



Australian Government

Department of Health

Female Facilities and Water Safety Stream Program Grant Opportunity Guidelines

Commonwealth policy entity:	Department of Health
Administering entity	Department of Health
Enquiries:	If you have any questions please contact grant.atm@health.gov.au
Date guidelines authorised:	28 February 2020 Version 2
Type of grant opportunity:	One off grant

Contents

1. About the grant	3
2. Grant amount and grant period	3
3. The grant selection process	3
3.1 Eligibility criteria	4
3.2 Eligible grant activities	4
3.3 Ineligible grant activities	5
3.4 Grant assessment	5
4. Who will approve the grant?	5
5. Notification of the grant	5
5.1 The grant agreement/Payment of the grant	6
5.2 Grant acquittal and reporting	6
6. Announcement of the grant	7
7. Grant evaluation	7
8. Glossary	8

THIS DOCUMENT HAS BEEN RELEASED UNDER
THE FREEDOM OF INFORMATION ACT 1982 (CTH)
BY THE DEPARTMENT OF HEALTH

1. About the grant

The Department of Health is responsible for the administration of \$150 million under the Female Facilities and Water Safety Stream (FFWSS) Program. This investment aligns with the sport and recreation priorities within the Health Portfolio.

The grant opportunity will be delivered under Outcome 3.1 – Sport and Recreation.

The objectives of the grant are to:

- Remove barriers to participation for women in sport; and
- increase access to community swimming facilities.

The intended outcomes of the grant are:

- an increase in sporting facilities that provide female change rooms and amenities;
- an increase in the number of girls and women participating in sport at all levels; and
- an increase in community swimming facilities.

This grant opportunity delivers on the Australian Government's election commitments identified for FFWSS.

Only projects identified by the Australian Government will be considered for this grant opportunity. If your project has been identified to receive grant funding, you will be contacted by the Australian Government.

The grant is to be undertaken in accordance with the [Commonwealth Grants Rules and Guidelines \(CGRGs\)](#)¹

Grant amount and grant period

For this grant opportunity \$150 million is available over four years. Further funding will not be made available after this time.

Table 1. Grant Funding Breakdown

2019-20 FY	2020-21 FY	2021-22 FY	2022-23 FY	Total
\$20 M	\$40 M	\$40 M	\$50 M	\$150 M
(GST exclusive)	(GST exclusive)	(GST exclusive)	(GST exclusive)	(GST exclusive)

2. The grant selection process

This grant opportunity has been established as a one-off grant. The Department of Health considers that this is an appropriate type of selection process considering the nature of the grant is one-off. Funding beyond the grant period is not available.

¹ <https://www.finance.gov.au/sites/default/files/commonwealth-grants-rules-and-guidelines.pdf>

You are not eligible to apply if you have not been identified by the Australian Government to receive funding under this grant opportunity.

General applications by organisations for projects not identified by the Australian Government will not be accepted by us.

We will contact you should further information be required to support the application. Requests for extension to the determined submittal date, or a change of scope, must be provided to us in writing, clearly stating the reasons for delay and timeframes proposed for project delivery.

If an identified project does not proceed for reasons including where an organisation considers that a project is no longer suitable or declines an offer of funding, the Australian Government may identify another project to be delivered under this grant opportunity.

2.1 Eligibility criteria

To be eligible you must:

- be a legal entity; and
- have an Australian Business Number (ABN) or an Australian Company Number (ACN);
- have an Australian Bank Account

Only projects identified by the Australian Government will be considered for funding under the FFWSS Program.

2.2 Eligible grant activities

To be eligible, your grant project must be consistent with the intent of the project as identified by the Australian Government.

You can only spend the grant on eligible expenditure you have incurred on eligible grant activities or agreed project activities.

Eligible expenditure must relate specifically to the project activities that are to be delivered under this grant opportunity. Specific items will be negotiated with us in the agreement.

If your application is successful, we may ask you to verify project costs that you provided in your Request for Information form. You may need to provide evidence such as quotes for major costs. Not all expenditure on your grant project may be eligible for grant funding. The (the Decision Maker) makes the final decision on what is eligible expenditure and may give additional guidance on eligible expenditure if required.

You must incur the expenditure on your grant project between the start and end date or completion date of the project as defined in your grant agreement or within the Request for Information form.

2.3 Ineligible grant activities

- ongoing operational and maintenance costs;
- existing staff member salaries of your organisation;
- costs incurred in the preparation of the grant application or related documentation; or
- overseas travel.

2.4 Grant assessment

We will assess the information provided in your Request for Information form to decide if the assessment criteria has been met.

The Request for Information form requires you to provide key information to support claims against the criteria.

Criterion: The project benefits are consistent with the intent of the program and the capacity of the applicant to undertake the grant.

The project will be assessed by the Department.

The assessment of the project will consider whether the project represents value for relevant money².

The following may also be considerations in the assessment of the project's viability and sustainability:

- how well the project has been scoped and costed;
- if/how you plan to secure partnership funding (both in-kind and cash) for the project, where required;
- how well you have assessed delivery risks and treatments for these risks; and
- how you aim to maintain the project in the future.

3. Who will approve the grant?

The Decision Maker will make the final decision to approve a grant.

The Decision Maker's decision is final in all matters, including:

- approval of the grant;
- grant amount to be awarded; and
- terms and conditions of the grant.

4. Notification of the grant

We will advise you of the outcome in writing, following a decision by the Decision Maker. We will advise you of any specific conditions attached to the grant.

² See Glossary

4.1 The grant agreement/Payment of the grant

You must enter into a legally binding grant agreement with the Commonwealth. We may use the simple grant agreement or letter of agreement or the Department of Health Capital Works Agreement depending on the amount of funding and complexity of the grant. Each agreement has general terms and conditions that cannot be changed. We will use a schedule to outline the specific grant requirements.

We must execute a grant agreement with you before we can make any payments. We are not responsible for any of your expenditure before a grant agreement is executed. If you choose to start your project before you have an executed grant agreement, you do so at your own risk.

Your grant agreement may have specific conditions determined by the assessment process or other considerations made by the Decision Maker. We will identify these in the agreement.

The Commonwealth may recover grant funds if there is a breach of the grant agreement.

The grant agreement will state the;

- maximum grant amount to be paid; and
- specific conditions negotiated for your project.

5.2 Grant acquittal and reporting

We may ask you to provide a declaration that the grant money was spent in accordance with the grant agreement and to report on any underspends of the grant money.

In addition, we may ask you to provide an independently audited financial acquittal report. A financial acquittal report will verify that you spent the grant in accordance with the grant agreement.

You must submit reports in line with the timeframes in the grant agreement. We will provide sample templates for these reports as appendices in the grant agreement if required.

Reports may include:

- progress against agreed project milestones;
- contributions of participants directly related to the grant activity; and
- eligible expenditure of grant monies.

You will be responsible for:

- meeting the terms and conditions of the grant agreement and managing the grant activity efficiently and effectively;
- complying with record keeping, reporting and acquittal requirements as set out in the grant agreement; and
- participating in a grant program evaluation as specified in the grant agreement.

5. Announcement of the grant

Your grant will be listed on the [GrantConnect](#) website, 21 days after the date of effect as required by Section 5.3 of the CGRGs.

6. Grant evaluation

The Department of Health may evaluate this grant to measure how well the outcomes and objectives have been achieved.

Your grant agreement may require you to provide information to help with this evaluation.

THIS DOCUMENT HAS BEEN RELEASED UNDER
THE FREEDOM OF INFORMATION ACT 1982 (CTH)
BY THE DEPARTMENT OF HEALTH

Glossary

Term	Definition
accountable authority	Each Commonwealth entity has an accountable authority. The accountable authority for a Department of State is the Secretary of the Department.
Administering entity	When an entity that is not responsible for the policy, is responsible for the administration of part or all of the grant administration processes.
assessment criteria	The specified principles or standards against which applications will be judged. These criteria are used to assess the merits of proposals and, in the case of a competitive granting activity, to determine applicant rankings.
commencement date	The expected start date for the grant activity.
completion date	The expected date that the grant activity must be completed and the grant spent by.
Co-sponsoring entity	When two or more entities are responsible for the policy and the appropriation for outcomes associated with it.
date of effect	This will depend on the particular grant. It can be the date in which a grant agreement is signed or a specified starting date. Where there is no grant agreement, entities must publish information on individual grants as soon as practicable.
decision maker	The person who makes a decision to award a grant.
eligibility criteria	The principles, standards or rules that a grant applicant must meet to qualify for consideration of a grant. Eligibility criteria may apply in addition to assessment criteria.
Commonwealth entity	A department of state, a parliamentary department, or a listed entity or a body corporate established by a law of the Commonwealth. See subsections 10(1) and (2) of the PGPA Act.
Commonwealth Grants Rules and Guidelines (CGRGs)	The CGRGs establish the overarching Commonwealth grants policy framework and the expectations for all non-corporate Commonwealth entities in relation to grants administration.

Term	Definition
grant	For the purposes of the CGRGs, a 'grant' is an arrangement for the provision of financial assistance by the Commonwealth or on behalf of the Commonwealth: a) under which relevant money or other CRF money is to be paid to a grantee other than the Commonwealth; and b) which is intended to help address one or more of the Australian Government's policy outcomes while assisting the grantee achieve its objectives.
grant activity	Is the project /tasks /services that the Grantee is required to undertake with the grant money. It is described in the Grant Agreement.
grant agreement	Grant agreement means the contract template used by Australian Government entities to set out the mutual obligations relating to the provision of the grant. The Australian Government is standardising and streamlining grant agreements between the Commonwealth and grant recipients to allow grant recipients to engage more easily and efficiently with the Commonwealth.
GrantConnect	<u>GrantConnect</u> is the Australian Government's grants information system, which centralises the publication and reporting of Commonwealth grants in accordance with the CGRGs. Non-corporate Commonwealth entities must publish on GrantConnect to meet the grant publishing requirements under the CGRGs. Where information is published in more than one location, and there are inconsistencies, GrantConnect is the authoritative, auditable information source.
grant opportunity	A notice published on GrantConnect advertising the availability of Commonwealth grants.
grant program	Is a group of one or more grant opportunities under a single [entity] Portfolio Budget Statement Program.
grantee	An individual/organisation that has been awarded a grant.

Term	Definition
PBS Program	Described within the entity's Portfolio Budget Statement, PBS programs each link to a single outcome and provide transparency for funding decisions. These high level PBS programs often comprise a number of lower level, more publicly recognised programs, some of which will be Grant Programs. A PBS Program may have more than one Grant Program associated with it, and each of these may have one or more grant opportunities.
selection criteria	Comprise eligibility criteria and assessment criteria.
selection process	The method used to select potential grantees. This process may involve comparative assessment of applications or the assessment of applications against the eligibility criteria and/or the assessment criteria.
Value with money	Value with money in this document refers to 'value with relevant money' which is a judgement based on the grant proposal representing an efficient, effective, economical and ethical use of public resources and determined from a variety of considerations. When administering a grant opportunity, an official should consider the relevant financial and non-financial costs and benefits of each proposal including, but not limited to: • the quality of the project proposal and activities; • fitness for purpose of the proposal in contributing to government objectives; • that the absence of a grant is likely to prevent the grantee and government's outcomes being achieved; and • the potential grantee's relevant experience and performance history.

