



Australian Government

**Department of Infrastructure, Transport,
Regional Development and Communications**

DEED OF AGREEMENT

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

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

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

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FUNDING AGREEMENT (LONG FORM)

FUNDING AGREEMENT IN RELATION TO THE [INSERT PROJECT NAME] (CDGXXX)

Parties

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

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

Context

- A. The Commonwealth is undertaking the Community Development Grants programme, which was to support needed infrastructure that promotes stable, secure and viable local and regional economies.
- B. The Recipient submitted an application to obtain funding under the Programme to conduct the Activity. The Activity will contribute to the completion of the Project, and will help achieve the objectives of the Programme.
- C. The Commonwealth has agreed to provide Funding to the Recipient to support the carrying out of the Activity.
- D. The Recipient agrees to accept the Funding for the purposes, and subject to the terms and conditions, set out in this Agreement.
- E. The Recipient agrees that it is a precondition of entitlement to the Funding that the Recipient must:
 - a. provide to the Commonwealth with satisfactory evidence that the Recipient is registered with a Commonwealth, State or Territory Regulatory Body or satisfactory evidence of the Recipient's correct statutory authority name;
 - b. correctly use the Recipient's name on all documentation provided to the Commonwealth;
 - c. have an Australian Business Number (ABN);
 - d. immediately notify the Commonwealth if the Recipient ceases to hold an ABN;
 - e. correctly quote the Recipient's ABN on all documentation provided to the Commonwealth;
 - f. supply proof of the Recipient's GST status, if requested by the Commonwealth; and
 - g. immediately notify the Commonwealth of changes to the Recipient's GST status.

Operative provisions

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

1. Interpretation

1.1. Definitions

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

ABN	means (Australian Business Number) as set out in section 41 of the A New Tax System (Australian Business Number) Act 1999 (Cth).
Activity	means the Activity described in Item A and includes the provision to the Commonwealth of the Activity Material;
Activity Completion date	means the date that the Activity must be completed by as set out in item A.5 of the Schedule.
Activity Material	means any Material: <ul style="list-style-type: none">a. created by the Recipient for the purpose of this Agreement;b. provided or required to be provided to the Commonwealth under the Agreement; orc. derived at any time from the Material referred to in paragraphs a or b, and includes <ul style="list-style-type: none">d. any Existing Material incorporated in the Material referred to in paragraphs b or c; ande. any Reports;
Activity Objectives	means the objectives of the Activity described in Item A.6 of the Schedule;
Activity Period	means the period specified in Item A during which the Activity must be completed;
Agreement	means this document and includes any Schedules and Annexures;
Annexure	means any annexure to Schedule 1;

Approved Auditor	means a person who is: <ul style="list-style-type: none">a. registered as a company auditor under the Corporations Act 2001 (Cth) or an appropriately qualified member of the Institute of Chartered Accountants in Australia or of CPA Australia;b. not a principal, member, shareholder, officer, agent, subcontractor, employee or related entity of the Recipient or of a related body corporate (the terms 'related entity' and 'related body corporate' have the same meaning as in section 9 of the Corporations Act 2001 (Cth)); andc. not the Recipient's Qualified Accountant;
Asset	means any item of property, purchased, leased, hired, financed, created or otherwise brought into existence either wholly or in part with use of the Funding, which has a value of over \$5,000 exclusive of GST, but excludes any Intellectual Property Rights and Real Property (including any property once it becomes part of the structure of Real Property).
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	refers to the standards of that name maintained by the Australian Accounting Standards Board created by section 226 of the Australian Securities and Investments Commission Act 2001 (Cth);
Australian Auditing Standards	refers to the standards made by the Auditing and Assurance Standards Board created by section 227A of the Australian Securities and Investments Commission Act 2001 (Cth);
Australian Privacy Principle	has the same meaning as it has in the Privacy Act 1988 (Cth).
Budget	means the budget set out in Annexure B of the Schedule;
Business Day (in a place)	means a weekday other than a public holiday in the place specified or, if no place is specified, in the State or Territory specified in Item M of the Schedule;
Capital Works	means any part of the Activity that comprises construction and building activities and includes the Capital Works listed at item E.2.2 of the Schedule.

Commence Construction	means to begin a continuous programme 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 or assembly, or installation of facilities or equipment at the site constitute a programme of on-site construction.
Commonwealth	where the context permits, includes officers, delegates, employees and agents and successors of the Department of Infrastructure, Transport, Regional Development and Communications;
Commonwealth Material	means any Material: <ul style="list-style-type: none">a. provided by the Commonwealth to the Recipient for the purposes of this Agreement; orb. derived at any time from the Material referred to in paragraph a;
Completion Date	means the day after the Recipient has done all that it is required to do under clauses 2 and 6 of this Agreement to the satisfaction of the Commonwealth;
Constitution	means (depending on the context): <ul style="list-style-type: none">a. a company's constitution, which (where relevant) includes rules and any amendments that are part of the company's constitution, orb. in relation to any other kind of body:<ul style="list-style-type: none">i. the body's charter, rules or memorandum, orii. 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 to the Schedule.
Cost Item	means an item of expenditure specified in the Budget at Annexure B to the Schedule.

Confidential Information

means:

- a. the information described in Item N; and
- b. information that the parties agree in writing after the Date of this Agreement is confidential information for the purposes of this Agreement;

Date of this Agreement

means the date written on the execution page of this Agreement, or if no date or more than one date is written there, then the date on which the Agreement is signed by the last party to do so;

Depreciated

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

Director

means any of the following:

- a. a person appointed to the position of a director or alternate director and acting in that capacity for a body corporate within the meaning of the Corporations Act 2001 (Cth) regardless of the name given to their position;
- b. a member of the governing committee of an Aboriginal and Torres Strait Islander corporation under the Corporations (Aboriginal and Torres Strait Islander) Act 2006 (Cth);
- c. a member of the committee of an organisation incorporated pursuant to State or Territory laws relating to the incorporation of associations; or
- d. a member of the board, committee or group of persons (however described) that is responsible for managing or overseeing the affairs of the body corporate;

Dispose

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

Existing Material

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

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

Financial Year	means each period from 1 July to the following 30 June occurring during the Term, or any part of such a period occurring at the beginning or end of the Term;
Funding	<p>means:</p> <ul style="list-style-type: none">a. the amount or amounts (in cash or kind) payable by the Commonwealth under this Agreement as specified in Item A.7 and Annexure A of this Agreement, andb. any interest earned on the Funding once paid by the Commonwealth to the Recipient;
GST	has the meaning that it has in the A New Tax System (Goods and Services Tax) Act 1999 (Cth);
Information Officer	means any of the information officers appointed under the Australian Information Commissioner Act 2010 (Cth) when performing privacy functions as defined in that Act;
Intellectual Property	<p>includes:</p> <ul style="list-style-type: none">a. all copyright (including rights in relation to phonograms and broadcasts);b. all rights in relation to inventions, plant varieties, trademarks (including service marks), designs, circuit layouts; andc. all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields; <p>but does not include:</p> <ul style="list-style-type: none">d. Moral Rights;e. the non-proprietary rights of performers; orf. rights in relation to confidential information;

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 the Recipient 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;

Material

means anything in relation to which Intellectual Property rights arise;

Milestone

means a milestone or stage of completion of the Activity as set out in Annexure A of this Agreement;

Moral Rights

includes the following rights of an author of copyright Material:

- a. the right of attribution of authorship;
- b. the right of integrity of authorship; and
- c. the right not to have authorship falsely attributed;

**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 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;

Operational Period

means the period during which the Recipient must keep the completed Project Operational;

Other Contributions	means financial or in-kind resources (with in-kind resources valued at cost other than the Funding, which are specified in Item C and Annexure B of the Schedule and are to be used by the Recipient to perform the Activity;
Personnel	means: <ul style="list-style-type: none">a. in relation to the Recipient - any natural person who is an officer, employee, agent, or professional advisor of the Recipient or its subcontractors; andb. in relation to the Commonwealth - any natural person, other than a person referred to in paragraph a, who is an officer, employee, agent or professional advisor of the Commonwealth;
Privacy Act	refers to the Privacy Act 1988 (Cth);
Programme	means the Community Development Grants programme under which the Commonwealth is able to provide Funding to the Recipient.
Programme Guidelines	refers to the guidelines for the Programme, if any, as described in Item A of the Schedule;
Programme Objectives	means the objectives of the Programme, as set out in the Programme Guidelines or otherwise in Item A of the Schedule;
Project	has the meaning given in Item A.2 of the Schedule and includes the Activity;
Project Completion Date	means the date specified in item A.2 of the Schedule, which is the date by which the Recipient must complete the Project;
Purpose	means the purpose of the Project as set out at item A.3 of the Schedule;
Qualified Accountant	means a person who is a member of the Institute of Chartered Accountants in Australia or of CPA Australia;
Recipient	includes, where the context permits, the officers, employees, agents, volunteers and subcontractors, and successors of the Recipient;
Records	includes documents, information and data stored by any means and all copies and extracts of the same;

Report	means Activity Material that is provided to the Commonwealth for reporting purposes as stipulated in Item D of the Schedule;
Real Property	<p>means:</p> <ul style="list-style-type: none">a. any land, buildings or fixtures including the Capital Works (both during and after completion) and the Works Locations; andb. any interest in the property specified in paragraph (a); <p>that are purchased, leased, upgraded or otherwise created or brought into existence wholly or in part with the use of the Funding and includes the property listed at item E.2.1 of the Schedule.</p>
Schedule	means the schedule to this Agreement and may include Annexures and incorporate other documents by reference;
Specified Personnel	means the Recipient's Personnel specified in Item I as Personnel required to undertake all or any part of the Activity;
Term	refers to the period described in clause 1.4.1 of this Agreement;
Third Party Interest	means any legal or equitable right, interest, power or remedy in favour of any person other than the Commonwealth or the Recipient in connection with the Agreement, including any right of possession, receivership, control or power of sale, and any mortgage, charge, security or other interest;
Undepreciated	in relation to the value of an Asset, means the value of the Asset which has not been Depreciated; and
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 E.2.3 of the Schedule.

