date for each event to be conducted.
- 25.10 The date of official openings or other official public function for the completed Activity and Project must be agreed by Us.
- 25.11 You must invite Our representative to officiate at any official opening or other official public function relating to the Activity or the Project.
- 25.12 Our Minister's prior agreement must be sought, through Us, to invite to any other Commonwealth or State elected official or other officials to attending either function. This invitation must be provided to Us no later than 45 days before the date of the official opening or other official public function relating to the Activity or the Project.
- 25.13 You must coordinate requests for Our agreement to the date of official openings and requests for Our representation at official openings or other official functions relating to the Activity or the Project through Our contact officer specified at item 14 of the Schedule.
- 25.14 This clause 25 applies for the Term of this Agreement and for a period of 5 years from the date of expiration or termination of this Agreement.

**26. COMPLIANCE WITH LAWS AND OUR POLICIES**

- 26.1 You must, in carrying out Your obligations under this Agreement, comply with all applicable Laws of any Commonwealth, State, Territory or local authority, including those listed at item 13.1 of the Schedule. You should note that under the *Criminal Code Act 1995* (Cth) section 137.1 giving false or misleading information is a serious offence.
- 26.2 You must, in carrying out Your obligations under this Agreement, comply with any of Our policies as notified by Us to You in writing, including those listed at item 13.2 of the Schedule.

**27. RESERVED****28. RESERVED****29. WORK HEALTH AND SAFETY**

- 29.1 You must ensure that the services and the work conducted by you, and any of your officers, employees, agents and subcontracts, comply with all applicable legislative requirements, standards and policies requirements of this Agreement, that relate to the health and safety of You, Your personnel, Our staff and third parties.



## REGIONAL DEVELOPMENT AUSTRALIA FUND

- 29.2 You must comply with obligations under applicable WHS law, and must ensure, so far as is reasonably practicable, that officers (as defined under applicable WHS law) and workers also comply with their WHS obligations. This sub-clause is not limited by sub-clause 29.1.
- 29.3 You must ensure, so far as is reasonably practicable, the health and safety of workers while they are working in relation to this Agreement:
- a) workers engaged, or caused to be engaged by you, and
  - b) workers whose activities in carrying out work are influenced or directed by you.
- 29.4 You must ensure, so far as is reasonably practicable, that the health and safety of other persons (including Our staff and Our contractors) are not put at risk as a result of work carried out under this Agreement.
- 29.5 You must consult, cooperate and coordinate with Us in relation to Your work health and safety duties.
- 29.6 Without limiting this Agreement, You must, on request, give all reasonable assistance to Us, by providing information and documents to assist Us and Our officers (as defined in the WHS Act) regarding compliance with the WHS Act.
- 29.7 We may direct You to take specified measures in connection with Your work under this Agreement, or otherwise, in connection with the Services that We 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. You must comply with such directions. You are not entitled to an adjustment of the Fees, or to charge additional allowances or expenses, merely because of compliance with such directions.
- 29.8 If an event occurs in relation to Your work under this Agreement that leads, or could lead, to the death of, injury to, illness of, a person (Notifiable Incident), You must:
- a) immediately report the matter to Us, including all relevant details that are known to You
  - b) as soon as possible after the Notifiable Incident, investigate the Notifiable Incident to determine, as far as it can reasonably be done:
    - i. its cause, and
    - ii. what adverse effects (if any) it will have on Your work under this Agreement, including adverse effects on health and safety.
  - c) as soon as possible after the Notifiable Incident, take all reasonable steps to remedy the effects of the Notifiable Incident on health and safety
  - d) as soon as possible after the Notifiable Incident, take all reasonable steps (including by instituting procedures and systems) to ensure that the kinds of events or circumstances which led to the Notifiable Incident do not recur
  - e) within three Business Days after the Notifiable Incident, give Us a written report detailing the Notifiable Incident, including the results of the investigations required by subclause 29.8(b) and a statement of the steps You have taken, or that You propose to take, as required by subclauses 29.8(c) and (d)
  - f) within three months after the Notifiable Incident, give the Department a written report giving full details of Your actions in relation to the Notifiable Incident.