The following amendments have been made to:

- Align program purpose with the Budget Measure
- Ensure large capital works can be accommodated
- minor administrative changes



Australian Government
Department of Health

OFFICIAL
Ministerial Submission – Standard
MS20-000488 Version (1)
Date sent to MO:24/06/20

To: Minister Colbeck

cc: Minister Hunt

Subject: COMMITMENT APPROVAL FOR GRANTS OVER \$2 MILLION FOR THE FEMALE FACILITIES AND WATER SAFETY STREAM PROGRAM

Critical date: N/A

Recommendation/s:

- | | |
|---|---|
| <p>1. Approve the commitment of \$118.000 million for 12 grants under the Female Facilities and Water Safety Stream (FFWSS) Program commencing in 2020-21 at Attachment A.</p> | <p>1. Approved/Not approved/Please discuss</p> |
| <p>2. Agree the Department can offer grant agreements to deliver on projects approved at Attachment A.</p> | <p>2. Agreed/Not agreed/Please discuss</p> |
| <p>3. Note this submission is seeking approval for 12 FFWSS grants that are over \$2 million each, but not for total funding through the FFWSS.</p> | <p>3. Noted</p> |
| <p>4. Note the Department is implementing decisions taken in the 2019-20 Budget for a closed, non-competitive grant opportunity process to specified organisations.</p> | <p>4. Noted</p> |
| <p>5. Note the process the Department is undertaking to develop funding arrangements, in accordance with the Commonwealth Grant Rules and Guidelines (CGRGs) and the <i>Public Governance, Performance and Accountability Act 2013</i> (PGPA Act).</p> | <p>5. Noted</p> |

Signature

Date: 1 / 17 / 2020

Media Release required? YES/ NO

Comments:

Please to retain oversight of any Variations.

Contact Officer:	s22(1)(a)(ii)	A/g Assistant Secretary, Health Infrastructure Branch, Portfolio Strategies Division	Ph: s22(1)(a)(ii)
			Mobile: s22(1)(a)(ii)
Clearance Officer:	Bronwyn Field	A/g First Assistant Secretary, Portfolio Strategies Division	Ph: s22(1)(a)(ii)
			Mobile: s22(1)(a)(ii)

OFFICIAL

Issues:

1. The Australian Government established the Female Facilities and Water Safety Stream (FFWSS) Program to improve opportunities for women and girls to play sport and be physically active through access to female change rooms; and to increase access to swimming facilities and safety programs in regional communities. The FFWSS Program is not a competitive grants program.
2. Your approval is sought for the commitment of \$118.000 million for 12 grants over three years (2020-21 to 2022-23) under the FFWSS, as outlined in the assessment summary at **Attachment A**. GST is not applicable to these grants.
3. If approved, the Department will have the ability to effect variations to the grants which are not significant in nature (such as minor changes to the grant value or project scope or parameters), subject to the funded activities continuing to promote the program outcomes.
4. If approved, the Department will offer grant agreements for a range of activities benefiting local communities including, the construction or redevelopment of:
 - a. swimming pools;
 - b. universally accessible toilet and change room facilities;
 - c. multipurpose sport and recreation facilities; and
 - d. accompanying general amenities.
5. There are three projects in **Attachment A** where risks have been identified:
 - a. The local councils (or equivalents) are undertaking reviews or feasibility studies (reviews) of these projects to ensure the proposed expenditure will meet the intended outcomes for the program, including determining the level of need in the community for these facilities.
 - b. Following the completion of these reviews, the Department will work with the relevant local funding recipients to agree milestones and funding for these projects.
 - c. The Department recommends scheduling the first payments for these projects (totalling \$9 million of 2020-21 funding) to later in 2020-21 to allow time for the reviews to be completed and any issues to be resolved.
 - d. The Department will continue to work with the funding recipients to progress these projects and will come back to you with further recommendations later in 2020-21 should any issues not be resolved.
6. There is one grant which the department has assessed there is a significant risk. The City of Wanneroo, Northern Suburbs Aquatic Facility project will not commence until 2026-27 which is four years after the program funding is finished.
 - a. The Department has been informed that construction of the new aquatic facility in the City of Wanneroo will commence in 2026-27.
 - b. The new Northern Suburbs Aquatic Facility is planned for a future suburb within the City of Wanneroo, which is still in the planning stage.
 - c. Precise details of the construction are still to be determined, pending finalisation of a feasibility study and completion of planning for the new suburb.
 - d. The Department recommends that funding not commence until late 2022-23 to allow time for the review to be completed and the council to provide the Department with an appropriate proposal for the funding.
 - e. Additionally, if the Department proceeds with a grant it is proposed to stipulate in the grant agreement, that the City of Wanneroo will be required to hold the funding in a special account with all interest earned retained for the specified project.

OFFICIAL**Background:**

The Australian Government established the Female Facilities and Water Safety Stream (FFWSS) Program to improve opportunities for women and girls to play sport and be physically active through access to female change rooms; and to increase access to swimming facilities and safety programs in regional communities. The FFWSS Program is not a competitive grants program.

Through election commitments, 12 organisations were announced as recipients of funding under the FFWSS for grants over \$2 million to:

- construct and/or upgrade facilities that are functional and include female change rooms and amenities;
- reduce drownings through repair and/or construction of safety fences at swimming facilities; and
- increase access to learn to swim programs through the construction of new swimming facilities.

The Prime Minister wrote to you on 22 August 2019, regarding the transfer of responsibility and associated administered funding for the FFWSS program from the Infrastructure portfolio to the Health portfolio.

In September 2019 you approved expenditure of up to \$150 million (GST exclusive) over four years from 2019-20 for the FFWSS program. MS19-900215 refers.

Separate to this submission, 29 FFWSS grants less than \$2 million each are being offered and executed in partnership between the Health Grants and Network Division and the Office for Sports.

Spending and Grant Rules

The Department advised you in September 2019 (MS19-900215 refers) that it will not be seeking advice on the constitutional risk rating from the Australian Government Solicitor (AGS) for the FFWSS program. As the Government made the decision on the allocation of grants and the Department is implementing the decision, it was decided to not seek formal AGS advice on the constitutional risk rating and legislative authority.

In accordance with section 71 of the PGPA Act, in order to approve the grants you must be satisfied (after making reasonable inquiries) the expenditure is a proper use of relevant money.

Each proposal was assessed against the Grant Opportunity Guidelines (GOGs) as part of a value for money assessment. Outcomes are identified in **Attachment A** that seeks your approval to the assessment.

Further information, including your Ministerial obligations under the PGPA Act, is provided at **Attachment B**.

Attachments:

A: Summary assessment for 12 FFWSS grants

B: Mandatory Grant Rules and Guidelines and Other Requirements

OFFICIAL

Budget/Financial Implications:

FFWSS - Allocation Table (GST exclusive)	2019-20 (\$m)	2020-21 (\$m)	2021-22 (\$m)	2022-23 (\$m)	Total (\$m)
Allocation (as at Budget 2019-20)	20.000	40.000	40.000	50.000	150.000
Previous approved grants already committed (<i>less than \$2m each</i>)	8.055	5.645	-	-	13.700
Submissions pending Minister approval (<i>this request</i>)	-	29.000	39.000	50.000	118.000
<i>Subtotal</i>	<i>8.055</i>	<i>34.645</i>	<i>39.000</i>	<i>50.000</i>	131.700
Unallocated funding*	11.945	5.355	1.000	-	18.300

*The issue of unallocated FFWSS funding was raised separately to you in MS20-000445.

Relevance to Election Commitments / Budget Measures:

The FFWSS was announced in the 2019-20 Budget with funding of \$150 million over four years from 2019-20.

Sensitivities:

There has been significant media attention regarding the administration of the FFWSS and in particular the selection of these projects. The need for additional information from project proponents, or to negotiate details of more complex projects, may delay offering formal grant agreements. This will be managed as needed on a case-by-case basis.

Consultations:

Consultation with the Health Grants and Network Division, Financial Management Division and the Office for Sports have been undertaken and will continue as required.

OFFICIAL: Sensitive

ASSESSMENT OUTCOMES FOR THE FEMALE FACILITIES AND WATER SAFETY STREAM PROGRAM

Organisation and project/activity details							Assessment		Delegate Decision
Funding Recipient	Project Title	Description	2020-21 (\$m)	2021-22 (\$m)	2022-23 (\$m)	Total (\$m)	Value for money (Yes/No)	Key risks and mitigation	Fund (Yes/No)
City of Mandurah	Mandurah Waterfront Pool	Construction of a new estuary pool on the eastern foreshore. Comprising universally accessible toilet facilities, a playground, picnic tables and seating, and a stage/shelter for events.	2.000	2.500	2.500	7.000	Yes	None identified.	
Coffs Harbour City Council	Sportz Central Upgrades	Upgrade and expansion to provide an additional court and improvements to the existing facility expanding capacity.	1.500	2.000	2.800	6.300	Yes	None identified.	
North Sydney Council	North Sydney Swimming Pool	Redevelopment of the pool and amenities.	1.500	8.000	0.500	10.000	Yes	None identified.	
Richmond Valley Council	Casino Pool	Redevelopment to upgrade pool area, refurbishment of the plant and pump, upgrade of the change rooms, landscaping and wet play area.	1.000	1.000	1.200	3.200	Yes	None identified.	
City of Swan	Ellenbrook Pool and Recreation Centre	Construction of a 25m lap pool, learn to swim pool, informal pools, amenities for persons with reduced mobility. Construction of sports courts, group fitness rooms and a gym. Flexible sports change rooms will cater for groups of all-female teams. Dedicated family change rooms and crèche facilities.	5.000	5.000	15.000	25.000	Yes	None identified.	
City of South Perth	South Perth Aquatic Centre	To provide an integrated multipurpose sport and recreation facility with indoor and outdoor aquatics, indoor sports courts, education spaces, commercial spaces, entertainment spaces and health and wellbeing spaces.	5.500	7.000	7.500	20.000	Yes	None identified.	
The Uniting Church in Australia Property Trust	The Lakes College swimming pool development	The construction of a 25m swimming pool and facilities.	1.000	1.000		2.000	Yes	None identified.	
Greater Geelong City Council	Bellarine Aquatic Centre Pool	Construction of a new 50m swimming pool and associated amenities.	2.500	2.500	5.000	10.000	Yes	None identified.	
Port Macquarie Tidal Pool Committee Incorporated	Port Macquarie Tidal Pool	Construction of a tidal pool and associated amenities.	1.500	3.000		4.500	Yes	A feasibility study is currently being undertaken and is due to be completed in late June 2020. A possible cultural significance of the proposed site for the Aboriginal community is being investigated. Funding is proposed to commence later in 2020-21 to allow time for resolution of current issues.	
Georges River Council	Kogarah War Memorial Swimming Pool	Replacement of current leaking pool or location on new pool to be determined.	1.500	2.000	1.500	5.000	Yes	The current pool is closed. An independent engineer's investigation documented that the structural and geotechnical integrity of the pools and their foundations have deteriorated. The Georges River Council is undertaking a review of the future aquatic needs of the community. Funding is proposed to commence later in 2020-21 to allow time for resolution of current issues.	
Surf Coast Shire Council	Torquay Pool	Construction of an indoor swimming pool and facilities.	6.000	5.000	9.000	20.000	Yes	Results from a feasibility study will be presented and voted on at a Council meeting in late June 2020 to determine if this project will progress. Funding is proposed to commence later in 2020-21 to allow time for resolution of current issues.	
City of Wanneroo	Northern Suburbs Aquatic Facility	Details to be determined, pending outcome of feasibility study and completion of planning for new suburb.			5.000	5.000	Yes	The Department has been informed that construction of the new aquatic facility will commence in 2026-27. The new aquatic facility is planned for a future suburb within the City of Wanneroo which is still in the planning stage. The grant is proposed to have funding provided in 2022-23 to enable time for further planning.	
Total funding			29.000	39.000	50.000	118.000			