1.2. Interpretation

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

- a. words importing a gender include any other gender;
- b. words in the singular include the plural and words in the plural include the singular;

- c. clause headings are for convenient reference only and have no effect in limiting or extending the language of provisions to which they refer;
- d. words importing a person include a partnership and a body whether corporate or otherwise;
- e. a reference to dollars is a reference to Australian dollars;
- f. a reference to any legislation or legislative provision includes any statutory modification, substitution or re-enactment of that legislation or legislative provision;
- g. if any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- h. the use of the word “includes” or “including” in relation to a right or obligation of a party, does not limit or restrict the scope of that right or obligation;
- i. a reference to a clause is a reference to a clause in this Agreement;
- j. a reference to an Item is a reference to an Item in the Schedule;
- k. the Schedule and any attachments form part of the Agreement;
- l. if any conflict arises between the terms and conditions contained in the clauses of this Agreement and any part of the Schedule (and attachments if any), the terms and conditions of the clauses prevail; and
- m. if any conflict arises between any part of the Schedule and any part of an attachment, the Schedule prevails.

1.3. **Guidance on construction of Agreement**

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

1.4. **Duration of Term**

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

2. Activity, Project and Operational Period

2.1. Conduct of Activity

2.1.1. The Recipient agrees to carry out the Activity:

- a. to achieve the Activity Objectives;
- b. to assist the Programme to meet the Programme Objectives;
- c. to meet the Milestones;
- d. within the Activity Period;
- e. in an efficient, effective, economical and ethical manner;
- f. in accordance with this Agreement; and
- g. diligently and to a high standard.

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

- a. manage the Funding; or
- b. undertake the Activity in accordance with this Agreement,
the Commonwealth may by written notice immediately:
- c. suspend, reduce or cease the release of Funding to the Recipient; and/or
- d. require the Recipient to refund some or all of the Funding to the Commonwealth; or
- e. terminate the Agreement in accordance with the provisions of clause 17.

2.2. Liaison and monitoring

2.2.1. The Recipient agrees to:

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

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

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

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

2.3. Subcontractors

- 2.3.1. The Recipient is fully responsible for the performance of the Recipient's obligations under this Agreement, even though the Recipient may have subcontracted any of them.
- 2.3.2. Unless the Commonwealth agrees otherwise, the Recipient must have a written contract with each of the Recipient's subcontractors (subcontract) and ensure that each subcontract is consistent with, and allows the Recipient to give effect to, the Recipient's obligations under this Agreement. If requested by the Commonwealth, the Recipient must notify the Commonwealth of any subcontractors appointed to carry out any of the Recipient's obligations under this Agreement. The Recipient must notify the Commonwealth no later than 20 Business Days after the request from the Commonwealth.
- 2.3.3. The Recipient is 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. The Commonwealth may direct the Recipient to terminate a subcontracting arrangement by notifying the Recipient in writing.
- 2.3.4. Upon receipt of a written notice from the Commonwealth directing the Recipient to terminate a subcontracting arrangement, the Recipient must, as soon as practicable (or as the Commonwealth may direct in the notice), cease using that subcontractor to perform any of the Recipient's obligations unless the Commonwealth directs that the subcontractor be replaced immediately, in which case the Recipient must comply with the direction.
- 2.3.5. If the Commonwealth directs the Recipient to terminate a subcontracting arrangement, the Recipient remains liable under this Agreement for the past acts or omissions of the Recipient's subcontractors as if they were current subcontractors.
- 2.3.6. The Recipient must, in any subcontract placed with a subcontractor, reserve a right of termination to take account of:
- a. The Commonwealth's right to direct the Recipient to terminate that subcontract under subclause 2.3; and
 - b. The Commonwealth's right of termination under clause 17,
- and the Recipient must make use of that right in the event of a termination by the Commonwealth.
- 2.3.7. The Recipient must, in any subcontract placed with a subcontractor, include a requirement for insurance that is consistent with the requirement for insurance under clause 21.5.
- 2.3.8. The Recipient must not enter into a subcontract under this Agreement with a subcontractor named by the Director of the Workplace Gender Equality Agency as an employer currently not complying with the Workplace Gender Equality Act 2012 (Cth).
- 2.3.9. For the purpose of this Agreement, 'subcontractor' includes any other member of the Recipient's consortium who is involved in the performance of the Activity.

2.4. Specified Personnel

NOTE: Unless Specified Personnel are identified during the assessment 'Reserved' this clause.

- 2.4.1. The Recipient agrees that the Specified Personnel will perform work in relation to the Activity in accordance with this Agreement.
- 2.4.2. If Specified Personnel are unable to perform the work as required under this clause 2.4, the Recipient agrees to notify the Commonwealth immediately.
- 2.4.3. The Recipient agrees, at the request of the Commonwealth acting in its absolute discretion, to remove Personnel (including Specified Personnel) from work in relation to the Activity.
- 2.4.4. If clause 2.4.2 or clause 2.4.3 applies, the Recipient will provide replacement Personnel acceptable to the Commonwealth at no additional cost and at the earliest opportunity.

2.5. Responsibility of the Recipient

- 2.5.1. The Recipient is fully responsible for the performance of the Activity and for ensuring compliance with the requirements of this Agreement, and will not be relieved of that responsibility because of any:
 - a. involvement by the Commonwealth in the performance of the Activity;
 - b. subcontracting of the Activity;
 - c. acceptance by the Commonwealth of Specified Personnel; or
 - d. payment of any amount of Funding to the Recipient.

2.6. Reports

- 2.6.1. The Recipient agrees to provide to the Commonwealth written Reports in the manner specified in Item D of the Schedule.

2.7. Project

- 2.7.1. The Recipient must complete the Project by the Project Completion Date.

2.8. Operational Period

- 2.8.1. The Recipient must keep the completed Project Operational during the Operational Period specified in Item A.4 of the Schedule.

2A. Capital Works

2A.1. Performance

- 2A.1.1 The Recipient must perform the Capital Works:
 - a. in accordance with the designs and plans submitted by the Recipient to the Commonwealth;
 - b. in a good and workmanlike manner by qualified tradespeople; and
 - c. with a minimum of delay.

2A.2. Applicable Laws

2A.2.1 The Recipient warrants and agrees 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.

2A.2.2 The Recipient agrees 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; and
- b. the completed Capital Works comply with all Laws relating to their ongoing use throughout the Operational Period.

2A.3. Commence Construction

- a. The Recipient must Commence Construction required for the Activity within six months of the Date of this Agreement;
- b. The Recipient must notify the Commonwealth that the Recipient has Commenced Construction for the Activity, within five (5) Business Days of Commencing Construction; and
- c. If the Recipient fails to Commence Construction required for the Activity within six months of the Date of this Agreement, the Commonwealth may give the Recipient notice requiring the Recipient to repay the Commonwealth all or part of the Funding that the Commonwealth has previously paid to the Recipient within the period specified in the notice.

2A.4. Completion

2A.4.1 The Recipient must:

- a. plan, control, manage, co-ordinate and carry out the Capital Works in a manner that enables completion of all activities comprising the Capital Works by the Project Completion Date;
- b. in addition to the Recipient's reporting obligations under item D of Schedule 1, the Recipient must provide the Commonwealth with written evidence satisfactory to the Commonwealth of the completion of the Capital Works, no later than 10 Business Days after the end of the Project Completion Date; and
- c. consult the Commonwealth in advance about any proposed change to, the scope or timing of the Capital Works which is likely to delay the completion of the Capital Works, detailing the extent, or likely extent, of the change and the reasons for it.

3. Funding

3.1. Payment of Funding

3.1.1. Subject to sufficient funds being available, and compliance by the Recipient with this Agreement, the Commonwealth agrees to provide the Recipient with the Funding at the times and in the manner specified in Annexure A.

3.1.2. The Commonwealth is not responsible for the provision of additional money to meet any expenditure in excess of the Funding.

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

3.2.1. Without limiting the Commonwealth's rights, the Commonwealth may suspend any payment in whole or in part until the Recipient has performed its obligations under this Agreement.

3.2.2. Reserved.

3.2.3. The Commonwealth may reduce the amount of Funding payable under this Agreement where the Recipient:

- a. owes money to the Commonwealth, or
- b. has money that the Recipient should have, but has not yet, acquitted

under any arrangement with the Commonwealth (whether contractual, statutory or otherwise).

3.2.4. Notwithstanding such suspension of any payments or reduction in the amount of the Funding, the Recipient agrees to continue to perform any obligations under this Agreement.

4. Taxes, duties and government charges

4.1.1. Except as provided by clause 4, the Recipient agrees to pay all taxes, duties and government charges imposed or levied in Australia or overseas in connection with the performance of this Agreement.

4.1.2. Unless otherwise indicated, any Funding and all other consideration for any supply made under this Agreement is exclusive of any GST imposed on the supply.

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

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

5. Debt and Interest

5.1.1. In this clause 5, '**Interest**' means interest calculated at an interest rate equal to the general interest charge rate for a day pursuant to section 8AAD of the *Taxation Administration Act 1953* (Cth), on a daily compounding basis.

5.1.2. The Recipient agrees, upon request of the Commonwealth, to pay any amount owed or payable to the Commonwealth or which the Commonwealth is entitled to recover from the Recipient under this Agreement, including if demanded by the Commonwealth any Interest, as a debt due by the Recipient without further proof of the debt by the Commonwealth being necessary. Such payment is without

prejudice to any other rights available to the Commonwealth under the Agreement, under statute, at law or in equity.

- 5.1.3. If the Commonwealth notifies the Recipient that an amount is to be refunded or otherwise paid to the Commonwealth and the amount is not refunded or paid within 20 Business Days, or as otherwise notified by the Commonwealth, the Recipient agrees to pay Interest, unless the Commonwealth notifies the Recipient otherwise, on the amount outstanding after the expiry of the date it was due, until the amount is paid in full.
- 5.1.4. In respect to any obligation the Recipient may have under this Agreement to pay the Commonwealth any Interest, the Recipient agrees that the Interest represents a reasonable pre-estimate of the loss incurred by the Commonwealth.