## REGIONAL DEVELOPMENT AUSTRALIA FUND

- 29.9 The obligations under clause 29.8 are additional to any reporting obligations that you may have under the law.
- 29.10 You must fully co-operate, at Your own cost, with any investigation by any government agency (Commonwealth/State/Territory) with respect to a Notifiable Incident, including parliamentary inquiries, boards of inquiry and coroner's investigations.
- 29.11 You must not enter into any subcontract for the purpose of directly or indirectly fulfilling obligations under this Agreement, unless such a subcontract obliges the subcontractor to comply with provisions equivalent to those contained in sub-clause 29.1.
- 29.12 A word or expression in clause 29 that is:
- a) used or defined in an applicable WHS law, and
  - b) is not otherwise defined in clause 29 or elsewhere in this Agreement
- has, for the purposes of clause 29, the meaning given to it under the applicable WHS.

**30. NEGATION OF LEGAL RELATIONSHIP OF EMPLOYMENT, PARTNERSHIP AND AGENCY**

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

**31. ENTIRE AGREEMENT, VARIATION AND SEVERANCE**

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

**32. WAIVER**

- 32.1 If either You or We do not exercise (or delay in exercising) any of Your or Our rights, that failure or delay does not operate as a waiver of those rights.
- 32.2 A single or partial exercise by You or Us of any of Your or Our rights does not prevent the further exercise of any right.
- 32.3 Waiver of any provision of, or right under, this Agreement:
- (a) must be in writing signed by the Party entitled to the benefit of that provision or right
  - (b) is effective only to the extent set out in the written waiver.
- 32.4 In this clause 32, 'rights' means rights or remedies provided by this Agreement or at law.

**33. ASSIGNMENT AND NOVATION**

- 33.1 You must not assign Your rights under this Agreement without Our prior written approval.

## REGIONAL DEVELOPMENT AUSTRALIA FUND

- 33.2 You must not enter into negotiations with any other person for the purposes of entering into an arrangement that will require novation of this Agreement without first consulting Us.

**34. INCORPORATION**

- 34.1 You warrant that Your Constitution is not, and will not become, inconsistent with this Agreement.
- 34.2 You must provide a copy of Your Constitution to Us upon request.
- 34.3 You must obtain Our written approval to any amendments to Your Constitution which may affect Your eligibility for the Funding or Your capacity to comply with this Agreement. If You alter Your Constitution in breach of this subclause 34.3, We may terminate this Agreement in accordance with clause 23.

**35. FUNDING PRECONDITION**

- 35.1 You agree that it is a precondition of entitlement to the Funding that You must:
- (a) provide to Us satisfactory evidence that Your Entity is registered with a Commonwealth, State or Territory Regulatory Body or satisfactory evidence of Your correct statutory authority name.
  - (b) correctly use Your Entity's name on all documentation provided to Us
  - (c) have an Australian Business Number (ABN)
  - (d) immediately notify Us if You cease to hold an ABN
  - (e) correctly quote Your ABN on all documentation provided to Us
  - (f) supply proof of Your GST status, if requested by Us
  - (g) immediately notify Us of changes to Your GST status.

**36. DISPUTE RESOLUTION**

- 36.1 Subject to subclause 36.3, both You and We agree not to commence any legal proceedings in respect of any dispute arising under this Agreement, which cannot be resolved by informal discussion, until the procedure provided by this clause 36 has been utilised.
- 36.2 Both You and We agree that any dispute arising during the course of this Agreement will be dealt with as follows:
- (a) the Party claiming that there is a dispute will send the other a written notice setting out the nature of the dispute
  - (b) the Parties will try to resolve the dispute through direct negotiation by persons who they have given authority to resolve the dispute
  - (c) if the dispute is not resolved within 15 Business Days from the receipt of the notice (or such extended time as the parties may agree in writing before the expiration of the 15 Business Days), the Parties will agree to submit the dispute to mediation or some accredited alternative dispute resolution procedure
  - (d) legal proceedings may be commenced by either You or Us if:
    - i. the Parties do not resolve the dispute



## REGIONAL DEVELOPMENT AUSTRALIA FUND

- ii. the Parties do not agree to submit the dispute to mediation or some alternative dispute resolution procedure, or
- iii. the dispute is submitted to mediation or some other form of alternative dispute resolution procedure, but there is no resolution within 15 Business Days of the submission (or such extended time as the parties may agree in writing before the expiration of the 15 Business Days).