Australian Government
Department of Health

t^{erms} & C^{onditions}

FOR **STANDARD FUNDING AGREEMENT**

TABLE OF CONTENTS

1	Context and Term	3
1.1	Context of this Agreement	3
1.2	Compliance with Supplementary Conditions	3
1.3	Term of the Agreement	3
2	Your Organisation's responsibilities	4
2.1	Conduct of the Activity	4
2.2	Records	4
2.3	Reports	5
2.4	Provision of information and liaison	6
2.5	Acknowledgement of support	7
2.6	Use of Commonwealth logos	7
2.7	Copies of publications	7
2.8	Permission to publicise Funding	7
2.9	Protection of Personal Information	Error! Bookmark not defined.
2.10	Commonwealth collection of Personal Information	Error! Bookmark not defined.
3	Financial provisions	7
3.1	Payment of Funding	9
3.2	Department's rights to withhold or reduce Funding	9
3.3	Your Organisation's use of Funding	10
3.4	Prohibited use of Funding	11
3.5	Budget	12
3.6	Unspent or misspent Funds	13
3.7	Interest and debt	14
3.8	Other Contributions	14
3.9	Taxes, duties and government charges	15
4	Parties' relationship and Personnel	16
4.1	Working with Vulnerable Persons	16
4.2	Subcontractors to be approved	16
4.3	Your Organisation's Personnel and Specified Personnel	19
4.4	Relationship of the Parties	19
4.5	Notices	20
4.6	No restriction on advocacy activities	20
5	Assets	20
5.1	Assets	20
6	Access to premises and information	23
6.1	Access to premises and Material	23
6.2	Access to documents	24

7	Intellectual Property	24
7.1	Activity Material	24
7.2	Existing Material	24
7.3	Intellectual Property warranties	25
7.4	Moral Rights and performers' rights	25
7.5	Commonwealth Material	25
8	Confidentiality	26
8.1	Confidential Information not to be disclosed	26
8.2	Exceptions to non-disclosure	26
8.3	Security of Commonwealth's Confidential Information	27
8.4	Written undertakings	27
8.5	Period of confidentiality	27
9	Risk Management	28
9.1	Proportionate liability regime	28
9.2	Indemnity	28
9.3	Insurance	29
9.4	Conflicts	29
9.5	Related Parties	30
9.6	Your Organisation's warranties, representations and undertakings	31
10	Termination and disputes	32
10.1	Termination or reduction in scope for convenience	32
10.2	Termination for default	34
10.3	Procedure for dispute resolution	36
11	Interpretation	37
11.1	General interpretation of this Agreement	37
11.2	Schedule may contain multiple Activities	39
11.3	Survival	39
11.4	Definitions	40

Introduction

This Agreement is made in the following context:

- A. Subject to the Terms and Conditions and any Supplementary Conditions contained in this Agreement, the Department agrees to provide the Funding to Your Organisation to conduct each Activity.
- B. Your Organisation must use the Funding to conduct each Activity subject to the Terms and Conditions and any Supplementary Conditions specified in this Agreement.

The Parties agree as follows:

1 Context and Term

1.1 Context of this Agreement

- 1.1.1 This Agreement is made between Your Organisation and the Commonwealth, represented by the Department, for the performance of each Activity specified in the Schedule to this Agreement.
- 1.1.2 This Agreement consists of:
 - a. the Covering Letter;
 - b. these Terms and Conditions;
 - c. the Schedule, including any Supplementary Conditions specified in Annexure A to the Schedule; and
 - d. any documents incorporated by reference into these Terms and Conditions or the Schedule.
- 1.1.3 Provisions regarding the interpretation of this Agreement are contained in clause 11 [Interpretation].
- 1.1.4 In this Agreement, certain words and phrases have defined meanings. They are indicated by initial capital letters (for example, 'Activity').
- 1.1.5 Where a defined word or phrase is used only in one clause of these Terms and Conditions or only in a Supplementary Condition, it is usually defined in that clause or Supplementary Condition. All other definitions used in these Terms and Conditions are set out in clause 11.4 [Definitions] of these Terms and Conditions.

1.2 Compliance with Supplementary Conditions

- 1.2.1 Your Organisation must, in Your Organisation's performance of an Activity, comply with any Supplementary Conditions for that Activity.

1.3 Term of the Agreement

- 1.3.1 This Agreement commences on the Commencement Date and, unless terminated earlier, it expires on the Completion Date.

2 Your Organisation's responsibilities

2.1 Conduct of the Activity

- 2.1.1 Your Organisation must carry out each Activity in accordance with this Agreement and any Guidelines for the Activity and:
- a. within its Activity Period and so as to meet the Milestones and other timeframes specified in the Schedule for that Activity;
 - b. diligently, efficiently, effectively and in good faith to a high standard and so as to achieve the Aim of the Activity and assist in meeting the Program's Objectives; and
 - c. so as to ensure that Your Organisation and Your Organisation's Personnel comply with:
 - i. all applicable Laws, including maintaining all qualifications, permits, registrations and licences required for the lawful performance of the Activity;
 - ii. any codes of ethics, regulations or other industry standards relevant to the Activity; and
 - iii. any Department or Commonwealth policy of which the Department gives Your Organisation notice.
- 2.1.2 Your Organisation remains fully responsible for the performance of this Agreement and each Activity and will not be relieved of that responsibility because of any:
- a. involvement by the Commonwealth in the performance of the Activity;
 - b. payment of Funding to Your Organisation;
 - c. Subcontracting or Sub-subcontracting of the Activity;
 - d. acceptance by the Department of any Report; or
 - e. acceptance by the Department of any Specified Personnel.
- 2.1.3 Your Organisation acknowledges that under section 137.1 of the *Criminal Code Act 1995* (Cth), giving false or misleading information to the Commonwealth is a serious offence.

2.2 Records

- 2.2.1 Your Organisation must keep accurate records and accounts regarding each Activity including receipts, proof of purchase and invoices and other documents to show how Your Organisation spent the Funds and the Other Contributions for at least 7 years after the Activity End Date for that Activity (or any such longer period required by legislation).

2.3 Reports

- 2.3.1 Your Organisation must provide the Department with the Reports for an Activity containing the information, and at the times and in the manner, specified in Items E and F of the Schedule for the Activity.
- 2.3.2 A financial acquittal Report must be provided for each Activity at the completion of each Activity Period and at any other times specified in Item E.4 or F of the Schedule. Each financial acquittal Report must:
- a. be prepared in accordance with this Agreement and must be based on proper accounts and records;
 - b. show the receipt and expenditure of the Funding and any Other Contributions provided to Your Organisation for the Activity including:
 - i. where a Budget for the Activity is set out in Item D of the Schedule - showing the extent to which the expenditure for the Activity is in accordance with each of the expenditure items in that Budget; or
 - ii. where no Budget for the Activity is set out in Item D of the Schedule - showing to the Department's satisfaction the categories, and major items, of expenditure for the Activity;
 - c. verify that Your Organisation has spent the Funding provided for an Activity for that Activity and in accordance with this Agreement;
 - d. include any other information or documentation specified in Item E.4 of the Schedule or that the Department notifies Your Organisation that is required to meet its financial management and accountability requirements; and
 - e. be accompanied by a certification from Your Organisation's Chief Executive Officer (or equivalent) and Chief Financial Officer (or equivalent), or another member of its governing body who has authority to do so, that:
 - i. the Funds provided for an Activity have been spent for that Activity in accordance with this Agreement; and
 - ii. contains any other confirmations specified in Item E.4 of the Schedule.
- 2.3.3 If Item E.4 or F of the Schedule specifies that a financial acquittal Report for an Activity must be audited, it must be audited by an Approved Auditor in accordance with all applicable Australian Auditing Standards and in accordance with any other audit requirements specified in Item E.4 of the Schedule.
- 2.3.4 If a financial acquittal Report for an Activity is not required to be audited, the Department may require (up to 5 years after the Activity End Date for that Activity) Your Organisation to provide it with:
- a. the originals of the documents specified in clause 2.2.1; and

- b. a statutory declaration made in accordance with the *Statutory Declarations Act 1959* (Cth) detailing the expenditure of the Funding for the Activity in accordance with the Agreement.

2.3.5 If an Activity or this Agreement is terminated, Your Organisation must provide the Department with a financial acquittal Report for each terminated Activity within 30 days after the date of termination. Each such financial acquittal Report must satisfy the requirements in clause 2.3.2 and:

- a. where Item E.4 or F of the Schedule required any of the other financial acquittal Reports for the Activity to be audited, the financial acquittal Report required under this clause 2.3.5 must also satisfy clause 2.3.3; or
- b. where clause 2.3.5.a does not apply, clause 2.3.4 will apply to the financial acquittal Report required under this clause 2.3.5.

2.3.6 Your Organisation must ensure that all Reports, and any publications referred to in clause 2.7, which are provided by Your Organisation to the Department under this Agreement:

- a. before December 2014 - comply with the Level A accessibility requirements; and
- b. after December 2014 - comply with the Level AA accessibility requirements;

in the *Web Content Accessibility Guidelines 2.0*¹ except to the extent the Department notifies Your Organisation otherwise.