6. Management of Funding

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

6.2. Budget

- 6.2.1. The Recipient agrees to only spend the Funding for the Activity and in accordance with the Budget.
- 6.2.2. Subject to clauses 6.2.3 and 6.2.4, the Recipient may spend the Funding on any separate category of expenditure item within the Budget.
- 6.2.3. The Recipient agrees to obtain prior written approval from the Commonwealth for any transfer of Funding between categories of expenditure items within the Budget which exceed a percentage of the total Budget as specified in Item B of the Schedule.
- 6.2.4. The total amount of transfers in any Financial Year must also not exceed the percentage of the Budget specified in Item B of the Schedule.

6.3. Account and financial records

- 6.3.1. The Recipient agrees to ensure that the Funding is held in an account in the Recipient's name and which the Recipient solely controls, with an authorised deposit-taking institution authorised under the Banking Act 1959 (Cth) to carry on banking business in Australia and that is an account that complies with any other requirements specified in Item A.7 in the Schedule.
- 6.3.2. Reserved
- 6.3.3. The Recipient must, in relation to the account referred to in clause 6.3.1:
- a. notify the Commonwealth, prior to the receipt of any Funding, of details sufficient to identify the account;
 - b. on notification from the Commonwealth, provide the Commonwealth and the authorised deposit-taking institution with a written authority for the Commonwealth to obtain any details relating to any use of the account;

- c. if the account changes, notify the Commonwealth within 10 Business Days of the change occurring and provide the Commonwealth with details of the new account;
- d. Reserved.

6.3.4. The Recipient agrees to:

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

NOTE: for projects under \$1 million which only require an Acquittal Report 'Reserve' clause c below

- c. arrange for the audit of those accounts and records in accordance with Australian Auditing Standards.

6.4. **Use as security**

6.4.1. Except with the prior written approval of the Commonwealth, the Recipient agrees not to use any of the following as any form of security for the purpose of obtaining or complying with any form of loan, credit, payment or other interest, or for the preparation of, or in the course of, any litigation:

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

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

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

- a. there remains an amount of Funding that has not been spent or legally committed for expenditure in accordance with the Agreement and the period in which that Funding was expected to be spent or legally committed has passed; or
- b. an amount of Funding has been spent in contravention of the Agreement,

the Commonwealth may (at its discretion and in addition to any other rights it may have) by notice in writing to the Recipient:

- c. require the Recipient to refund this amount to the Commonwealth within 20 Business Days (or other such period specified in the notice); or
 - d. reduce any further payments of Funding to the Recipient (if applicable) by an amount up to this amount.
- 6.5.2. If clause 6.5.1.a applies, the Commonwealth may by notice in writing require the Recipient to otherwise deal with this amount in accordance with any conditions that the Commonwealth considers appropriate, including conditions relating to the ongoing use and expenditure by the Recipient of that amount for particular goals or objectives associated with the Activity
- 6.5.3. The Recipient must immediately notify the Commonwealth in writing if any of the events in clauses 6.5.1.a or 6.5.1.b occurs.
- 6.5.4. If the completed Project ceases to be Operational during the Operational Period, the Commonwealth may give the Recipient notice requiring the Recipient to repay all or part of the Funding to the Commonwealth within the period specified in the notice and the Recipient must comply with that notice.
- 6.5.5. On completion of the Project, if the cost of the completed Project is less than the Cost Estimate, the Commonwealth may give the Recipient notice requiring the Recipient to return any unexpended Funding to the Commonwealth within the period specified in the notice and the Recipient must comply with that notice.
- 6.5.6. This clause survives termination or expiry of the Agreement.

7. Other Contributions and Cost Savings

7.1. Other Contributions

- 7.1.1. The Recipient must, within six (6) months of the date of the Agreement provide to the Commonwealth satisfactory written evidence that confirms the Other Contributions identified in Item C and detailed in Annexure B of the Schedule, including the amounts to be provided, the due dates for each of these amounts and the terms and conditions of the provision of the Other Contributions.
- 7.1.2. If, for any reason, the Recipient is not able to obtain the Other Contributions (including any part thereof) as required under this Agreement, then the Commonwealth may:
 - a. suspend payment of the Funding or an instalment of the Funding until the Other Contributions are obtained (as the case may be);
 - b. reduce the total Funding payable under this Agreement by an amount that, in the Commonwealth's opinion, represents an equivalent proportion of the overall reduction in the total value of the Other Contributions (as the case may be) resulting from the failure; or
 - c. terminate this Agreement in accordance with clause 17.2.
- 7.1.3. The Recipient must notify the Commonwealth in writing as soon as possible after it becomes aware of any likely or actual failure (for any reason) to obtain the Other Contributions (including any part thereof) as required under this Agreement.

- 7.1.4. The Recipient agrees to notify the Commonwealth within 10 Business Days of entering into any arrangement under which the Recipient is entitled to receive any additional monetary or in-kind contributions in respect of the Project and Activity that are not identified as Other Contributions in Item C and Annexure B of the Schedule. Any such additional contribution that the Recipient becomes entitled to receive after the Date of this Agreement constitutes Other Contributions for the purposes of the Agreement (and Schedule 1 is deemed to be varied accordingly) on the date on which the Recipient notifies the Commonwealth of that contribution under this clause 7.1.4.
- 7.1.5. If the Recipient is provided with or obtains (and/or was required to provide or obtain) any Other Contributions and the cost of the completed Project is less than the Cost Estimate, the Commonwealth may give the Recipient notice requiring the Recipient to return to the Commonwealth, within the period specified in the notice, an amount equal to the Commonwealth's Proportion of the Cost Savings. In this subclause 7.1.5, 'the Commonwealth's Proportion of the Cost Savings' means $\text{savings} \times \%$ where:
- a. $\text{savings} = (\text{the Cost Estimate} - \text{the actual cost of the Project} - \text{any Funds previously repaid to the Commonwealth under this Agreement}); \text{ and}$
 - b. $\% = (\text{the Funding} \div (\text{the maximum Funding} + \text{the maximum Other Contributions excluding any in-kind Other Contributions})).$
- 7.1.6. If the Recipient receives a notice given by the Commonwealth under subclause 18, the Recipient must comply with the notice within the period specified within the notice.
- 7.2. **Cost Savings**
- 7.2.1. Subject to compliance with this Agreement, the Recipient must:
- a. continually identify any costs saving or efficiency measures in carrying out the Activity; and
 - b. in consultation with the Commonwealth:
 - i. implement those costs saving or efficiency measures;
 - ii. ensure that any reductions in expenditure for the Activity that result from those costs saving or efficiency measures are accounted for and allocated equitably in proportion to the relative total values of the Funding, the Recipient Contributions and the Other Contributions (as applicable) as committed to the Activity.

8. **Statutory Approvals**

- 8.1 The Recipient must obtain all necessary statutory approvals in relation to the Project, including those specified in item K of the Schedule, and the Recipient must give the Commonwealth, within six (6) months after the Date of this Agreement, satisfactory written evidence that these statutory approvals have been obtained.

- 8.1A The Recipient must also provide satisfactory written evidence that the statutory approvals obtained under subclause 8.1 are sufficient for the Recipient to Commence Construction within six months after the Date of this Agreement.
- 8.2 If the Recipient does not comply with the requirement in subclause 8.1, the Commonwealth may at the Commonwealth's sole discretion:
- a. suspend payment of the Funding until the evidence of the statutory approvals referred to in subclause 8.1 has been received; or
 - b. terminate this Agreement in accordance with clause 17.2.

9. Assets

9.1. Acquisition of Asset

- 9.1.1. The Recipient agrees not to use the Funding to acquire or create any Asset, apart from those detailed in the Item E, without obtaining the Commonwealth's prior written approval. Approval may be given subject to any conditions the Commonwealth may impose.
- 9.1.2. Unless it is specified in Item E that the Commonwealth or a third party owns the Asset or the Commonwealth provides written consent to a third party owning the Asset, then the Recipient must ensure that it owns any Asset acquired with the Funding.
- 9.2. **Terms applicable to Asset**
- 9.2.1. If the Commonwealth owns the Asset clauses 9.4 and 9.6.2 do not apply.
- 9.2.2. If the Asset is owned by a third party then the Recipient agrees to ensure that the terms of the lease, hire or finance arrangement are consistent with clause 9.3, and clauses 9.4, 9.5 and 9.6 do not apply.

9.3. Recipient's responsibilities for Asset

- 9.3.1. Throughout the Term, the Recipient agrees to:
- a. use any Asset in accordance with this Agreement and for the purposes of the Activity;
 - b. not encumber or Dispose of any Asset, or deal with or use any Asset other than in accordance with this clause 9 without the Commonwealth's prior written approval;
 - c. hold all Assets securely and safeguard them against theft, loss, damage, or unauthorised use;
 - d. maintain all Assets in good working order;
 - e. maintain all appropriate insurances for all Assets to their full replacement cost noting the Commonwealth's interest, if any, in the Asset under the Agreement;
 - f. if required by law, maintain registration and licensing of all Assets;

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

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

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

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

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

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

9.5.1. If any of the Assets are lost, damaged or destroyed, the Recipient agrees to promptly reinstate the Assets including from the proceeds of the insurance, and this clause 9 continues to apply to the reinstated Assets. The proportion of any surplus from the proceeds of the insurance, which reflects the proportion of the cost of the Asset that was funded from the Funding, must be notified to the Commonwealth and accounted for as Funding and used for the Activity.