36.3 This clause 36 does not apply to the following circumstances:

- (a) either You or We commence legal proceedings for urgent interlocutory relief
- (b) action by Us under or purportedly under clauses 4, 8, 8A, 20, 22 or 23, or
- (c) an authority of the Commonwealth, a State or Territory is investigating a breach or suspected breach of the Law by You.

36.4 Despite the existence of a dispute, You must (unless requested in writing by Us not to do so) continue to perform Your obligations under this Agreement.

36.5 Each party will bear its own costs of complying with this clause 36, and the parties will bear equally the cost of any third person engaged under clause 36.2(c).

36.6 The provisions relating to clause 36 shall survive the termination or expiration of this Agreement.

### **37. RESERVED**

### **38. APPLICABLE LAW AND JURISDICTION**

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

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

### **39. LIAISON AND MONITORING**

39.1 You must:

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

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

### **40. NOTICES**

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

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

40.2 The Parties' address details are specified in item 14 of the Schedule.

40.3 A notice given in accordance with subclause 40.1 is taken to be received:

## REGIONAL DEVELOPMENT AUSTRALIA FUND

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

**41. COUNTERPARTS**

- 41.1 This Agreement may be executed in counterparts. All executed counterparts constitute one document.

## REGIONAL DEVELOPMENT AUSTRALIA FUND

**EXECUTION CLAUSES**

Executed by the parties as evidence of their agreement.

**SIGNED** for and on behalf of the  
**COMMONWEALTH OF AUSTRALIA**  
 represented by and acting through the  
**Department of Regional Australia, Local  
 Government, Arts and Sport**  
 ABN 37 862 725 624 by on the  
           day of                           2013.

**Gordon McCormick**

Print name of Signatory

*Assistant Secretary*  
 Position

in the presence of:

s47F

s47F

s47F

witness sign here

Executed on behalf of  
**District Council of Franklin Harbour**  
 ABN 87 245 431 404  
 on the           day of                           2013.  
**This Signatory** warrants that they have the  
 authority to bind **District Council of  
 Franklin Harbour**.

*TERRY BARNES*  
 Print name of Signatory

sign here

s47F

Position

insert date

Signed in the presence of:

s47F

Print name of Witness

*FINANCE MANAGER*  
 Position

s47F



## REGIONAL DEVELOPMENT AUSTRALIA FUND

**SCHEDULE****1. PROJECT, PURPOSE & ACTIVITY (CLAUSES 1 AND 5)****Project**

- 1.1 The Project to be undertaken by You is the construction of a Common Use Export Facility in Lucky Bay Harbour, Lucky Bay SA. The project includes the extension of the existing harbour, earthworks and hardstand area, new channel configuration and loading dock, revetment construction, load-out facility, landscape buffers, acoustic screens and road access upgrades and improvements. The Project includes the Activity.
- 1.2 **Project Completion Date:** The Project Completion Date is 1 May 2014.
- 1.3 Reserved
- 1.4 **Purpose:** The Purpose of the completed Project is: to provide a Common User Export Facility providing a harbour facility available for the export of bulk commodities and enhanced ferry service operations.