2.4 **Provision of information and liaison**

2.4.1 Your Organisation must:

- a. liaise with and provide the Department with any information that it reasonably requires, including information regarding Your Organisation's ability to conduct an Activity and Your Organisation's financial and non-financial viability; and
- b. comply with all of the Department's reasonable requests, directions and monitoring requirements,

in relation to this Agreement or any review or evaluation of the Program that is conducted by or for the Department.

2.4.2 Your Organisation must promptly advise the Department about any issue that may delay, stop or adversely affect an Activity.

¹ At the time of printing these Terms and Conditions, the *Web Content Accessibility Guidelines 2.0* were available on-line at <http://www.w3.org/TR/WCAG/>

2.5 Acknowledgement of support

2.5.1 Your Organisation must acknowledge the financial and other support Your Organisation has received from the Department for each Activity:

- a. in all publications, promotional and advertising materials, public announcements and activities published, made or carried out by Your Organisation, or on Your Organisation's behalf, which relate to the Activity and in any products, processes or inventions developed as a result of the Activity; and
- b. in the form that is approved by the Department prior to the publication of the acknowledgement;

except to the extent the Department notifies Your Organisation otherwise.

2.6 Use of Commonwealth logos

2.6.1 Your Organisation must not use a Commonwealth logo without the prior written consent of the Department to that use.

2.7 Copies of publications

2.7.1 Where Your Organisation has been provided with Funding to produce a publication as part of an Activity, Your Organisation must provide the Department with a final copy of the publication prior to it being published and comply with the relevant *Web Content Accessibility Guidelines 2.0* requirements specified in clause 2.3.6 as well as any additional publication requirements specified in Item B of the Schedule for the Activity.

2.8 Permission to publicise Funding

2.8.1 Your Organisation permits the Department to publicise and report on the awarding of the Funding to Your Organisation. This may include, but is not limited to, the Department publishing Your Organisation's name, the amount of the Funding for an Activity and the title, location and a brief description of an Activity in media releases, annual reports and on the Department's website.

2.8.2 Your Organisation must ensure that any Subcontractor or Sub-subcontractor expressly consents to the disclosure of its identity (and their Personal Information if the Subcontractor or Sub-subcontractor is an individual) to the Department. The consent obtained must extend to allowing the Commonwealth to publish, in the types of publications specified in this clause 2.8 [Permission to publicise Funding], information about the Subcontractor or Sub-subcontractor, including its identity and the existence and nature of the Subcontract or Sub-subcontract.

2.9 Protection of Personal Information

2.9.1 Your Organisation must, in conducting the Activity:

- a. not do any act or engage in any practice which, if done or engaged in by the Department, would be a breach of an Australian Privacy Principle;
 - b. comply with the obligations contained in the Australian Privacy Principles that apply to Your Organisation; and
 - c. comply with any of the Department's directions, guidelines, determinations or recommendations to the extent that they are consistent with the requirements in this clause 2.9 [Protection of Personal Information].
- 2.9.2 Your Organisation must notify the Department immediately if Your Organisation becomes aware of a breach or possible breach of any of Your Organisation's obligations under this clause 2.9 [Protection of Personal Information].
- 2.9.3 If Your Organisation provides a 'health service' (as defined in the Privacy Act 1988 (Cth)) to an individual, Your Organisation must:
- a. comply with the requirements in that Act regarding the use and disclosure of 'health information' or other 'sensitive information' (as those terms are defined in that Act) about the individual to the extent those requirements apply to Your Organisation;
 - b. disclose that 'health information' and any other 'sensitive information' to another Australian health service provider when the Department directs Your Organisation to do so; and
 - c. inform the individual:
 - i. as required by the Privacy Act 1988 (Cth); and
 - ii. at the time the information is collected,
 that the information may be disclosed to another health service provider if required by the Department.

2.10 Commonwealth collection of Personal Information

- 2.10.1 Personal Information may be collected from or about Your Organisation's Personnel and may be used or disclosed to administer, monitor, review, promote and evaluate this Agreement, the Programme and any other grant programmes administered by the Department and for directly-related purposes.
- 2.10.2 Your Organisation agrees to notify Your Organisation's Personnel that the Department may do the following for the purposes specified in clause 2.10.1:
- a. collect, use and disclose the Personal Information of Your Organisation's Personnel; and
 - b. disclose information about Your Organisation's Personnel to, and receive information about Your Organisation's Personnel from, any

Commonwealth or other entity that maintains the Department's electronic on-line grant management system or has a directly-related policy interest or a role in administering the Programme.

3 Financial provisions

3.1 Payment of Funding

- 3.1.1 Subject to parliamentary appropriation for the Program and Your Organisation's compliance with this Agreement, the Department will pay the Funding to Your Organisation for an Activity at the times, and in the manner, specified for that Activity in Item C and Item F of the Schedule.
- 3.1.2 Subject to any other Provision of this Agreement, a payment of Funds will be made for an Activity within 30 days of:
- a. Your Organisation satisfying the preconditions (if any) specified in the Schedule for that payment; and
 - b. the Department providing Your Organisation with an RCTI, or Your Organisation providing the Department with a tax invoice (or where a tax invoice is not required, an invoice), for that payment.
- 3.1.3 The Department is not responsible for providing any money for an Activity in excess of the Funding specified for that Activity in Item C of the Schedule.

3.2 Department's rights to withhold or reduce Funding

- 3.2.1 Where Your Organisation has not met a Milestone for an Activity by the date specified for that Milestone in the Schedule, the Department may withhold, in whole or part, the Funds remaining payable under this Agreement for the Activity until such time (if any) that the Milestone is completed to the Department's satisfaction.
- 3.2.2 The Department may, at its discretion and in addition to any other rights it has under this Agreement, withhold (either permanently or temporarily) or reduce one or more payments of Funds under this Agreement where Your Organisation has breached a provision of:
- a. this Agreement; or
 - b. another funding arrangement or agreement with the Department.
- 3.2.3 The Department may, at its discretion and in addition to any other rights it has under this Agreement, reduce the amount of Funding payable for an Activity under this Agreement:
- a. by the amount of any monetary or in-kind contributions (other than the Funding and the Other Contributions identified in the Schedule for the Activity) that Your Organisation receives, or is entitled to receive, for the Activity or another project that is similar to the Activity, including any contributions to which clause 3.8.5 applies; and/or

- b. by the amount of any:
 - i. money that Your Organisation owes to the Department; or
 - ii. money in respect of which a financial acquittal Report (or other financial acquittal documentation) is outstanding,
 under this Agreement or any other arrangement (whether contractual, statutory or otherwise) between Your Organisation and the Department.

3.2.4 Your Organisation must continue to perform Your Organisation's obligations under this Agreement notwithstanding any withholding or reduction of the Funding.

3.3 Your Organisation's use of Funding

3.3.1 Your Organisation must use the Funding provided for an Activity:

- a. solely for that Activity; and
- b. in accordance with this Agreement.

3.3.2 Your Organisation may use the Funding provided for the Activity for domestic travel and accommodation expenses that Your Organisation's Personnel incur in the course of the Activity provided that:

- a. the Department considers that the travel is reasonable and necessary for the Activity and in accordance with any Budget for the Activity;
- b. the travel is taken by the most cost-effective and direct means possible;
- c. the claimed rate for any accommodation, food and drink and incidentals is equal to or lower than the lowest rate for accommodation, food and drink and incidentals that the Commissioner of Taxation has determined for the relevant financial year for the purpose of ATO Ruling TR 2004/6 (which for the 2012/13 financial year are the rates in Table 1 of Taxation Determination 2012/17 available from www.ato.gov.au); and
- d. receipts are obtained for the cost of travel, accommodation, food and drink and incidentals and are provided to the Department upon request.

3.3.3 Your Organisation must not Commit or spend any part of the Funding for an Activity beyond its Activity End Date except for:

- a. the preparation of any of the Activity's Reports (other than any annual report specified in Item E.3 of the Schedule) that are due after the Activity End Date. If there is a Budget for the Activity, Your Organisation may only spend Funding on the preparation of that Activity's Reports to the extent that Budget provides for the preparation of those Reports; and

- b. any other Funding that the Department has previously agreed in writing may be Committed or spent by Your Organisation for the Activity beyond its Activity End Date.

3.3.4 Your Organisation must immediately deposit and hold all Funds in an Australian bank account that:

- a. is controlled solely by Your Organisation;
- b. enables the tracking of the Funds (that is, the records for the account must show how Your Organisation spent the Funding in undertaking the Activity); and
- c. complies with any other requirements set out in Item C of the Schedule; and

Your Organisation must notify the Department as soon as practicable if the details of this bank account change.

3.3.5 Your Organisation must keep separate financial accounts and records for each Activity that:

- a. identify all receipts and payments for the Activity; and
- b. enable the preparation of an income and expenditure statement for the Activity for each financial year or other required period as detailed in Item E4 of the Schedule (including in comparison with any Budget that is set out in Item D of the Schedule for the Activity) except to the extent otherwise notified by the Department.

3.3.6 If:

- a. the Department, acting reasonably, considers that Your Organisation is in breach of a Provision of this Agreement; or
- b. the Department is considering terminating or reducing the scope of this Agreement under clause 10.1 [Termination or reduction in scope for convenience],

the Department may direct Your Organisation, by written notice, to suspend Your Organisation's Commitment and expenditure of some or all of the Funds as specified in the notice and Your Organisation must fully comply with that notice.

3.4 Prohibited use of Funding

3.4.1 Except to the extent that the Department has otherwise agreed in writing, Your Organisation must not use the Funding provided for an Activity:

- a. for any international travel or expenses related to international travel;
- b. to pay fines or penalties;
- c. to cover the costs of any legal action or proceedings or to settle or agree to consent orders in relation to, or otherwise resolve, any proceeding or

application for reinstatement and/or wrongful dismissal by a current or former employee;

- d. to lend or gift money or Assets to any person;
- e. to provide redundancy payments, advances, commissions, bonuses, performance based benefits or similar benefits to any person;
- f. to pay sitting fees to any person, including a member of Your Organisation's governing board for his or her attendance at a meeting, or involvement in the business of the board;
- g. for a sale and lease back arrangement;
- h. to lease an item of property that Your Organisation owns;
- i. for the purpose of establishing a subsidiary or other commercial entity or activity;
- j. to pay Your Organisation any fee or charge that is calculated on a basis other than the costs Your Organisation actually incurs in the performance of the Activity; or
- k. to provide for the future replacement of any asset or to purchase or provide for the future replacement of any Real Property.

3.4.2 For the purposes of clause 3.4.1.j, and subject to any other Provision of this Agreement, 'costs Your Organisation actually incurs in the performance of the Activity' includes the proportion of any general operational overhead or expense of Your Organisation that is reasonably required for, and thus attributable to, Your Organisation's performance of the Activity. The Department may require Your Organisation to demonstrate that Your Organisation's attribution of an operational overhead or expense to the Activity is reasonable.