9.6. **Dealing with Asset**

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

9.6.2. Subject to clause 9.6.1, if on expiry of the Activity Period or the earlier termination of this Agreement, an Asset has not been fully Depreciated, the Commonwealth may, by written notice, require the Recipient to:

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

10. Real Property

10.1. Approval

- 10.1.1 The Recipient must obtain the Commonwealth's prior written approval to spend the Funding on any Real Property that is not specifically identified in the Budget. The Commonwealth may grant that approval subject to conditions.

10.2. Outgoings

- 10.2.1 The Recipient must pay all rents, rates, taxes, levies and other outgoings of any nature in relation to the Real Property. The Funding must not be used to pay rent.

10.3. Recipient's Responsibilities for Real Property

- 10.3.1 Throughout the Term of this Agreement, including the Operational Period, the Recipient agrees 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 10.3.1 continues to apply to the Real Property once rectified. The Recipient must notify the Commonwealth of any surplus from the proceeds of this insurance and the Recipient 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 E.2 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 the Commonwealth, provide copies of the Real Property register to the Commonwealth.

10.4. Recipient's Use of Real Property

- 10.4.1. The Recipient agrees to ensure that:
- a. the Real Property is used for, and is fit to be used for, the Purpose specified in item A.3 of the Schedule throughout the Operational Period; and
 - b. the use of the Real Property for the Purpose specified in item A.3 of the Schedule throughout the Operational Period, does not infringe any conditions of the Recipient's ownership or occupation of the Real Property.

10.4.2. Throughout the Operational Period, the Recipient must use the Real Property for the Purpose specified in item A.3 of the Schedule.

10.4.3. If the Commonwealth requests, the Recipient must take all action necessary to grant the Commonwealth a security, including in the form of a charge or mortgage, over the Real Property and on terms acceptable to the Commonwealth.

10.5. **Third Party Interests**

10.5.1. If a third party has proprietary or other rights or interests in relation to any Real Property, the Recipient agrees 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 Purpose specified in item A.3 of the Schedule throughout the Operational Period; and
 - iii. the use of any other Real Property for the Activity throughout the Activity Period and for the Purpose specified in item A.3 of the Schedule throughout the Operational 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 the Commonwealth, provide evidence to the Commonwealth that the Recipient has complied with the requirements of this subclause 10.5.

10.6. **Dealing with Real Property**

10.6.1. If:

- a. the Agreement is terminated under clause 17.2 and some or all of the Funding has been provided to the Recipient for expenditure on Real Property;
- b. the Recipient fails to Commence Construction for the Activity within six months of the Date of this Agreement;
- c. the Recipient Disposes of any Real Property during the Term of this Agreement; or
- d. the Recipient fails to or ceases to use any Real Property for the Purpose specified in item A.3 of the Schedule at any time during the Operational Period

then:

- e. the Recipient must notify the Commonwealth at least 20 Business Days prior to the event in paragraph (b), (c) or (d) occurring; and

- f. the Commonwealth may give the Recipient a notice requiring the Recipient to repay the Commonwealth some or all of the Funding provided under this Agreement and the Recipient must repay the amount specified in any such notice within the period specified in that notice.
- 10.6.2. If the Recipient fails to pay the Commonwealth an amount as required by a notice given under subclause 10.6.1:
 - a. the Recipient must pay the Commonwealth 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 10.6.2, will be recoverable by the Commonwealth as a debt due to the Commonwealth by the Recipient.
- 10.6.3. The provisions relating to this clause 10 shall survive the termination or expiration of this Agreement.

11. Records

11.1. Keeping Records

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

11.2. Retention of Records

- 11.2.1. The Recipient agrees to create and maintain records and accounts under clause 11.1.1 and retain them for a period of no less than seven (7) years after the end of the Term.

12. Intellectual Property

12.1. Use of Commonwealth Material

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

12.2. Rights in Activity Material

- 12.2.1. Subject to this clause 12, Intellectual Property in Activity Material vests or will vest in the Recipient.
- 12.2.2. Clause 12.2.1 does not affect the ownership of Intellectual Property in any Commonwealth Material incorporated into the Activity Material.

- 12.2.3. The Recipient grants to (or will procure for) the Commonwealth a permanent, irrevocable, royalty-free, worldwide, non-exclusive licence (including a right of sublicense) to use, reproduce, exploit, communicate, adapt and distribute the Activity Material for any purpose.
- 12.2.4. The Recipient agrees that the licence granted in clause 12.2.3 includes a right for the Commonwealth to licence the Activity Material to the public under an Open Access Licence.
- 12.2.5. The Recipient agrees, on request by the Commonwealth, to create, sign, execute or otherwise deal with any document necessary or desirable to give effect to this clause 12.
- 12.2.6. The Recipient warrants that:
- a. it is entitled; or
 - b. it will be entitled at the relevant time,
- to deal with the Intellectual Property in the Activity Material in the manner provided for in this clause 12.

12.3. **Moral Rights**

12.3.1. In this clause 12.3:

Permitted Acts

means any of the following classes or types of acts or omissions:

- a. using, reproducing, adapting or exploiting all or any part of the Activity Material, with or without attribution or authorship;
- b. supplementing the Activity Material with any other Material;
- c. using the Activity Material in a different context to that originally envisaged; and
- d. releasing the Activity Material to the public under an Open Access Licence;

but does not include false attribution of authorship.

- 12.3.2. Where the Recipient is a natural person and the author of the Activity Material he or she:
- a. consents to the performance of the Permitted Acts by the Commonwealth or any person claiming under or through the Commonwealth (whether occurring before or after the consent is given); and
 - b. acknowledges that their attention has been drawn to the Commonwealth's general policies and practices regarding Moral Rights.
- 12.3.3. Where clause 12.3.1 does not apply, the Recipient agrees:
- a. to obtain from each author a written consent which extends directly or indirectly to the performance of the Permitted Acts by the Commonwealth

or any person claiming under or through the Commonwealth (whether occurring before or after the consent is given) and, upon request, will provide the executed original of any such consent to the Commonwealth; and

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

12.3.4. This clause 12.3 does not apply to any Commonwealth Material incorporated in the Activity Material.

13. Confidential Information

13.1. Confidential Information not to be disclosed

13.1.1. Subject to clause 13.2.1, a party must not, without the prior written consent of the other party, disclose any Confidential Information of the other party to a third party.

13.2. Written Undertakings

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

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

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

13.3. Exceptions to Obligations

13.3.1. The obligations on the parties under this clause 13.3 will not be taken to have been breached to the extent that Confidential Information:

- a. is disclosed by a party to its Personnel solely in order to comply with obligations, or to exercise rights, under this Agreement;
- b. is disclosed to a party's internal management Personnel, solely to enable effective management or auditing of Agreement-related activities;
- c. is disclosed by the Commonwealth to the responsible Minister;
- d. is disclosed by the Commonwealth, in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia;
- e. is shared by the Commonwealth (including other agencies), where this serves the Commonwealth of Australia's legitimate interests;
- f. is authorised or required by law to be disclosed; or
- g. is in the public domain otherwise than due to a breach of this clause 13.3.

13.3.2. Where a party discloses Confidential Information to another person pursuant to clauses 13.3.1.a - 13.3.1.e, the disclosing party must notify the receiving person that the information is confidential.

13.3.3. In the circumstances referred to in clauses 13.3.1.a, 13.3.1.b and 13.3.1.e, the disclosing party agrees not to provide the information unless the receiving person

agrees to keep the information confidential (subject to the exceptions in this clause 13.3).

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

13.4. **Period of Confidentiality**

- 13.4.1. The obligations under this clause 13.4 will continue, notwithstanding the expiry or termination of this Agreement:

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

13.5. **No reduction in Privacy Obligations**

- 13.5.1. This clause 13 does not detract from any of the Recipient's obligations under the Privacy Act or under clause 21.2.

14. Acknowledgement and publicity

14.1. **Acknowledgement of support**

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

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

14.2. **Right to publicise Funding**

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

14.3. **No restriction on advocacy activities**

- 14.3.1. The Commonwealth confirms that, subject to clause 14.3.2:

- a. no right or obligation arising under this Agreement should be interpreted as limiting the Recipient's ability to enter into public debate or criticism of

the Commonwealth of Australia or its agencies, employees, servants or agents;

- b. the Commonwealth does not require the Recipient to obtain advance approval of any involvement by the Recipient in public debate or advocacy activities.

14.3.2. Nothing in this clause 14.3 limits or derogates from the Recipient's obligations under clauses 13 and 21.2.

15. Liability

15.1. Proportionate liability regime

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

15.2. Indemnity

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

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

arising from:

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

15.2.2. The Recipient's liability to indemnify the Commonwealth under clause 15.2.1 will be reduced proportionally to the extent that any act or omission involving fault on the part of the Commonwealth or its Personnel contributed to the relevant cost, liability, loss, damage or expense.

15.2.3. The right of the Commonwealth to be indemnified under this clause 15.2 is in addition to, and not exclusive of, any other right, power or remedy provided by law, but the Commonwealth is not entitled to be compensated in excess of the amount of the relevant cost, liability, loss, damage or expense.

15.3. Meaning of 'fault'

15.3.1. In this clause 15, 'fault' means any negligent or unlawful act or omission or wilful misconduct.

16. Dispute resolution

16.1. Procedure for dispute resolution

- 16.1.1. The parties agree that a dispute arising under this Agreement will be dealt with as follows, and that, subject to clause 16.4, neither party will commence legal proceedings in relation to that dispute until this procedure is completed:
- a. the party claiming that there is a dispute will give the other party a notice setting out the nature of the dispute;
 - b. within five (5) Business Days (or such other period as agreed by the parties in writing) each party will nominate a representative not having any prior involvement in the dispute;
 - c. the representatives will try to settle the dispute by direct negotiation between them;
 - d. failing settlement within a further 10 Business Days or such other period as agreed by the parties in writing (or failure of one or both parties to nominate a representative within the period set out in clause 16.1.1.b), the parties may agree to refer the dispute to an independent third person with power:
 - i. to intervene and direct some form of resolution, in which case the parties will be bound by that resolution; or
 - ii. to mediate and recommend some form of non-binding resolution;
 - e. the parties will co-operate fully with any process instigated under clause 16.1.1.d in order to achieve a speedy resolution; and
 - f. if the parties have been unable to agree to refer the dispute to an independent third person, or they have agreed and a resolution is not reached within a further 20 Business Days (or such other period as the parties may agree in writing), either party may commence legal proceedings.