**Activity**

- 1.5 The Activity to be undertaken by You is an upgrade of the Lucky Bay Harbour including:
- 1.5.1 a north-west extension to the existing harbour, 80 metres wide, approximately 200 metres in length with a depth of approximately -4.0 metres AHD (Australian Height Datum);
  - 1.5.2 removal of approximately 80 metres of the existing revetment wall and removal of one ferry berth;
  - 1.5.3 construction of an armour rock revetment wall around the perimeter of the channel and dock matching the existing height and general appearance of the existing seawall;
  - 1.5.4 construction of three landscape buffers created from mounds vegetated with native species; and
  - 1.5.5 installation of acoustic screens up to 8.4 metres high to minimise noise disturbance.
- 1.6 As part of the Activity, You must achieve the Milestones specified in the table at Annexure A.
- 1.7 **Activity Completion Date:** The Activity Completion Date is 1 April 2014.

**Use of Assets and Real Property**

- 1.8 **Post-Activity Period:** The Post-Activity Period commences on the business day after the end of the Activity Period and continues for a period of five years. All Assets as per item 5.3 of the Schedule and all Real Property as per item 5.A.1 of the Schedule are to be used in accordance with the Purpose described at item 1.4 of the Schedule for the full Post Activity Period.

**2. FUNDING AND PAYMENT (CLAUSES 4 AND 5)**

- 2.1 The Funding for the Activity is **\$2,212,710** (GST exclusive).
- 2.2 The Budget for the Activity, identifying the Funding and Other Contributions, is at Annexure B.
- 2.3 You must obtain written approval from Us for any transfer of Funds between Cost items identified in the Budget, which exceed 10% of the Funding. The total amount of such transfers in any Financial

## REGIONAL DEVELOPMENT AUSTRALIA FUND

Year must not exceed 20% of the Funding.

2.4 Subject to conditions at items 2.5, 2.6 and 2.7, the Funding will be paid in accordance with the table at Annexure A.

2.5 The first payment of Funding specified in the table at Annexure A will not be made until:

- (a) this Agreement has been executed by all Parties and
- (b) We receive a properly rendered invoice or, if required by subclause 11.3, a tax invoice which meets the requirements of the Australian Taxation Office for the amount of the payment.

2.6 The second payment of Funding specified in the table at Annexure A will not be made until:

- (a) all Milestones specified in the table at Annexure A that relate to the second payment have been achieved to Our satisfaction
- (b) all Reports identified in clause 10 and item 3 as being due on or before the due date for the second payment have been received and accepted by Us
- (c) We receive a properly rendered invoice or, if required by subclause 11.3, a tax invoice which meets the requirements of the Australian Taxation Office for the amount of the payment and
- (d) You have provided Us with evidence that all previously paid Funds have been expended or committed.

2.7 The third and each subsequent payment specified in the table at Annexure A will not be made until:

- (a) all Milestones specified in the table at Annexure A that relate to the relevant payment have been achieved to Our satisfaction
- (b) all Reports identified in clause 10 and item 3 as being due on or before the due date for the relevant payment have been received and accepted by Us
- (c) We receive a properly rendered invoice or, if required by subclause 11.3, a tax invoice which meets the requirements of the Australian Taxation Office for the amount of the payment and
- (d) You have provided Us with evidence that all previously paid Funds have been expended or committed.

2.8 **Bank Account:** You must identify the receipt and expenditure of the Funds separately within Your accounting Records so that at all times the Funds are identifiable and ascertainable.

### 3. REPORTS (CLAUSE 10)

You must give Us the Progress Reports, the Activity Completion Report and the Project Completion Report by the times specified in the Table of Milestones, Reports and Payments relating to the Activity at Annexure A.

3.1 Each Progress Report must contain:

- (a) details of progress and performance against the Activity, and the Project (to the extent that it is directly related to the Activity) and evidence of completion of the Milestones that are due for completion (including but not limited to photographs to demonstrate completion of Milestones) during the period between Your previous Progress Report and the due date of this Progress Report (or in the case of the first Progress Report, the period between the Date of this Agreement and the due date of this Report)
- (b) details of mitigating circumstances and remedial action undertaken in the event a

## REGIONAL DEVELOPMENT AUSTRALIA FUND

Milestone is not met or completed in the manner and/or by the time specified

- (c) copies of any published reports, promotional material, media publicity, pamphlets or other documentation relevant to the Project
- (d) evidence that you have obtained and or utilised in-kind Other Contributions specified in the Budget at Annexure B
- (e) a statement of receipts (which separately identifies any interest earned on the Funds) and expenditure to date in respect of the Funding
- (f) a statement of receipts and expenditure to date in respect of Other Contributions (excluding in-kind) and
- (g) a copy of the Assets register described in Item 5 of this Schedule and a copy of the Real Property register described in item 5A of this Schedule.