3.4.3 Your Organisation must not use any of the following as 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 Department's obligations under this Agreement; or
- c. any Assets, Real Property or Intellectual Property rights in Activity Material;

except to the extent that the Department has agreed in writing otherwise.

3.5 **Budget**

3.5.1 Subject to clause 3.5.2, where there is a Budget for an Activity, Your Organisation must only spend the Activity Funding that is specified in that Budget in accordance with that Budget.

- 3.5.2 Where there is a Budget for an Activity, Your Organisation may transfer Funding for the Activity between the expenditure items of the Activity's Budget, up to the percentage (if any) specified in Item D without the Department's prior written approval.
- 3.5.3 Where there is a Budget for an Activity, Your Organisation must seek the Department's prior written approval for:
- a. any transfer of Funding within the Activity's Budget where no percentage is specified in Item D for that Budget;
 - b. any transfer of Funding between expenditure items in the Activity's Budget that exceeds the percentage specified in Item D of the Schedule for that Budget; and
 - c. any transfer of Funding between the Budgets for two or more Activities.

3.6 Unspent or misspent Funds

- 3.6.1 If at any time the Department determines, having discussed (or made a reasonable attempt to discuss) the relevant aspects of this clause 3.6 with Your Organisation, that:
- a. Your Organisation has an amount of Funding for an Activity that has not been, and will not be, spent or Committed for the Activity in accordance with this Agreement including as a result of Your Organisation having a Funding surplus and/or underspend for the Activity;
 - b. the Department has overpaid an amount of Funding to Your Organisation; or
 - c. Your Organisation has spent or Committed an amount of Funding other than:
 - i. for the Activity for which it was provided; and
 - ii. in accordance with this Agreement,
 then at the Department's discretion:
 - d. Your Organisation must repay that amount of Funding to the Department within 30 days after receiving a notice from the Department requiring Your Organisation to do so;
 - e. Your Organisation must deal with that amount of Funding as directed by the Department; or
 - f. the Department may reduce one or more further payments of Funds for an Activity by up to that amount of Funding.

3.7 Interest and debt

- 3.7.1 In this clause 3.7 [Interest and debt], 'Interest' means interest calculated on a daily compounding basis at the 90 day bank-accepted bill rate (available from the Reserve Bank of Australia) less 10 basis points.
- 3.7.2 If Your Organisation is required to pay an amount to the Department under a Provision of this Agreement and does not repay that amount in full by the date referred to in that provision, Your Organisation must pay Interest on the outstanding amount until it is paid in full, except to the extent the Department notifies Your Organisation in writing otherwise.
- 3.7.3 Your Organisation acknowledges that any Interest payable under a Provision of this Agreement represents a reasonable and genuine pre-estimate of the loss to the Department.
- 3.7.4 Your Organisation must, upon the Department's request, pay an amount owed or payable to the Department, or which the Department is entitled to recover from Your Organisation, under this Agreement without prejudice to any other rights available to the Department (whether under this Agreement or Law) as a debt due by Your Organisation to the Department without further proof of the debt by the Department being necessary.

3.8 Other Contributions

- 3.8.1 Your Organisation must ensure that any Other Contributions specified in Item D of the Schedule for an Activity are obtained or provided for that Activity at the times and in the amounts specified in Item D of the Schedule. If no times are specified in Item D of the Schedule for the provision of Other Contributions, then Your Organisation must ensure that those Other Contributions are obtained or provided in sufficient time to enable the Activity to be completed in accordance with this Agreement.
- 3.8.2 Your Organisation must use the Other Contributions specified in the Budget for an Activity for that Activity and in accordance with any Budget set out in Item D of the Schedule for that Activity.
- 3.8.3 If Your Organisation does not obtain or provide an amount of Other Contributions specified in Item D of the Schedule for an Activity by the date specified in Item D for that amount, or Your Organisation is otherwise unable to obtain or provide that amount of Other Contributions in time to enable completion of the Activity, then the Department may:
- a. withhold payment of some or all of the Funding for that Activity until Your Organisation has obtained or provided that amount of Other Contributions;
 - b. reduce the amount of Funding payable under the Agreement for that Activity; or
 - c. terminate the affected Activity or this Agreement in accordance with clause 10.2 [Termination for default].

3.8.4 Subject to the Department notifying Your Organisation otherwise, Your Organisation must notify the Department within 14 days after entering into any arrangement or agreement under which Your Organisation receives, or is entitled to receive, any additional monetary or in-kind contributions for an Activity that are not specified as Other Contributions for that Activity in Item D of the Schedule. The notice must include the amount of any such additional contributions and the purpose for which they will be used.

3.8.5 Any additional contributions referred to in clause 3.8.4 that Your Organisation becomes entitled to receive for an Activity constitute Other Contributions for that Activity for the purposes of the Agreement. Consistent with clause 11.1.6, Item D of the Schedule will be deemed to be varied accordingly on the earlier of the date that Your Organisation receives the additional contributions or the date that Your Organisation notifies the Department of those contributions under clause 3.8.4.

3.9 Taxes, duties and government charges

3.9.1 In this clause 3.9 [Taxes, duties and government charges]:

- a. the term 'GST Act' means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);
- b. the terms 'supply', 'supplier', 'taxable supply', 'tax invoice', 'GST', 'input tax credit', 'decreasing adjustment' and 'adjustment note' have the same meaning as given in the GST Act;
- c. the term 'RCTI' means a 'recipient created tax invoice' as defined in the GST Act. For the purpose of this Agreement, an RCTI is a tax invoice belonging to a class of tax invoices that the Australian Commissioner of Taxation has determined in writing may be issued by the receiver of the supply; and
- d. 'receiver of the supply' has the same meaning as the term 'recipient' has in the GST Act.

3.9.2 Your Organisation must pay all taxes, duties and government charges imposed or levied in Australia or overseas in connection with the performance of this Agreement, except as provided by this clause 3.9 [Taxes, duties and government charges].

3.9.3 If one Party (for the purposes of this clause 3.9 [Taxes, duties and government charges], 'the supplier') makes a taxable supply to the other Party (for the purposes of this clause 3.9 [Taxes, duties and government charges], the 'receiver of the supply') under this Agreement the receiver of the supply will pay without set-off, on provision of a tax invoice or RCTI, an additional amount to the supplier equal to the GST imposed on the supply in question.

3.9.4 If an amount on account of GST has been included in the consideration for a supply under this Agreement, the amount of GST is as specified in Items C and/or F of the Schedule.

- 3.9.5 If an amount on account of GST has been included in the consideration for a supply under this Agreement and the supply is not a taxable supply for any reason, the supplier must, on demand, refund the amount paid on account of GST to the receiver of the supply.
- 3.9.6 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.
- 3.9.7 The Parties acknowledge and agree that each Party:
- a. is registered for GST purposes;
 - b. has quoted its Australian Business Number to the other; and
 - c. must tell the other of any changes to the matters covered by this clause 3.9.7.
- 3.9.8 The Department (as the receiver of the supply) will issue RCTI(s) and any adjustment notes for any taxable supplies Your Organisation makes to the Department under this Agreement within 28 days of the Department determining the value of the taxable supplies in question.
- 3.9.9 Your Organisation must not issue tax invoices or adjustment notes for taxable supplies Your Organisation makes to the Department under this Agreement.
- 3.9.10 Both Parties must comply with the determination scheduled to GST Ruling 2000/10.
- 3.9.11 The Department will not issue RCTI(s) or adjustment notes for taxable supplies Your Organisation makes to the Department under this Agreement at any time that either Party fails to comply with any of the requirements in clauses 3.9.7 to 3.9.11.

4 Parties' relationship and Personnel

4.1 Working with Vulnerable Persons

- 4.1.1 Your Organisation agrees to comply, and ensure that Your Organisation's Personnel comply, with:
- a. any obligations under any Laws relating to working or contact with vulnerable persons or police checks; and
 - b. any other requirements in the Supplementary Conditions regarding working or contact with vulnerable persons or police checks.

4.2 Subcontractors to be approved

- 4.2.1 Your Organisation must not Subcontract any of Your Organisation's obligations under this Agreement without the Department's prior written approval except to the extent the Schedule otherwise permits.

- 4.2.2 The Department may impose any conditions it considers appropriate when giving its approval under clause 4.2.1, and Your Organisation must comply with those conditions.
- 4.2.3 The Subcontractors, if any, specified or referred to in Item I of the Schedule for an Activity are approved by the Department to undertake the part of the Activity specified in Item I of the Schedule.
- 4.2.4 If the Department requests, Your Organisation must provide the Department with details of all Subcontractors (and any Sub-subcontractors) engaged in the performance of each Activity.
- 4.2.5 Unless the Department agrees otherwise in writing, where a Subcontractor that is specified or referred to in Item I of the Schedule or that is otherwise approved by the Department under this clause 4.2 [Subcontractors to be approved] is unable to perform the Subcontracted work, Your Organisation must notify the Department of this inability no later than 7 days after Your Organisation becomes aware of it. Your Organisation must also notify the Department of any inability of a Sub-subcontractor to perform the part of an Activity that has been Sub-subcontracted to it within 7 days after Your Organisation becomes aware of that inability.
- 4.2.6 The Department may, at any time:
- a. revoke its approval of a Subcontractor or Sub-subcontractor; and/or
 - b. require Your Organisation to:
 - i. replace a Subcontractor (whether or not the Subcontractor was originally approved by the Department); or
 - ii. require the relevant Subcontractor to arrange for the replacement of a Sub-subcontractor,

in which case Your Organisation must, at no additional cost to the Department and at the earliest opportunity, secure a suitable replacement Subcontractor or require the Subcontractor to arrange for a suitable replacement Sub-subcontractor. The replacement Subcontractor or Sub-subcontractor must be a person acceptable to the Department, except to the extent the Schedule specifies or the Department agrees otherwise in writing.
- 4.2.7 If Your Organisation does not comply with Your Organisation's obligations under clause 4.2.6, the Department may terminate the affected Activity or this Agreement in accordance with clause 10.2 [Termination for default].
- 4.2.8 Your Organisation must:
- a. have a Subcontract with each Subcontractor; and
 - b. ensure in respect of all of Your Organisation's Subcontracts (including any that the Department was not required to approve under clause 4.2.1) that:

- i. each Subcontract gives effect to, and is not inconsistent with, Your Organisation's obligations and the Department's rights under this Agreement;
- ii. without limiting the operation of clause 4.2.8.b.i, each Subcontract contains a right of termination to take account of the Department's rights of termination and reduction under clause 10 [Termination] and Your Organisation must, where the Department considers appropriate, make use of that right in the event of termination or reduction in scope of an Activity or this Agreement;
- iii. each Subcontractor has the necessary relevant expertise and the appropriate types and amounts of insurance to perform the work it is engaged by Your Organisation to perform;
- iv. each Subcontractor is prohibited under its Subcontract with Your Organisation from any further subcontracting in respect of an Activity (whether by it or a Sub-subcontractor) without the Department's prior written consent, which the Department may give subject to any conditions it considers appropriate; and
- v. each Subcontract requires the Subcontractor to acknowledge that it may be considered a 'Commonwealth service provider' for the purposes of the *Ombudsman Act 1976* (Cth) and subject to investigation by the Ombudsman under that Act. The Department will not be liable for the cost of any such investigation by the Ombudsman;

except to the extent that the Department has agreed in writing otherwise.