16.2. Costs

- 16.2.1. Each party will bear its own costs of complying with this clause 16 Dispute resolution, and the parties will bear equally the cost of any third person engaged under clause 16.1.1.d.

16.3. Continued performance

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

16.4. Application of clause

- 16.4.1. This clause 16 does not apply to:
- a. legal proceedings by either party for urgent interlocutory relief; or

- b. action by the Commonwealth under or purportedly under clauses 3, 6, 17 and 21.2.

17. Termination or reduction in scope of Agreement

17.1. Termination for convenience

- 17.1.1. The Commonwealth may by notice, at any time and in its absolute discretion, terminate this Agreement or reduce the scope of the Agreement immediately.
- 17.1.2. The Recipient agrees, on receipt of a notice of termination or reduction, to:
 - a. stop or reduce the performance of the Recipient's obligations as specified in the notice;
 - b. take all available steps to minimise loss resulting from that termination or reduction;
 - c. continue performing any part of the Activity not affected by the notice; and
 - d. immediately return to the Commonwealth any Funding in accordance with clause 17.1.5, or deal with any such Funding as directed by the Commonwealth.
- 17.1.3. In the event of termination under clause 17.1.1, the Commonwealth will be liable only:
 - a. to pay Funding due and owing to the Recipient under the payment provisions of the Agreement before the date of the notice of termination; and
 - b. to reimburse any expenses the Recipient unavoidably incurs that relate directly and entirely to the Activity and not covered by clause 17.1.3.a.
- 17.1.4. The Commonwealth will not be liable to pay amounts under 17.1.3.a and 17.1.3.b which would, added to any payments already paid to the Recipient under this Agreement, together exceed the Funding set out in Item A.7 of the Schedule and Annexure A.
- 17.1.5. The Commonwealth will be entitled to recover from the Recipient any part of the Funding which:
 - a. is not legally committed for expenditure by the Recipient in accordance with the Agreement and due and payable by the Recipient by the date that the notice of termination is received; or
 - b. has not, in the Commonwealth's opinion, been spent by the Recipient in accordance with the Agreement.
- 17.1.6. In the event of a reduction in the scope of the Agreement under clause 17.1.1, the Commonwealth's liability to pay any part of the Funding will, unless there is agreement in writing to the contrary, reduce in accordance with the reduction in the Activity.
- 17.1.7. The Commonwealth's liability to pay any compensation under or in relation to this clause 17.1 is subject to:
 - a. the Recipient's compliance with this clause 17.1; and

- b. the Recipient's substantiation of any amount claimed under clause 17.1.3.b.

17.1.8. The Recipient will not be entitled to compensation for loss of prospective profits or loss of any benefits that would have been conferred on the Recipient.

17.2. **Termination for fault**

17.2.1. If the Recipient does not comply with any of its obligations under this Agreement, then the Commonwealth:

- a. *if it considers that the non-compliance is not capable of remedy* - may by notice terminate this Agreement immediately;
- b. *if it considers that the non-compliance is capable of remedy* - may, by notice require that the non-compliance be remedied within the time specified in the notice, and if not remedied within that time, may terminate the Agreement immediately by giving a second notice.

17.2.2. The Commonwealth may also by notice terminate this Agreement immediately if:

- a. the Recipient comes under one of the forms of external administration referred to in Chapter 5 of the Corporations Act 2001 (Cth) or equivalent provisions in legislation of the States and Territories pertaining to incorporated associations or Chapter 11 of the Corporations (Aboriginal and Torres Strait Islander) Act 2006 (Cth) or has an order made against it for the purpose of placing it under external administration;
- b. the Recipient is unable to pay all its debts as and when they become due and payable or it fails to comply with a statutory demand within the meaning of sections 459E and 459F of the Corporations Act 2001 (Cth);
- c. proceedings are initiated with a view to obtaining an order for winding up the Recipient, or any shareholder, member or director convenes a meeting for the purpose of considering or passing of any resolution for winding up the Recipient;
- d. in relation to this Agreement, the Recipient breaches any law of the Commonwealth of Australia, or of a State or Territory;
- e. the Recipient becomes bankrupt or enters into a scheme of arrangement with creditors;
- f. another clause of this Agreement allows for termination under this clause 17.2; or
- g. the Commonwealth is satisfied that any statement made in the Recipient's application for Funding is incorrect, incomplete, false or misleading in a way which would have affected the original decision to approve the Funding.

17.2.3. Where the Commonwealth terminates this Agreement under clause 17.2 the Commonwealth:

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

17.3. Preservation of other rights

- 17.3.1. Clause 17.2 does not limit or exclude any of the Commonwealth's other rights under this Agreement.

18. Notices

18.1. Format, addressing and delivery

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

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

- 18.1.2. Any such notice must be delivered to the other party by hand, prepaid post or transmitted electronically (via email or facsimile) and be signed by the sending party. For the avoidance of doubt, an electronic signature on an email will be taken to be a signed notice for the purpose of this clause 18.

18.2. When received

- 18.2.1. Subject to clause 18.2.2, a notice is deemed to be received:

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

- 18.2.2. If a notice is received:

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

it is deemed to be received at 9:00am on the next Business Day for the purposes of this clause 18.

19. Compliance with the Code for the Tendering and Performance of Building Work 2016

Optional – if deleted write 'Reserved' – This clause 19 must be included where:

Drafting Note:

The Building Code applies to all construction projects indirectly funded by the Australian Government through grants and other programmes. Clause 19 applies where the Australian Government Funding for a construction project where:

- The value of Australian Government contribution to the project that includes the building work is at least \$5 million and represents at least 50 per cent of the total construction project value; or
- Regardless of the proportion of Australian Government funding, where the Australian Government contribution to the project is \$10 million or more.

If the Australian Government's contribution to the project is above either of these thresholds, you must include Clause 19 otherwise remove it and replace the heading with "19. Reserved". For more information see the [Fact Sheet](#) here.

Building work is considered indirectly funded where it is funded by the Australian Government or an Australian Government authority through grants and other programmes. This includes building projects where the Australian Government provides money through a funding agreement or grants to a person, for example a state or territory government who may then contract with persons who will undertake the building work or persons who will arrange for the building work to be carried out.

19.1. In this clause 19:

ABCC	means the body referred to in subsection 29(2) of the Act.
Act	means the Building and Construction Industry (Improving Productivity) Act 2016.
Building Code	means the Code for the Tendering and Performance of Building Work 2016, which is available at https://www.legislation.gov.au/Details/F2017C00125
Building Contractor	has the same meaning as in the Act.
Building Industry Participant	has the same meaning as in the Act.
Building Work	has the same meaning as in subsection 3(4) of the Building Code.

Commonwealth Funded Building Work	means Building Work in items 1-8 of Schedule 1 of the Building Code.
Contractor	means a Building Contractor or Building Industry Participant who the Funding Recipient has entered, or proposes to enter, into a contract with to undertake any of the Works.
Exclusion Sanction	has the same meaning as in subsection 3(3) of the Building Code
Funding	means the funding provided by the Commonwealth to the Funding Recipient.
Funding Recipient	means the entity that the Commonwealth is providing funding or assistance to in relation to building works to which the Building Code applies.
Related Entity	has the same meaning as in subsection 3(2) of the Building Code.
Works	means Commonwealth Funded Building Work that is being indirectly funded by the Commonwealth through the provision of the Funding to the Funding Recipient.

19.2. The Funding Recipient must ensure that:

- a. tender processes and calls for expressions of interest (howsoever described) in respect of Commonwealth Funded Building Work are conducted in a manner consistent with this code of practice; and
- b. respondents are only permitted to participate in tender processes where the respondent is not subject to an exclusion sanction.

19.3. The Funding Recipient must ensure that any request for expressions of interest or request for tender (howsoever described) for Commonwealth Funded Building Work requires a respondent:

- a. to confirm that the respondent and any related entity will comply with the Building Code when undertaking the Commonwealth Funded building Work; and
- b. to confirm that the respondent, and any related entities; will comply with the Building Code from the time of lodging an expression of interest or tender response (if not already obligated to do so); and
- c. to confirm that it is not subject to an exclusion sanction at the time of lodging an expression of interest or tender; and
- d. to demonstrate a positive commitment to the provision of appropriate training and skill development for their workforce. Such commitment may

be evidenced by compliance with any state or territory government building training policies and supporting the delivery of nationally endorsed building and construction competencies; and

- e. to include details of the number of current apprentice and trainee employees and the number of classes of persons that hold visas under the Migration Act 1958 that are engaged by the respondent, and that are intended to be engaged by the respondent to undertake the Commonwealth Funded Building Work; and
- f. to advise whether the respondent has, within the preceding 3 year period:.
 - i. had an adverse decision, direction or order made by a court or tribunal for a breach of a designated building law, work health and safety law or the Migration Act 1958; or
 - ii. been required to pay any amount under an adjudication certificate (provided in accordance with a law relating to the security of payments that are due to persons in respect of building work) including by any related entity to a building contractor or building industry participant; or
 - iii. owed any unsatisfied judgement debts (including such debts owed by any related entity) to a building contractor or building industry participant.

19.4. Where the value of the Commonwealth's contribution to the project that includes the Works meets the financial thresholds set out in Item 1, Schedule 2 to the Building Code, the Funding Recipient must:

- a. ensure the requirement to have a Workplace Relations Management Plan (WRMP) for the Works approved by ABCC is included in all expression of interest and tender documents; and
- b. on behalf of the funding entity:
 - i. apply to the ABCC to have a WRMP for the Works approved; and
 - ii. ensure that an application to the ABCC for approval of a WRMP for the Works is made in the manner and form required by the ABCC Commissioner; and
 - iii. ensure that the proposed WRMP for the Works is accompanied by any supporting evidence required by the ABCC; and
 - iv. obtain and provide additional information to the ABCC when requested, to enable the ABCC to make a decision whether or not to approve the proposed WRMP for the Works.