3.2 The Activity Completion Report must contain:

- (a) evidence that the Activity and the Milestones have been completed
- (b) an analysis of the planning, implementation and overall process You followed to deliver the Activity
- (c) any recommendations on improved practice, relevant to Your and Our practices, that may assist in the delivery of future projects
- (d) a copy of the current Assets register described in item 5 of this Schedule and a copy of the Real Property register described in item 5A of this Schedule
- (e) evidence that You obtained in-kind Other Contributions for the Activity specified in the Budget at Annexure B
- (f) an up to date Audited Financial Report in respect of the Activity and
- (g) copies of any published reports, promotional material, media publicity, pamphlets or other documentation relevant to the Activity, not already included in the Progress Report/s.

3.3 The Project Completion Report must contain:

- (a) evidence that the Project has been completed
- (b) an analysis of the planning, implementation and overall process You followed to deliver the Project
- (c) any recommendations on improved practice, relevant to Your and Our practices, that may assist in the delivery of future projects
- (d) a copy of the Assets register described in item 5 of this Schedule and a copy of the Real Property register described in item 5A of this Schedule
- (e) copies of any published reports, promotional material, media publicity, pamphlets or other documentation relevant to the Project, not already included in the Progress Report/s and
- (f) the Financial Audit Report.

3.4 In accordance with subclause 10.4, You must ensure that the audited statement contained in the Financial Audited Report complies with Accounting Standard ASA 700 *The Auditor's Report on a General Purpose Financial Report*.

3.5 During the progress of the Activity and the Project, in addition to those Reports identified in the table at Annexure A, You must promptly give Us any interim Reports We request, in the manner specified by Us.



## REGIONAL DEVELOPMENT AUSTRALIA FUND

- 3.6 During the Post-Activity Period, You must, if requested by Us to do so, promptly provide evidence satisfactory to Us that the Project is Operational.
- 3.7 Unless otherwise agreed by Us in writing, all Reports must be:
- (a) supplied in hard copy or electronic form
  - (b) supplied in a format that is acceptable to Us and
  - (c) signed by Your Chief Executive Officer, Chief Financial Officer or other person authorised by You to execute documents and legally bind You by their execution.

**4 RESERVED****5 ASSETS (CLAUSE 8)**

- 5.1 You must maintain a register of all Assets in accordance with item 5.2 below.
- 5.2 The Assets register must include the following items (where applicable):
- (a) Asset description
  - (b) acquisition or creation price or total lease cost
  - (c) date of acquisition, creation, upgrade or lease
  - (d) type and term of lease
  - (e) location of Asset
  - (f) date of disposal approval obtained from Us
  - (g) disposal date
  - (h) disposal method
  - (i) if the Asset was partly created, acquired or upgraded using the Funds, the proportion of the Asset created, acquired or upgraded with the Funds.
- 5.3 For the purposes of clause 8.1, You may create, acquire or upgrade following Assets: None

**5A REAL PROPERTY (CLAUSE 8A)**

- 5A.1 The Real Property includes **Lucky Bay Harbour, Lucky Bay SA.**
- 5A.2 The Capital Works includes:
- Extension to the existing harbour, 80 metres wide, approximately 200 metres in length with a depth of approximately -4.0 metres AHD (Australian Height Datum);
  - Construction of a rock revetment wall;
  - Construction of three landscape buffers and installation of acoustic screens.
- 5A.3 The Works Locations include **Lucky Bay Harbour, Lucky Bay SA 5602.**

## REGIONAL DEVELOPMENT AUSTRALIA FUND

5A.4 You must maintain a register of all Real Property that includes the following information:

- (a) Real Property description
- (b) acquisition, upgrade or creation price or total lease cost
- (c) date of acquisition, creation, upgrade or lease
- (d) if leased, type and term of lease
- (e) location of Real Property
- (f) date of Disposal
- (g) disposal method
- (h) if the Real Property was partly created, acquired or upgraded using the Funds, the proportion of that creation, acquisition or upgrade that was paid for with the Funds.