- 4.2.9 If the Department requests a copy of a Subcontract or a Sub-subcontract, Your Organisation must provide a copy of the Subcontract or Sub-subcontract to the Department within 7 days and at no additional expense to the Department.
- 4.2.10 If the Department consents to the engagement of a Sub-subcontractor under clause 4.2.8.b.iv, Your Organisation must ensure that the Sub-subcontract with that Sub-subcontractor imposes requirements on that Sub-subcontractor that are substantially the same as those imposed on a Subcontractor under clause 4.2.8. For this purpose, references in clause 4.2.8 to:
- a. 'Your Organisation' are to be read as references to the entity engaging the Sub-subcontractor;
 - b. 'Subcontractor' are to be read as references to the Sub-subcontractor being engaged; and
 - c. 'Subcontract' are to be read as references to the Sub-subcontract under which the Sub-subcontractor is being engaged.
- 4.2.11 Your Organisation must not enter into a Subcontract under this Agreement with a Subcontractor named by the Director of the Equal Opportunity for

Women in the Workplace Agency as an employer currently not complying with the *Equal Opportunity for Women in the Workplace Act 1999* (Cth).

4.3 Your Organisation's Personnel and Specified Personnel

4.3.1 Your Organisation agrees that the Specified Personnel listed in Item J of the Schedule for an Activity will perform the work in relation to the Activity as specified in this Agreement, including as specified in Item J of the Schedule for that Activity.

4.3.2 If:

- a. Your Organisation receives a notice from the Department requesting Your Organisation to remove a natural person who is a member of Your Organisation's Personnel (including Specified Personnel) from an Activity or Your Organisation and the Parties have first discussed (or the Department has first made a reasonable attempt to discuss with Your Organisation) the removal of that person from that Activity or Your Organisation; or
- b. any Specified Personnel are unable to undertake work in respect of an Activity as required under this Agreement;

Your Organisation must remove that person as requested by the Department, or notify the Department of that inability, within 7 days after Your Organisation receives that notice or becomes aware of that inability. Your Organisation must then replace that person with another natural person who is a member of Your Organisation's Personnel, and who is acceptable to the Department, at no additional cost to the Department and within 7 days after:

- c. in the case of clause 4.3.2.a - Your Organisation's receipt of the notice; and
- d. in the case of clause 4.3.2.b - Your Organisation's notice to the Department.

4.3.3 If Your Organisation does not comply with clause 4.3.2, the Department may terminate the affected Activity or this Agreement in accordance with clause 10.2 [Termination for default].

4.4 Relationship of the Parties

4.4.1 This Agreement does not make Your Organisation the Commonwealth's employee, partner or agent.

4.4.2 This Agreement does not give Your Organisation any power or authority to bind or represent the Commonwealth in any way or for any purpose. Your Organisation must not, and must ensure that Your Organisation's Personnel do not, misrepresent themselves, as being the Commonwealth's officer, employee, partner or agent, or as otherwise able to bind or represent the Commonwealth.

4.5 Notices

- 4.5.1 A Party ('First Party') notifying, or giving notice, to the other Party under this Agreement must do so in writing and that notice must be:
- a. hand delivered or sent by pre-paid post, facsimile or email to the other Party's address specified in Item L of the Schedule (or any other address which that other Party has most recently notified to the First Party); and
 - b. marked for the attention of the other Party's contact officer specified in Item L of the Schedule (or any other contact officer which that other Party has most recently notified to the First Party).
- 4.5.2 A notice given in accordance with clause 4.5.1 is received:
- a. if hand delivered, on delivery to the relevant address;
 - b. if sent by pre-paid post, on delivery to the relevant address; or
 - c. if sent by email or facsimile, when received by the addressee or when the sender's computer or facsimile machine generates written notification that the notice has been received by the addressee, whichever is earlier.

4.6 No restriction on advocacy activities

- 4.6.1 The Department confirms that, subject to this clause 4.6 [No restriction on advocacy activities]:
- a. no right or obligation arising under this Agreement should be interpreted as limiting Your Organisation's ability to enter into public debate or criticism of the Commonwealth or its agencies, employees, servants or agents;
 - b. the Department does not require Your Organisation to obtain advance approval of any involvement by Your Organisation in public debate or advocacy activities; and
 - c. the Department will only exercise its rights under clause 4.3 [Your Organisation's Personnel and Specified Personnel] on reasonable grounds.
- 4.6.2 Nothing in this clause 4.6 [No restriction on advocacy activities] limits or derogates from Your Organisation's obligations under clause 2.9 [Protection of Personal Information] or clause 8 [Confidentiality].

5 Assets

5.1 Assets

- 5.1.1 Your Organisation may only use the Funding provided for an Activity to Acquire an Asset for that Activity if:
- a. that Asset is specified for that Activity in Item H of the Schedule; or

- b. the Department has given its prior written consent to the Acquisition of that specific Asset with that Funding. Any such consent may be given by the Department subject to any conditions it considers appropriate.
- 5.1.2 If the Commonwealth owns the Asset, Your Organisation may only deal with the Asset as directed by the Department, and clauses 5.1.5 and 5.1.7 to 5.1.9 do not apply to the Asset, except to the extent that the Department has agreed in writing otherwise.
- 5.1.3 If a third party owns the Asset, Your Organisation must ensure that the terms of the lease, hire or other arrangement for the Asset are consistent with clause 5.1.4 and clauses 5.1.7 to 5.1.9 do not apply to the Asset.
- 5.1.4 In respect of each Asset for an Activity, for the duration of the relevant Activity Period Your Organisation must:
- a. use the Asset for the purposes of the Activity and in accordance with this Agreement;
 - b. not encumber or Dispose of the Asset (or otherwise deal with the Asset inconsistently with this clause 5 [Assets]) without the Department's prior written approval;
 - c. hold the Asset securely and safeguard it against theft, loss, damage or unauthorised use;
 - d. maintain the Asset in good working order;
 - e. maintain insurance for the Asset to its full replacement cost noting the Department's interest, if any, in the Asset under this Agreement;
 - f. maintain any registration or licensing of the Asset required by Law;
 - g. be responsible for, and bear all risks relating to, the use or Disposal of the Asset (where the Asset is not subject to clause 5.1.3 and noting the Disposal must be approved by the Department);
 - h. comply with the terms of any lease, hire or other agreement relating to the Asset; and
 - i. include the Asset in a register of Assets in the form of and containing the details described in Item H of the Schedule and provide that register to the Department within 7 days after a request from the Department to do so.
- 5.1.5 If Your Organisation Disposes of an Activity's Asset during its Activity Period, the greater of the following proportions form part of the Funding and must be used to perform the Activity:
- a. the proportion of the sale proceeds for 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 paid for with the Funding or Other Departmental Monies.

- 5.1.6 If, during the Activity Period for an Activity, an Asset for that Activity is lost, damaged or destroyed Your Organisation must promptly:
- a. advise the Department of the loss, damage or destruction of the Asset; and
 - b. reinstate, or seek the reinstatement of, the Asset, including from the proceeds of insurance, except to the extent the Department notifies Your Organisation otherwise,
- and this clause 5 [Assets] continues to apply to the reinstated Assets.
- 5.1.7 On:
- a. expiry of the Activity Period for an Activity; or
 - b. the earlier termination of that Activity or this Agreement;
- the Department may, by notice, require Your Organisation to deal with one or more of the Activity's Assets as the Department may, at its sole discretion, direct. This may involve Your Organisation transferring an Asset to a third party.
- 5.1.8 Subject to clause 5.1.7, if on expiry of the Activity Period for an Activity, or the earlier termination of that Activity or this Agreement, an Asset for that Activity has not been fully depreciated, the Department may, by written notice, require Your Organisation to:
- a. pay to the Department within 30 days after the Activity End Date for that Activity, an amount equal to the proportion of the Undepreciated value of the Asset that is equivalent to the proportion of the Asset's cost that was paid for with the Funding or Other Commonwealth Monies;
 - b. sell the Asset at a public auction, or for market value using an arms-length process, and pay to the Department within 30 days after the Asset's sale, the proportion of the sale proceeds (minus an amount equal to the reasonable Disposal costs for the Asset) that is equal to the proportion of the Asset's cost that was paid for with the Funding or Other Departmental Monies;
 - c. continue to use the Asset, or the amount specified in clause 5.1.8.b, for a purpose approved in writing by the Department and subject to any conditions imposed by the Department; and/or
 - d. transfer the Asset to a third party for that third party to use the asset for a purpose approved in writing by the Department and subject to any conditions imposed by the Department.
- 5.1.9 Amounts payable to the Department under clause 5.1.8.b form part of the Funding and are recoverable as such.

6 Access to premises and information

6.1 Access to premises and Material

- 6.1.1 Subject to clause 6.1.3, Your Organisation must allow access to:
- a. the Department;
 - b. the Auditor-General;
 - c. the Freedom of Information Commissioner, Information Commissioner and Privacy Commissioner;
 - d. the Ombudsman; and
 - e. any person authorised by a person described in clause 6.1.1.a to 6.1.1.d, to sites or premises at which records and Materials associated with this Agreement are stored or work related to an Activity is undertaken.
- 6.1.2 Subject to clause 6.1.3, Your Organisation must arrange for the persons listed in clause 6.1.1 to:
- a. inspect and copy Materials in Your Organisation's possession or control; and
 - b. access any Assets and Your Organisation's Personnel, wherever they may be located,
- for purposes associated with this Agreement or any review of Your Organisation's performance of this Agreement.
- 6.1.3 The rights referred to in clauses 6.1.1 and 6.1.2 are, wherever practicable, subject to:
- a. the Department providing Your Organisation (or, where applicable, a Subcontractor or Sub-subcontractor) with 3 business days' prior notice (or, if a longer period of notice is agreed in writing by the Department, that longer period of notice); and
 - b. Your Organisation's (or, where applicable, a Subcontractor's or Sub-subcontractor's) reasonable security procedures,
- except where a person listed in clause 6.1.1 or his or her delegate believes that the Activity poses a risk to the safety, health or well-being of any person or there is a suspected or actual breach of Law.
- 6.1.4 Nothing in this Agreement limits or restricts in any way any duly authorised function, power, right or entitlement of the persons listed in clause 6.1.1 or their respective delegates.