20. Work Health and Safety

20.1. Use of Commonwealth's premises

20.1.1. The Recipient agrees, when using the Commonwealth's premises or facilities, to comply with all reasonable directions and procedures relating to work health and safety and security in effect at those premises or in regard to those facilities, as

notified by the Commonwealth or as might reasonably be inferred from the use to which the premises or facilities are being put.

20.2. **Assistance to the Commonwealth**

20.2.1. Without limiting clause 2.2 of this Agreement, the Recipient agrees to, on request, give all reasonable assistance to the Commonwealth, by way of provision of information and documents, to assist the Commonwealth and its officers (as defined in the Work Health and Safety Act 2011 (WHS Act)) to comply with the duties imposed on them under the WHS Act.

20.2.2. The Recipient acknowledges that the Commonwealth may direct the Recipient to take specified measures in connection with the Recipient's work under this Agreement or otherwise in connection with the Activity that the Commonwealth considers reasonably necessary to deal with an event or circumstance that has, or is likely to have, an adverse effect on the health or safety of persons. The Recipient must comply with the direction. The Recipient agrees that it is not entitled to an adjustment to the Funding merely because of compliance with the direction.

20.3. **Australian Government building and construction industry Work Health and Safety Accreditation Scheme**

optional – if deleted write 'Reserved' – This clause 20.3 must be included where:

Drafting note: The application of the WHS Accreditation Scheme extends to projects receiving indirect Commonwealth funding. The relevant thresholds for indirectly funded projects (based on the total project value) are Australian Government funding of:

- at least \$6 million representing at least 50 per cent of the total project value; or
- \$10 million or more, irrespective of the proportion of the total project value met by Australian Government funding.

If a project meets the above thresholds the requirement that accredited builders carry out the building work only applies to head contracts for building work valued at \$4 million or more.

If the Australian Government's contribution to the project is above either of these thresholds, you must include Clause 20.3 otherwise remove it and replace the heading with "20.3. Reserved". For more information see the [Fact Sheet](#) here.

The Scheme

means the Scheme described at Section 43 of the Building and Construction Industry (Improving Productivity) Act 2016.

Builder

has the meaning given in Section 43(8) of the Building and Construction Industry (Improving Productivity) Act 2016.

Building Work has the meaning given to it by Section 6 of the Building and Construction Industry (Improving Productivity) Act 2016.

Exclusions means the building work is prescribed under section 26 of the Fair Work (Building Industry—Accreditation Scheme) Regulation 2016

- 20.3.1. Construction projects that utilise funds provided under this agreement are bound by the application of the Australian Government building and construction industry Work Health and Safety Accreditation Scheme (the Scheme) and the following conditions:

All head contracts for building work under the project that are valued at \$4 million (GST inclusive) or more must:

- a. be notified to the Office of the Federal Safety Commissioner at the earliest possible opportunity (that is, when approaching the market).
- b. contain a requirement that the builder:
 - i. is accredited under the Scheme*;
 - ii. maintains Scheme accreditation for the life of the contract;
 - iii. must comply with all conditions of the Scheme accreditation; and
 - iv. must comply with the National Construction Code performance requirements in relation to building materials.

- 20.3.2. If conduct of the Activity requires You to carry out any Building Work, You must:

- a. maintain accreditation under the Scheme, and
- b. comply with all conditions of Scheme accreditation.

* Section 26(1)(f) of the Fair Work (Building Industry – Accreditation Scheme) Regulation 2016[#] outlines provisions applying to joint venture arrangements that include accredited and unaccredited builders.

[#] The Fair Work (Building Industry – Accreditation Scheme) Regulation 2016, made under section 35 of the Fair Work (Building Industry) Act 2012 (FWBI Act), was continued in force after the repeal of the FWBI Act as rules made for the purposes of section 43 of the Building and Construction Industry (Improving Productivity) Act 2016 (see item 11 of Schedule 2 to the Building and Construction Industry (Consequential and Transitional Provisions) Act 2016).

21. General Provisions

Note: for LGAs only clause 21.1 - delete 'Constitution' and replace with 'Reserved' and delete all subclauses in 21.1

21.1. Constitution

- 21.1.1. The Recipient warrants that the Recipient's Constitution is not, and will not become, inconsistent with this Agreement.

- 21.1.2. The Recipient must provide a copy of the Recipient's Constitution to the Commonwealth, upon request.
- 21.1.3. The Recipient must obtain the Commonwealth's written approval to any amendments to the Recipient's Constitution which may affect the Recipient's eligibility for the Funding or the Recipient's capacity to comply with this Agreement. If the Recipient alters the Constitution in breach of this subclause 21.1.3, the Commonwealth may terminate this Agreement in accordance with clause 17.2 of this Agreement.
- 21.2. **Obligations of Recipient in relation to privacy**
- 21.2.1. The Recipient agrees, in conducting the Activity:
- a. not to do any act or engage in any practice which, if done or engaged in by the Commonwealth, would be a breach of an Australian Privacy Principle; and
 - b. to comply with any directions, guidelines, determinations or recommendations of the Commonwealth, to the extent that they are consistent with the Australian Privacy Principles.
- 21.2.2. The Recipient agrees to notify the Commonwealth immediately if it becomes aware of a breach or possible breach of any of its obligations under this clause 21.2.
- 21.2.3. The provisions of this clause 21.2 survive the termination or expiration of this Agreement.
- 21.3. **Audit and Access**
- 21.3.1. The Recipient agrees:
- a. to give the Commonwealth, or any persons authorised in writing by the Commonwealth, access to premises where obligations under this Agreement are being carried out; and
 - b. to permit those persons to inspect and take copies of any Material relevant to this Agreement.
- 21.3.2. The rights referred to in clause 21.3.1. are subject to:
- a. the Commonwealth providing reasonable prior notice; and
 - b. the reasonable security procedures in place at the premises.
- 21.3.3. The Auditor-General and Information Officer (and their delegates) are persons authorised for the purposes of clause 21.3.1.
- 21.3.4. This clause 21.3 does not detract from the statutory powers of the Auditor-General or Information Officer.
- 21.4. **Access to Documents**
- 21.4.1. In this clause 21.4, 'document' and 'Commonwealth contract' have the same meaning as in the Freedom of Information Act 1982 (Cth). This clause 21.4 only

applies if this Agreement is a 'Commonwealth contract', as defined in the Freedom of Information Act 1982 (Cth).

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

21.4.3. The Recipient must include in any subcontract relating to the performance of this Agreement provisions that will enable the Recipient to comply with its obligations under this clause 21.4.

21.5. **Insurance**

21.5.1. The Recipient agrees:

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

21.5.2. This clause 21.5 continues in operation for so long as any obligations remain in connection with this Agreement.

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

21.6.1. In this clause 21.6:

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

21.6.2. The Recipient agrees to ensure that:

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

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

21.7. **Conflict of interest**

21.7.1. In this clause 21.7:

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

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

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

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

21.8. **Relationship of parties**

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

21.8.2. The Recipient agrees:

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

21.9. **Waiver**

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

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

21.10. **Variation of Agreement**

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

21.11. **Assignment**

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

21.11.2. The Recipient agrees not to enter into negotiations with any other person for the purposes of entering into an arrangement that will require novation of this Agreement without first consulting the Commonwealth.

21.12. **Survival**

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

- a. Intellectual Property;
- b. confidentiality;
- c. security;

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

21.13. **Compliance with Legislation and Policies**

21.13.1. In this clause 21.13:

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

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

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

21.14. **Applicable law and jurisdiction**

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

21.14.2. The parties submit to the jurisdiction of the courts of the Australian Capital Territory.

21.15. **Child Safety**

In this Agreement:

Child means an individual(s) under the age of 18 years and Children has a similar meaning;

Child-Related Personnel

means officers, employees, contractors (including subcontractors), agents and volunteers of the Recipient involved with the Activity who as part of that involvement may interact with Children;

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

National Principles for Child Safe Organisations

means the National Principles for Child Safe Organisations, which have been endorsed in draft form by the Commonwealth Government (available at: <https://www.humanrights.gov.au/national-principles-child-safe-organisations>) and subsequently, from the time of their endorsement by the Council of Australian Governments, the final National Principles for Child Safe Organisations as published by the Australian Government;

Relevant Legislation

means Legislation in force in any jurisdiction where any part of the Activity may be carried out;

Working With Children Check or WWCC

means the process in place pursuant to Relevant Legislation to screen an individual for fitness to work with Children.

Relevant Checks and authority

21.15.1. The Recipient must:

- a. comply with all Relevant Legislation relating to the employment or engagement of Child-Related Personnel in relation to the Activity, including all necessary Working With Children Checks however described; and
- b. ensure that Working With Children Checks obtained in accordance with this clause 21.15.1 remain current and that all Child-Related Personnel continue to comply with all Relevant Legislation for the duration of their involvement in the Activity.

National Principles for Child Safe Organisations and other action for the safety of Children

21.15.2. The Recipient agrees in relation to the Activity to:

- a. implement the National Principles for Child Safe Organisations;
- b. ensure that all Child-Related Personnel implement the National Principles for Child Safe Organisations;
- c. complete and update, at least annually, a risk assessment to identify the level of responsibility for Children and the level of risk of harm or abuse to Children;

- d. put into place and update, at least annually, an appropriate risk management strategy to manage risks identified through the risk assessment required by this clause 21.15.2;
 - e. provide training and establish a compliance regime to ensure that all Child-Related Personnel are aware of, and comply with:
 - i. the National Principles for Child Safe Organisations;
 - ii. the Recipient's risk management strategy required by this clause 21.15.2;
 - iii. Relevant Legislation relating to requirements for working with Children, including Working With Children Checks;
 - iv. Relevant Legislation relating to mandatory reporting of suspected child abuse or neglect, however described; and
 - f. provide the Commonwealth with an annual statement of compliance with clauses 21.15.1 and 21.15.2, in such form as may be specified by the Commonwealth.
- 21.15.3. With reasonable notice to the Recipient, the Commonwealth may conduct a review of the Recipient's compliance with this clause 21.15.
- 21.15.4. The Recipient agrees to:
- a. notify the Commonwealth of any failure to comply with this clause 21.15;
 - b. co-operate with the Commonwealth in any review conducted by the Commonwealth of the Recipient's implementation of the National Principles for Child Safe Organisations or compliance with this clause 21.15; and
 - c. promptly, and at the Recipient's cost, take such action as is necessary to rectify, to the Commonwealth's satisfaction, any failure to implement the National Principles for Child Safe Organisations or any other failure to comply with this clause 21.15.