## 6 STATUTORY APPROVALS (CLAUSE 7)

6.1. For the purposes of clause 7.1, You must obtain statutory approvals for the Project.

## 7. COMMONWEALTH MATERIAL (CLAUSE 12)

7.1 In accordance with subclause 12.1, the following conditions and restrictions apply to Your use of the Commonwealth Material listed below:

Description of Commonwealth Material	Conditions or restrictions on Your use licence to use, copy and reproduce the Commonwealth Material only for the purposes of this Agreement
None specified	None specified

## 8. EXISTING MATERIAL (CLAUSE 13)

8.1 For the purpose of subclause 13.4, the following Existing Material is specified:

- (a) No Existing Material specified.

## 9. DISCLOSURE OF INFORMATION (CLAUSE 15)

9.1 For the purposes of subclause 15.3, the following Commonwealth Material is Commonwealth Confidential Information and must not be disclosed by You:

- (a) No confidential material specified.

## 10. INSURANCE (CLAUSE 18)

- 10.1 Workers' compensation insurance as required by Law.
- 10.2 Public liability insurance to the value of \$10 million per claim, or occurrence giving rise to a claim, in respect to activities undertaken under this Agreement, where occurrence means either a single occurrence or a series of occurrences if these are linked or occur in connection with one another from one original cause, as the case may be.
- 10.3 Insurance over any Asset or Real Property for its full replacement value.
- 10.4 Appropriate insurance for the building works which constitute the Project.

## REGIONAL DEVELOPMENT AUSTRALIA FUND

**11. CONFLICT OF INTEREST (CLAUSE 19)**

11.1 In accordance with subclause 19.2, during the Term of this Agreement, You must ensure that no conflict arises through Your involvement with the following parties or programs:

- (a) No parties or programs have been identified.

**12. SUBCONTRACTORS (CLAUSE 24)**

12.1 Not Used.

**13. COMPLIANCE WITH LAWS AND POLICIES (CLAUSE 26)**

13.1 For the purposes of subclause 26.1, the following Laws are identified:

- *Crimes Act 1914;*
- *Criminal Code Act 1995;*
- *Disability Discrimination Act 1992;*
- *Equal Opportunity for Women in the Workplace Act 1999;*
- *Fair Work Act 2009;*
- *Racial Discrimination Act 1984;*
- *Sex Discrimination Act 1984; Work Health and Safety Act 2011.*

13.2 For the purposes of clause 26.2, the following policies are identified:

- None

**14. NOTICES (CLAUSE 40)**

14.1 A Party giving notice or notifying under this Agreement must do so in the manner identified at clause 40, to the following addresses:

(a) Our contact details:

Name: Assistant Secretary, Regional Development Programs Branch  
 Address: Department of Regional Australia, Local Government, Arts and Sport  
 GPO Box 803  
 CANBERRA ACT 2601  
 Telephone: 02 6210 6430  
 Email: RDAF@regional.gov.au

(b) Your contact details:

Name: Terry Barnes  
 Position: Chief Executive Officer  
 Address: District Council of Franklin Harbour  
 PO Box 71  
 COWELL SA 5602  
 Telephone: 08 8629 2019  
 E-mail: terry@franklinharbour.sa.gov.au