6.2 Access to documents

- 6.2.1 In this clause 6.2 [Access to documents], ‘document’ and ‘Commonwealth contract’ have the same meaning as in the *Freedom of Information Act 1982* (Cth).
- 6.2.2 This clause 6.2 [Access to documents] only applies to the Agreement if it is a ‘Commonwealth contract’ as defined in the *Freedom of Information Act 1982* (Cth).
- 6.2.3 Where the Commonwealth has received a request for access to a document created by or in the possession of, Your Organisation, a Subcontractor or a Sub-subcontractor that relates to the performance of this Agreement (and not to the entry into this Agreement), the Department may at any time by notice require Your Organisation to provide, or arrange for the provision of, the document to the Department and Your Organisation must, at no additional cost to the Commonwealth, promptly comply with the notice.
- 6.2.4 Your Organisation must include in any Subcontract relating to the performance of this Agreement, and ensure that any Sub-subcontracts contain, provisions that will enable Your Organisation to comply with Your Organisation’s obligations under this clause 6.2 [Access to documents].

7 Intellectual Property

7.1 Activity Material

- 7.1.1 Subject to this clause 7 [Intellectual Property], as between the Commonwealth and Your Organisation, Intellectual Property rights in the Activity Material vest, or will vest upon creation, in Your Organisation.
- 7.1.2 Your Organisation grants to (or must procure for) the Commonwealth a perpetual, irrevocable, royalty-free and licence fee-free, world-wide, non-exclusive licence (including a right of sub-licence) to use, reproduce, modify, adapt, publish, perform, broadcast, communicate and exploit the Activity Material for any purpose.
- 7.1.3 Your Organisation agrees that the licence granted in clause 7.1.2 includes a right for the Commonwealth to license the Activity Material in respect of an Activity to the public under an Open Access Licence, except to the extent otherwise specified in Item B of the Schedule in respect of that Activity.

7.2 Existing Material

- 7.2.1 Clause 7.1.1 does not affect the ownership of Intellectual Property rights in any Existing Material. However, Your Organisation grants (or must procure for) the Commonwealth, a perpetual, irrevocable, royalty-free and licence fee-free, world-wide, non-exclusive licence (including a right of sub-licence) to use, reproduce, modify, adapt, publish, perform, broadcast, communicate and exploit the Existing Material for an Activity as part of, or in conjunction with, the Activity Material for that Activity.

- 7.2.2 Your Organisation agrees that the licence granted in clause 7.2.1 includes a right for the Commonwealth to license the Existing Material for an Activity to the public under an Open Access Licence as part of, or in conjunction with, the Activity Material for that Activity, except to the extent otherwise specified in Item B of the Schedule in respect of that Activity.

7.3 Intellectual Property warranties

- 7.3.1 Your Organisation represents and warrants that the following will not infringe the Intellectual Property rights of any person:
- a. Your Organisation's performance of Your Organisation obligations under this Agreement; and
 - b. the Commonwealth's use of Activity Material and Existing Material in accordance with the licences granted or procured by Your Organisation under this clause 7 [Intellectual Property].
- 7.3.2 If the Department requires, Your Organisation must bring into existence, sign or otherwise deal with any document which the Department considers is necessary or desirable to give effect to this clause 7 [Intellectual Property].

7.4 Moral Rights and performers' rights

- 7.4.1 Your Organisation must obtain from:
- a. each author of Activity Material and Existing Material; and
 - b. any person who undertakes a Performance that either relates to an Activity or is incorporated in the Activity Material or Existing Material,
- a written consent which extends directly or indirectly to the performance of the Specified Acts by the Commonwealth or any person claiming under or through the Commonwealth (whether occurring before or after the consent is given) and, Your Organisation must upon request, provide the executed original of any such consent to the Department.

7.5 Commonwealth Material

- 7.5.1 The Commonwealth owns:
- a. the Intellectual Property rights in the Commonwealth Material provided for the Activity; and
 - b. the original and all copies of the Commonwealth Material;
- except as otherwise specified in Item B of the Schedule for an Activity.
- 7.5.2 Except as otherwise specified in Item B of the Schedule for an Activity, the Commonwealth grants to Your Organisation a royalty-free and licence fee-free, world-wide, non-exclusive licence (including a limited right to sub-license a Department approved Subcontractor or Sub-subcontractor) to use, reproduce, modify, adapt and communicate the Commonwealth Material

provided for that Activity solely for the purpose of performing that Activity in accordance with this Agreement.

- 7.5.3 Your Organisation must use the Commonwealth Material strictly in accordance with any conditions or restrictions of which the Department notifies Your Organisation.
- 7.5.4 Your Organisation must keep safe all Commonwealth Material in Your Organisation's custody or control and accept all risks relating to that Material.

8 Confidentiality

8.1 Confidential Information not to be disclosed

- 8.1.1 Subject to clause 8.2.1, a Party must not disclose Confidential Information of the other Party to a third party, without the prior written consent of that other Party, who may give that consent subject to conditions.

8.2 Exceptions to non-disclosure

- 8.2.1 A Party can disclose Confidential Information of the other Party to the extent that it:
- a. is disclosed by the Party to its Personnel solely in order to comply with obligations, or to exercise rights, under this Agreement;
 - b. is disclosed by the Party to its internal management Personnel, solely to enable effective management or auditing of Agreement-related activities;
 - c. is disclosed by the Department to the responsible Minister;
 - d. is disclosed by the Party, in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia;
 - e. is shared by the Department within the Commonwealth, or with another Government Agency, where this serves the Commonwealth's or the Government Agency's legitimate interests;
 - f. is authorised or required by Law to be disclosed;
 - g. is disclosed by the Department in order to protect the health or safety of any person; or
 - h. is in the public domain otherwise than due to a breach of this clause 8 [Confidentiality].
- 8.2.2 Where a Party discloses Confidential Information to another person under clauses 8.2.1.a to 8.2.1.d and 8.2.1.g, the disclosing Party must notify the receiving person that the information is confidential.
- 8.2.3 In the circumstances referred to in clauses 8.2.1.a and 8.2.1.b, 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 8 [Confidentiality]).

8.3 Security of Commonwealth's Confidential Information

8.3.1 Your Organisation agrees to secure all of the Commonwealth's Confidential Information against loss and unauthorised access, use, modification or disclosure.

8.4 Written undertakings

8.4.1 Your Organisation must, on request by the Department at any time, arrange for:

- a. Your Organisation's Personnel; or
- b. any person (other than the Parties) who has a legal or equitable right, interest, power or remedy in connection with the Agreement,

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

8.5 Period of confidentiality

8.5.1 The obligations under this clause 8 [Confidentiality] will continue, notwithstanding the expiry or termination of an Activity or this Agreement:

- a. in relation to an item of information described in Item K of the Schedule – for the period set out in respect of that item, and if no such period is specified, in perpetuity;
- b. subject to clause 8.5.1.c, in relation to any item of information agreed by the Parties to be Confidential Information and not described in Item K of the Schedule – 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; and
- c. in relation to Secret and Sacred Material, in perpetuity.

8.5.2 The obligations contained in this clause 8 [Confidentiality] are in addition to those specified in clause 6.2 [Access to documents] and clause 2.9 [Protection of Personal Information].

9 Risk Management

9.1 Proportionate liability regime

- 9.1.1 To the extent permitted by Law, the operation of any legislative proportionate liability regime is excluded in relation to any claim against Your Organisation under or in connection with this Agreement.

9.2 Indemnity

- 9.2.1 Your Organisation indemnifies the Commonwealth and the Commonwealth's Personnel from and against any:

- a. loss or liability incurred by the Commonwealth or its Personnel;
- b. loss of or damage to property of the Commonwealth or its Personnel; or
- c. loss or expense incurred by the Commonwealth or its Personnel in dealing with any claim against it or them 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 of Your Organisation's obligations or warranties in this Agreement;
 - e. any act or omission by Your Organisation or Your Organisation's Personnel in connection with this Agreement, where there was fault (including, any negligent or other tortious or unlawful act or omission) on the part of the person whose conduct gave rise to that liability, loss, damage or expense;
 - f. Your Organisation or Your Organisation's Personnel's Acquisition or use of the Assets, the Real Property, the Activity Material and/or the Existing Material; or
 - g. the use by the Commonwealth or its Personnel of the Activity Material or Existing Material in accordance with this Agreement, and/or any claim by a third party relating to:
 - i. a person's rights regarding a Performance that relates to an Activity; or
 - ii. any ownership or right to use Intellectual Property rights, Moral Rights or performers rights in the Activity Material or Existing Material (including any Performance that is incorporated into that Material).
- 9.2.2 Your Organisation's liability to indemnify the Commonwealth and the Commonwealth's Personnel under clause 9.2.1 will be reduced proportionately to the extent that any negligent or other tortious or unlawful act or omission of the Commonwealth or its Personnel contributed to the relevant liability, loss, damage or expense.

- 9.2.3 The right of the Commonwealth or its Personnel to be indemnified under clause 9.2.1:
- a. is in addition to, and not exclusive of, any other right, power or remedy provided by Law; and
 - b. does not entitle the Commonwealth or its Personnel to be compensated in excess of the amount of the relevant liability, loss, damage, or expense.

9.3 Insurance

- 9.3.1 Your Organisation must take out and maintain for the period specified in clause 9.3.2 or 9.3.3 as applicable, all types and amounts of insurance necessary to cover Your Organisation's obligations in relation to an Activity under this Agreement (including those which survive the expiration or earlier termination of this Agreement), including the types and amounts of insurance specified in Item G of the Schedule, or the Supplementary Conditions, in respect of the Activity.
- 9.3.2 If Your Organisation takes out a 'claims made policy', which requires all claims and any fact situation or circumstance that might result in a claim to be notified within the period of insurance, Your Organisation must maintain the policy during the Term of this Agreement and a policy in like terms for 7 years, plus any longer period specified in Item G for the relevant Activity, after the expiry or early termination of this Agreement.
- 9.3.3 If Your Organisation takes out an 'occurrence' policy, which requires the circumstances to which a claim relates to occur during the period of insurance whilst the notification of the event can occur at any time subsequently, Your Organisation must maintain the policy throughout the Term of this Agreement.
- 9.3.4 Your Organisation must, within 7 days after a request from the Department, provide to the Department any relevant certificates of currency for inspection.