Executed as a deed

Executed by the parties as evidence of their agreement.

SIGNED for and on behalf of the
COMMONWEALTH OF AUSTRALIA,)
as represented by and acting through)
the **Department of Infrastructure,**)
Transport, Regional Development)
and Communications :
ABN 86 267 354 017

Name of signatory

Signature

Position

Insert Date

In the presence of:

Name of witness

Signature of witness

Executed on behalf of **[INSERT
RECIPIENT'S NAME HERE]**, ABN
[insert ABN here] or CAN [insert ACN
here] by [insert name of signatory
here] who by signing warrants they are
authorised to bind the **[name of
Recipient]**

Signature

Insert Date

In the presence of:

Name of witness

Signature of witness

SCHEDULE 1 PARTICULARS

A. Programme, Project, Purpose, Activity and Funding and Payment (Recital A, clauses 1.1.1 and 2.1.1)

A.1. Programme

The Commonwealth is undertaking the Community Development Grants programme, which was to support needed infrastructure that promotes stable, secure and viable local and regional economies.

A.2. Project

The project to be undertaken by the Recipient is [insert description of the project based on information from the application ensuring that the description is consistent with the approved project and include location/address of the project]. The Project will include the Activity that the Programme will fund, defined in more detail in item A.5 of the Schedule.

The Project Completion Date is [insert date the project will be completed – note that this date may be different to the date the Activity will be completed].

A.3. Purpose

The Purpose for which the completed Project is required to be used is:
[insert Purpose here]

A.4. Operational Period

The Operational Period commences on the date the Commonwealth accepts the Project Completion Report, to the Commonwealth's satisfaction. The duration of the Operational Period is dependent on the amount of Funding provided by the Commonwealth under this Agreement. The thresholds are set out in the table below:

Note: select Duration as appropriate and delete other lines

Amount of Funding	Duration of Operational Period
Up to \$250,000	One (1) year
\$250,001 to \$1,000,000	Three (3) years
Over \$1,000,000	Five (5) years

During the Operational Period, the Recipient must, if requested by the Commonwealth to do so, promptly provide evidence satisfactory to the Commonwealth that the Project is Operational.

A.5. Activity

The Activity to be undertaken by the Recipient is [insert description of what the Programme Funding must be used for, including any deliverables that are to be achieved]

- [insert deliverables]

The Activity Period commences on the Date of this Agreement and ends on the Activity Completion Date which is **[insert date which reflects when the Activity must be completed. Note that this date may occur before the Project is completed]**.

A.6. Reserved

**A.7. Funding and Payment
(clauses 1.1.1, 3.1, 6)**

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

1. 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 all Milestones specified in the table at Annexure A that relate to the first payment have been achieved to the Commonwealth's satisfaction; and
 - b) all Reports identified in item D of the Schedule as being due on or before the due date for the first payment have been received and accepted by the Commonwealth; and
2. The second 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 the Commonwealth's satisfaction;
 - b) all Reports identified in item D of this Schedule as being due on or before the due date for the relevant payment have been received and accepted by the Commonwealth; and
 - c) the Recipient has provided the Commonwealth with evidence that all previously paid Funds have been expended or committed.

Invoicing

The Commonwealth must receive a properly rendered invoice or, if required a tax invoice which meets the requirements of the Australian Taxation Office for the amount of the payment and;

The Recipient must provide the Commonwealth with evidence that all previous paid Funding has been expended or committed.

**B. Budget
(clause 6.2)**

The Budget for the Activity, identifying the Funding and Other Contributions, is at Annexure B.

The percentage of the Budget (Total Cost) below which Funding may be transferred between Cost items without the Commonwealth's approval is 10%.

The percentage of the Budget (Total Cost) which must not be exceeded in total transfers between expenditure items per Financial Year is 20%.

**C. Other Contributions
(clause 7)**

C.1. Other Contributions

Other Contributions are specified at the table titled "Other Contributions" in Annexure B. Any financial or in-kind assistance that the Recipient has received from the Commonwealth of Australia or a State, Territory or local government and which the Recipient intends to, or is required to, use to perform the Activity must be identified in Other Contributions.

**D. Reporting
(clauses 1.1.1, 2.6)**

D.1. Progress Reports, Activity Completion Report and Project Completion Report

D.1.1 The Recipient must give the Commonwealth the Progress Reports, the Activity Completion Report and Project Completion Report by the times specified in the Table of Milestones, Reports and Payments relating to the Activity at Annexure A.

D.1.2 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 relevant part of the Activity which is being covered by that Progress Report) and evidence of completion of the Milestones listed in Annexure A of the Schedule that are due for completion (including but not limited to photographs to demonstrate completion of Milestones) during the period between the Recipient's 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 the first Progress Report);
- b. details of mitigating circumstances and remedial action undertaken in the event a 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 the Recipient has obtained and/or utilised in-kind Other Contributions specified in the table at Annexure B;
- e. a statement of receipts (which separately identifies any interest earned on the Funding) and expenditure to date in respect of the Funding; and
- f. a statement of receipts and expenditure to date in respect of Other Contributions (excluding in-kind).

D.1.3 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 the Recipient followed to deliver the Activity;
- c. any recommendations on improved practice, relevant to the Recipient's and the Commonwealth's practices, that may assist in the delivery of future projects;
- d. a copy of the current Assets register described in item E.1.2 of this Schedule and a copy of the Real Property register described in item E.2.4 of this Schedule;
- e. evidence that the Recipient has obtained in-kind Other Contributions for the Activity specified in the table at Annexure B;
- f. an up to date **Audited Financial Report/Acquittal 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.
- h. a copy of the Assets register described in item E.1 of this Schedule and a copy of the Real Property register described in item E.2 of this Schedule.

D.1.4 The Project Completion Report must contain:

- a. evidence that the Project has been completed;
- b. an analysis of the planning, implementation and overall process the Recipient followed to deliver the Project;
- c. any recommendations on improved practice, relevant to the Recipient's and the Commonwealth's practices, that may assist in the delivery of future projects;
- d. a copy of the Assets register described in item E.1 of this Schedule and a copy of the Real Property register described in item E.2 of this Schedule.
- e. evidence that the Recipient obtained in-kind contributions specified in the table at Annexure B;
- f. an **Audited Financial Report/Acquittal Report**; and
- g. 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.

In addition, the Project Completion Report must also:

- h. describe the Recipient's activities during the Term;
- i. discuss in detail the conduct, benefits and outcomes of the Activity as a whole and the Activity's results and findings; and
- j. Reserved; and
- k. **[Insert any other information relevant to the Activity that the Recipient is required to include in the Project Completion Report.]**

The Recipient must also include in the Project Completion Report a discussion of any other matters relating to the performance of the Project and Activity, which the Commonwealth notifies the Recipient is required to be included in the Project

Completion Report. Any such requirement will be notified to the Recipient at least 20 Business Days before the Project Completion Report is due.

- D.1.5. Unless otherwise agreed by the Commonwealth in writing, all Reports must be:
- a. supplied in hard copy or electronic form;
 - b. supplied in a format that is acceptable to the Commonwealth; and
 - c. signed by the Recipient's Chief Executive Officer, Chief Financial Officer or other person authorised by the Recipient to execute documents and legally bind the Recipient by their execution.

D.2. Audit and certification/Acquittal Report

D.2.1. The Activity Completion Report and Project Completion Report must be accompanied by a copy of a letter to the Recipient from the Approved Auditor, or a report from the Approved Auditor, that includes:

- a. separate audited statements of receipts and expenditure in respect of the Funding and Other Contributions (excluding in-kind), which must:
 - i. comply with all relevant Australian Accounting Standards
 - ii. separately identify any interest earned on the Funding
 - iii. include a definitive statement made by an Approved Auditor as to whether:
 1. the statements of receipts and expenditure are fair and true
 2. Funding and Other Contributions (excluding in-kind) were held and expended in accordance with this Agreement
- b. a certificate, signed by the Recipient's Chief Executive Officer, Chief Financial Officer or a person authorised by the Recipient to execute documents and legally bind the Recipient 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.

Note: For projects under \$1 million delete clauses above and replace with the following:

D.2.1 The Activity Completion Report and Project Completion Report must be accompanied by an Acquittal Report (as part of the Final Report) which includes:

- a. a certificate that all Funding received was expended for the Project and in accordance with this agreement
- b. a Budget statement signed by the Recipient's Chief Executive Officer (or equivalent) showing the budgeted expenditure proposed against each line

item approved in the Budget, and the actual expenditure outcome for each line item together with a brief explanation of under/over expenditure, and

- c. any other requirements set out in this agreement or any other information required by the Commonwealth and advised by the Commonwealth to the Recipient.

D.2.2 The certificate referred to in item D.2.1(a) and the audits referred to in clause D.2.1(b) and (c) must:

- a. contain the details, if any, described in Annexure A of Schedule 1
- b. be provided to the Commonwealth within one month (or other period specified in Annexure A of Schedule 1) of the end of the Completion Date, and
- c. be provided to the Commonwealth:
 - i. at the other times specified in Annexure A of Schedule 1 (if any), and
 - ii. at any other time notified by the Commonwealth to the Recipient.