## REGIONAL DEVELOPMENT AUSTRALIA FUND

## ANNEXURE A

Table of Milestones, Reports and Funding payments relating to the Activity

Number	Milestone(s) covered by the Report	Milestone Completion Date	Payment amount (GST Exclusive)	Report Coverage	Due Date for Report/ Information	Due Date for Funding Payment
1	Evidence acceptable to Us that all requirements under item 2.5 of the Schedule have been met.	On execution of the Funding Agreement	s47G(1)(a)	Nil	N/A	April 2013
2	Evidence acceptable to Us that all requirements under items 2.6 and 3.1 of the Schedule have been met and the following have been achieved: <ul style="list-style-type: none"> <li>the Project is 30 per cent or more completed in line with the accepted project schedule and certified by the Project Manager, Quantity Surveyor, or similar.</li> </ul>	4 October 2013		Progress Report 1	31 October 2013	14 November 2013
3	Evidence acceptable to Us that all requirements under items 2.7 and 3.1 of the Schedule have been met and the following have been achieved: <ul style="list-style-type: none"> <li>the Project is 60 per cent or more completed in line with the accepted project schedule and certified by the Project Manager, Quantity Surveyor, or similar.</li> </ul>	20 December 2013		Progress Report 2	24 January 2014	7 February 2014

## REGIONAL DEVELOPMENT AUSTRALIA FUND

4	Evidence acceptable to Us that all requirements under items 2.7 and 3.1 of the Schedule have been met and the following have been achieved: <ul style="list-style-type: none"> <li>the Project is 90 per cent or more completed in line with the accepted project schedule and certified by the Project Manager, Quantity Surveyor, or similar.</li> </ul>	28 March 2014	s47G(1)(a)	Progress Report 3	24 April 2014	9 May 2014
5	Evidence acceptable to Us that all requirements under item 2.7 of the Schedule have been met and the following activities has been achieved: <ul style="list-style-type: none"> <li>the Activity, at Item 1.5 of the Schedule, is complete;</li> <li>all requirements under Item 3.3 of the Schedule have been met;</li> <li>the Project, at Item 1.1 of the Schedule, is complete;</li> <li>evidence that approvals required to enable public access and use of the facility have been met; and</li> <li>the project has been opened and is fully operational.</li> </ul>	1 May 2014		Project Completion Report	1 August 2014	15 August 2014

## REGIONAL DEVELOPMENT AUSTRALIA FUND

## ANNEXURE B

BUDGET FOR THE EXPENDITURE OF RDAF FUNDING		
Cost Item	Description	Amount (GST exclusive)
Construction	Construction of harbour extension including site preparation and earthworks	s47G(1)(a)
Construction	Construction of two new rock armour marina walls	
Construction	Installation of utilities infrastructure	
RDAF Funding		\$2,212,710

OTHER CONTRIBUTIONS (FINANCIAL)			
Name of Contributor	Cost Item	Description of item	Amount (GST exclusive)
IronClad Mining Limited	Construction	Construction of harbour extensions including preliminaries; preparation and earthworks; pavement and hardstand; stormwater drainage; and utilities infrastructure	s47G(1)(a)
Sea Transport Development	Construction	Construction of harbour extensions including site preparation and earthworks; Marina Walls and utilities infrastructure	
State Government of SA – Regional Development Infrastructure Fund	Construction	Installation of utilities infrastructure	
Other Contributions (Financial)			

OTHER CONTRIBUTIONS (IN-KIND)	
Description of Other Contribution (In-kind)	Name of Contributor
Not applicable	Not applicable



## REGIONAL DEVELOPMENT AUSTRALIA FUND

## ANNEXURE C

OUTPUTS AND PERFORMANCE MEASURES	
Key Outputs	Performance Measure
Extension to the existing harbour, 80 metres wide, approximately 200 metres in length with a depth of approximately -4.0 metres AHD	Construction has been completed and the harbour is open to transport bulk commodities and ferry operations as per the requirement of the Funding Agreement.
Construction of a rock revetment wall;	The marina walls have been completed as per the requirements of the Funding Agreement.
Construction of three landscape buffers and installation of acoustic screens	Landscape buffers have been completed and planted with native vegetation and acoustic screens have been installed as per the requirements of the Funding Agreement.