D.2.3 The certificate referred to in item D.2.1(a) must be provided by the person specified in Annexure A of Schedule 1 or, if no person is specified, by the Recipient's Chief Executive Officer, chief internal auditor or board member.

D.3. Other Reports

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

- a. any significant developments concerning the Activity;
- b. any significant delays or difficulties encountered in performing the Activity in accordance with the Agreement; and
- c. the outcomes and outputs of the project as listed in the application.

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

E. Assets and Real Property **(clauses 1.1.1 and 9)**

E.1. Assets

E.1.1. For the purposes of Clause 9, the Recipient may create, acquire or upgrade the following Assets: [List here the Assets that the Department has determined the Recipient may create, acquire or upgrade with the use of Funding, without having to obtain the Department's prior written approval. Note that an item of Real Property is not an Asset. If no Assets are to be listed insert "None Specified"]

E.1.2. The Recipient must for the Term of this Agreement maintain an Asset Register in the following form and containing the following information:

- a. Asset 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 Asset;
- f. date of Disposal;
- g. disposal method; and
- h. if the Asset was partly created, acquired or upgraded using the Funding, the proportion of that creation, acquisition or upgrade that was paid for with the Funding.

E.1.3. The Recipient must use the Assets created, acquired, or upgraded under this Agreement for the Purpose set out in item A.3 of the Schedule for the duration of the Operational Period.

E.2. Real Property

E.2.1. The Real Property includes [insert project name].

E.2.2. The Capital Works includes [insert brief description of what is happening, eg construction and fit-out of the Real Property] at the Works Location.

E.2.3. The Works Locations includes [insert address/location of construction].

E.2.4. The Recipient must for the Term of this Agreement maintain a Real Property Register in the following form and containing 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; and
- h. if the Real Property was partly created, acquired or upgraded using the Funding, the proportion of that creation, acquisition or upgrade that was paid for with the Funding.

E.2.5. The Recipient must use the Real Property created, acquired, or upgraded under this Agreement for the Purpose set out in item A.3 of the Schedule for the duration of the Operational Period.

F. Insurance

(clause 21.5)

The Recipient must maintain:

- a. workers compensation insurance as required by law where the Recipient carries out activities under this Agreement;
- b. public liability insurance to the value of at least \$10 million for each and every claim, or occurrence giving rise to a claim, in respect to activities undertaken under this Agreement, where occurrence means either a single

occurrence or a series of occurrences if these are linked or occur in connection with one another from one original cause, as the case may be; and

- c. insurance against any loss or damage to an Asset or Real Property for its full replacement cost including where relevant the costs of demolition and removal of debris and the cost of architects, engineers and other consultants.
- d. [Insert reference to any insurance of specific relevance to the Activity, or delete this item if there is no other insurance specific to the Activity.]

G. Reserved

**H. Acknowledgement and publicity
(clause 14)**

- H.1.1 If the Recipient erects or maintains any signage in relation to the Project, the signage must be approved by the Commonwealth prior to use and contain an acknowledgement of the Funding as required under Clause 14 of this Agreement. Any signage must remain in place during the Operational Period for the Project as specified in Item A.4. 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 the Recipient's own cost.
- H.1.2 If a Federal, State or Local Government election is announced, the Recipient 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.
- H.1.3 The Recipient must include the Commonwealth logo in all signage, publications and promotional activities related to the Activity.
- H.1.4 The Recipient must not use the Commonwealth's logo without the Commonwealth's approval. If the Commonwealth provides approval for the Recipient's use of the Commonwealth's logo, the Recipient must use it in accordance with the Commonwealth's Print Style Guidelines (as advised by the Commonwealth).
- H.1.5 All the Recipient's publicity, announcements and media releases relating to the Activity must be cleared through the Commonwealth's contact officer specified at item L of the Schedule with at least 10 Business Days' notice, before release.
- H.1.6 The Commonwealth reserves the right to publicise and report on the provision of Funding to the Recipient, including progress on completing the Activity and the Project. The Commonwealth may do this by including the information specified in clause 14.2 in media releases, general announcements about the Funding and in annual reports and in electronic media.
- H.1.7 The Recipient must conduct an official opening of the completed Activity and Project unless otherwise agreed by the Commonwealth.

- H.1.8 The Recipient must provide to the Commonwealth with at least 3 options for dates for the official opening, or any other milestone events that the Recipient chooses to conduct (e.g. stage completion), for the Activity and the Project. These dates must be provided at least 56 days prior to the first proposed date for each event to be conducted.
- H.1.9 The date of official openings or other official public function for the completed Activity and Project must be agreed by the Commonwealth.
- H.1.10 The Recipient must invite the Commonwealth's representative to officiate at any official opening or other official public function relating to the Activity or the Project.
- H.1.11 The Commonwealth Minister's prior agreement must be sought, to invite any other Commonwealth or State elected official or other officials to attending either function. This invitation must be provided to the Commonwealth no later than 56 days before the date of the official opening or other official public function relating to the Activity or the Project.
- H.1.12 The Recipient must coordinate requests for the Commonwealth's agreement to the date of official openings and requests for Commonwealth representation at official openings or other official functions relating to the Activity or the Project through the Commonwealth's contact officer specified at item L of the Schedule.

I. Reserved

**J. Compliance with laws and policies
(clause 21.13)**

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

- Crimes Act 1914;
- Criminal Code of Conduct 1995;
- Disability Discrimination Act 1992;
- Workplace Gender Equality Act 2012;
- Building and Construction Industry (Improving Productivity) Act 2016;
- Racial Discrimination Act 1975;
- Sex Discrimination Act 1984;
- Migration Act 1958
- Work Health and Safety Act 2011.

For the purposes of clause 21.13, the following policies are identified:

Community Development Grants Programme – Grant Programme Guidelines

**K. Statutory Approvals
(clause 2A.2)**

For the purposes of subclause clause 2A.2, the Recipient must obtain statutory approvals for the Project.

L. Notices

(clause 18.1)

The Commonwealth's details for notices are as follows:

Name: Assistant Secretary
Regional Programs Branch

Address: Department of Infrastructure, Transport, Regional Development and Communications
GPO Box 594
CANBERRA ACT 2601

Email: CDG@infrastructure.gov.au

The Recipient's details for notices are as follows:

Name:

Position:

Address:

Telephone:

E-mail:

M. Applicable Law

(clause 21.14)

The Laws of the Australian Capital Territory apply to this Agreement.

N. Confidential Information

(clause 13)

Commonwealth's Confidential Information

Insert as required, or otherwise delete table below and insert "None Specified"

Agreement Provisions/Schedules/Attachments

Item	Period of Confidentiality
[insert relevant items]	

Agreement related material

Item	Period of Confidentiality
[insert relevant items]	

Recipient's Confidential Information

Insert as required or otherwise delete table below and insert "None Specified"

Agreement Provisions/Schedules/Attachments

Item	Period of Confidentiality
[insert relevant items]	

Agreement related material

Item	Period of Confidentiality
[insert relevant items]	

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ANNEXURE A

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

Report	Milestone(s) / Information covered by the Report	Milestone Completion Date	Payment amount (GST Exclusive)	Due Date for Report	Due Date for Funding Payment
Progress Report 1	<p>Evidence acceptable to the Commonwealth that the following have been achieved:</p> <ul style="list-style-type: none"> Confirmation that the contractor is compliant with the Code for the Tendering and Performance of Building Work 2016 and accredited under the Australian Government Building and Construction WHS Accreditation Scheme - Funding recipients ABCC and OFSC website information as per Section/s 19 and/or 20.3 of this Agreement (delete or amend if clause 19 or 20.3 is Reserved); risk mitigation/s XXX as needed <> per cent of the Project is completed and certified by the Project Manager, Quantity Surveyor, or similar. 				
Progress Report 2	<p>Evidence acceptable to the Commonwealth that the following have been achieved:</p> <ul style="list-style-type: none"> <> per cent of the Project is completed and certified by the Project Manager, Quantity Surveyor, or similar. 				

Report	Milestone(s) / Information covered by the Report	Milestone Completion Date	Payment amount (GST Exclusive)	Due Date for Report	Due Date for Funding Payment
Activity Completion Report	<p>Evidence acceptable to the Commonwealth that the following have been achieved:</p> <ul style="list-style-type: none"> activity XXX activity YYY the Activity at item A.5 of the Schedule is completed and certified by the Project Manager, Quantity Surveyor, or similar. 				
Progress Report [insert number here]	<p>Evidence acceptable to the Commonwealth that the following have been achieved:</p> <ul style="list-style-type: none"> an Event Invitation has been submitted to the Department as required at Item H of the Schedule; (This mitigation is to be included is the last progress report before the Project Completion Report) <> per cent of the Project is completed and certified by the Project Manager, Quantity Surveyor, or similar. 				

Report	Milestone(s) / Information covered by the Report	Milestone Completion Date	Payment amount (GST Exclusive)	Due Date for Report	Due Date for Funding Payment
Project Completion Report	<p>Evidence acceptable to the Commonwealth that the following has been achieved:</p> <ul style="list-style-type: none"> the Activity, at Item A.5 of the Schedule, is complete; the Project, at Item A.2 of the Schedule, is complete; all approvals required to enable public access and use of the facility have been met; and the Project is fully Operational. 				

ANNEXURE B

BUDGET FOR THE EXPENDITURE OF CDG FUNDING		
Cost item	Description	Amount (GST exclusive)
		\$
		\$
		\$
		\$
		\$
		\$
		\$
Funding (A)		\$

OTHER CONTRIBUTIONS (FINANCIAL)			
Name of Contributor	Cost Item	Description of item	Amount (GST exclusive)
			\$
			\$
			\$
			\$
Other Contributions (Financial) (B)			\$

TOTAL COST ESTIMATE (A + B) (GST exclusive):	\$
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OTHER CONTRIBUTIONS (IN-KIND)

Name of Contributor	Description of Other Contribution (In-kind)

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