9.4 Conflicts

- 9.4.1 Your Organisation warrants that, to the best of Your Organisation's knowledge after making diligent inquiry, at the Commencement Date no Conflict exists or is likely to arise in Your Organisation, or Your Organisation's Personnel's, performance of this Agreement.
- 9.4.2 If, during the Term of this Agreement, a Conflict arises, or appears likely to arise, in respect of Your Organisation or any of Your Organisation's Personnel, Your Organisation must:
- a. immediately notify the Department of the Conflict making a full disclosure of all relevant information relating to the Conflict and setting out the steps Your Organisation proposes that Your Organisation or

Your Organisation's Personnel will take to resolve or otherwise deal with the Conflict; and

- b. take such steps as have been proposed by Your Organisation, or at the discretion of the Department, take such steps as the Department may reasonably require to resolve or otherwise deal with the Conflict.

9.4.3 If Your Organisation fails to notify the Department as required under clause 9.4.2, or is unable or unwilling to resolve or deal with the Conflict as required, the Department may terminate the relevant Activity or this Agreement in accordance with clause 10.2 [Termination for default].

9.4.4 Your Organisation must not, and will use Your Organisation's best endeavours to ensure that any of Your Organisation's Personnel do not, engage in any activity or obtain any interest during the course of this Agreement that is likely to conflict with or restrict Your Organisation or Your Organisation's Personnel in performing each Activity fairly and independently.

9.5 Related Parties

9.5.1 For the purpose of this clause 9.5 [Related Parties], a 'Related Party' is:

- a. an entity that controls or has significant influence over Your Organisation at any time;
- b. an entity that Your Organisation controls or has significant influence over at any time, including Your Organisation's subsidiary;
- c. a person who is a member of Your Organisation's board or governing body;
- d. a member of the board of an entity referred to in clause 9.5.1.a or 9.5.1.b;
- e. a member of Your Organisation's Personnel, other than in their capacity as an employee; or
- f. a spouse or immediate family member of:
 - i. a member of Your Organisation's Personnel; or
 - ii. a person specified in clause 9.5.1.c or 9.5.1.d;
 who is not themselves an employee of Your Organisation.

9.5.2 Apart from reimbursing Your Organisation's employee or board member for their travel expenditure incurred in accordance with clause 3.3.2, Your Organisation must not pay any Funds, or transfer any Asset, to a Related Party without the Department's prior written consent.

9.5.3 To request the Department's consent, Your Organisation must provide it with a written notice setting out:

- a. the relevant Activity;

- b. the amount of the Activity's Funds that Your Organisation proposes to pay to the Related Party and how this amount was determined;
- c. Your Organisation's relationship with the Related Party;
- d. a complete description of the part of the Activity that Your Organisation expects the Related Party to perform; and
- e. the reason(s) why it is necessary to pay the Funds to the Related Party for that part of the Activity.

9.5.4 If the Department receives a request under clause 9.5.3, it may:

- a. request further information from Your Organisation, and Your Organisation must provide the requested information within 7 days of receiving the request; and
- b. consent, or not consent, to Your Organisation making the payment to the Related Party. Any consent may be given by the Department on any terms or conditions that it thinks fit, and Your Organisation must comply with those terms and conditions.

9.6 Your Organisation's warranties, representations and undertakings

9.6.1 Your Organisation represents and warrants to the Department that:

- a. where Your Organisation is a corporation it is duly incorporated;
- b. Your Organisation has full power and authority to enter into, perform and comply with Your Organisation's obligations under this Agreement;
- c. Your Organisation has duly and validly authorised the execution, delivery and performance of this Agreement;
- d. Your Organisation's execution of, and compliance with, this Agreement does not and will not contravene any Law, any of Your Organisation's constituent documents or any other agreement or arrangement to which Your Organisation is a party;
- e. at the date of signing this Agreement Your Organisation is not bankrupt, insolvent or in the process of being wound up;
- f. unless otherwise disclosed in this Agreement, Your Organisation is not entering into this Agreement as trustee of any trust or settlement;
- g. Your Organisation has not made any false declaration in respect of any current or past dealings with the Commonwealth or any Government Agency, including in any tender or application process or in any agreement;
- h. Your Organisation has, and will continue to have and to use, the skills, qualifications and experience, to deliver each Activity in an efficient and controlled manner with a high degree of quality and responsiveness and to a standard that complies with this Agreement;

- i. Your Organisation has the necessary resources, including financial resources, to deliver each Activity and will use those resources to deliver each Activity;
- j. the recruitment and management of Personnel that Your Organisation employs or engages with the use of the Funds will be fair, open, and based on merit;
- k. Your Organisation will, as soon as practicable, notify and fully disclose to the Department if:
 - i. a termination event specified in clause 10.2 [Termination for default] has occurred or is likely to occur;
 - ii. a person makes an allegation to Your Organisation, or Your Organisation otherwise become aware of an allegation, that Your Organisation or Your Organisation's Personnel have committed an act or omission that has resulted, or may result, in injury, death or harm to any person;
 - iii. Your Organisation seeks, or propose to seek, expert advice to address or avoid significant governance, management or financial issues; or
 - iv. proceedings are taking place, are pending, or are threatened against Your Organisation which could have an adverse effect upon Your Organisation's reputation or upon Your Organisation's capacity to perform Your Organisation's obligations under this Agreement.

9.6.2 Your Organisation acknowledges that the Department, in entering into this Agreement, is relying on the warranties and representations contained in this clause 9.6 [Your Organisation's warranties, representations and undertakings]. Your Organisation agrees that the warranties and representations contained in this clause 9.6 [Your Organisation's warranties, representations and undertakings] are deemed to be repeated by Your Organisation each time a payment of Funds is made under this Agreement.

10 Termination and disputes

10.1 Termination or reduction in scope for convenience

- 10.1.1 The Department may by notice, at any time and in its absolute discretion, terminate this Agreement or reduce the scope of the Agreement (including by reducing or terminating one or more Activities) immediately.
- 10.1.2 Your Organisation must, on receipt of a notice of termination or reduction:
 - a. stop or reduce the performance of Your Organisation's obligations as specified in the notice;
 - b. take all available steps to minimise the losses, costs and expenses resulting from that termination or reduction;

- c. continue performing any Activity, or any part of an Activity, not affected by the notice, except to the extent the Department notifies Your Organisation otherwise; and
 - d. immediately return to the Department any Funding, or deal with such Funding as directed by the Department, in accordance with clause 10.1.5.
- 10.1.3 In the event of a termination under clause 10.1.1, the Commonwealth will be liable only:
 - a. to pay Funding due and payable to Your Organisation under this Agreement prior to the date of the notice of termination; and
 - b. to reimburse any reasonable expenses that Your Organisation unavoidably incur that relate directly and entirely to the termination of the Agreement and are not covered by clause 10.1.3.a.
- 10.1.4 The Commonwealth will not be liable to pay, in respect of an Activity, amounts under clause 10.1.3 which would, added to any payments already paid to Your Organisation under this Agreement for that Activity, together exceed the Funding set out in Item C of the Schedule for that Activity.
- 10.1.5 In the event of termination under clause 10.1.1, the Department is entitled to recover from Your Organisation (or direct the use of) any part of the Funding for an Activity which:
 - a. has not been spent or Committed by Your Organisation as at the date that the notice of termination is received; or
 - b. has, in the Department's opinion, been spent or Committed by Your Organisation other than for that Activity and in accordance with this Agreement.
- 10.1.6 In the event of a reduction in the scope of the Agreement under clause 10.1.1:
 - a. the Department is entitled to recover any Funds which:
 - i. have been provided to Your Organisation for an Activity (or part thereof) that has been removed by the reduction in scope; and
 - ii. have not been spent or Committed for that Activity in accordance with the Agreement as at the date that notice of reduction is received; and
 - b. the Commonwealth's liability to pay any part of the Funding for an Activity will, except to the extent the Parties agree in writing otherwise, reduce in accordance with the reduction in, or termination of, the Activity resulting from that reduction in scope.
- 10.1.7 The Commonwealth's liability to pay any compensation under clause 10.1.3.b is subject to:

- a. Your Organisation's strict compliance with this clause 10.1 [Termination or reduction in scope for convenience]; and
 - b. Your Organisation's substantiation of any amount claimed under clause 10.1.3.b.
- 10.1.8 Your Organisation will not be entitled to compensation for loss of prospective profits or loss of any benefits that would have been conferred on Your Organisation if the termination or reduction had not occurred.
- 10.1.9 This clause 10.1 [Termination or reduction in scope for convenience] does not affect the Commonwealth's other rights under this Agreement or otherwise at Law.
- 10.2 Termination for default**
- 10.2.1 The Department may:
 - a. terminate this Agreement immediately by notice to Your Organisation if any of the termination events specified in clause 10.2.2 occur; or
 - b. at its sole discretion, instead choose to terminate one or more of the Activities affected by a termination event specified in clause 10.2.2 rather than terminating the entire Agreement.
- 10.2.2 For the purposes of clause 10.2.1, the termination events are:
 - a. Your Organisation breaches any Provision of this Agreement and the Department considers that the breach cannot be rectified;
 - b. Your Organisation breaches any Provision of this Agreement and does not rectify the breach within 14 days after receipt of the Department's notice to do so;
 - c. the Department considers that its decision to approve the Funding was affected by a statement in Your Organisation's application for Funding that was incorrect, incomplete, false or misleading;
 - d. the Department is satisfied on reasonable grounds that Your Organisation is unable or unwilling to satisfy the terms of this Agreement;
 - e. Your Organisation:
 - i. fails to submit a Report in the form, and containing the information, specified in this Agreement; or
 - ii. submits a Report that is incomplete or that the Department, acting reasonably, considers is inadequate;
 and Your Organisation fails to rectify this within 14 days of being notified to do so by the Department;
 - f. Your Organisation comes under one form 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 local governments or to incorporated associations or Chapter 11 of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth) or has an order made against Your Organisation for the purpose of placing Your Organisation under external administration;

- g. Your Organisation is unable to pay all Your Organisation's debts as and when they become payable or Your Organisation fails to comply with a statutory demand within the meaning of sections 459E and 459F of the *Corporations Act 2001* (Cth);
- h. proceedings are initiated with a view to obtaining an order for winding Your Organisation up, or any shareholder, member or director convenes a meeting for the purpose of considering or passing any resolution for winding Your Organisation up;
- i. if Your Organisation is a local government organisation, the relevant State Government takes action to cease Your Organisation's operations and/or to amalgamate them with the operations of another local government organisation;
- j. Your Organisation becomes bankrupt or enters into a scheme of arrangement with creditors;
- k. anything analogous to, or of a similar effect to, anything described in clauses 10.2.2.f to 10.2.2.j occurs in respect of Your Organisation;
- l. another Provision of this Agreement allows for termination under this clause 10.2 [Termination for default];
- m. Your Organisation has breached a provision of another funding arrangement or agreement with the Commonwealth and that breach allows the Commonwealth to terminate that other arrangement or agreement;
- n. the Department considers that an Activity poses a threat to the health, safety or well-being of any person; or
- o. in respect of an Activity, the Department considers that Your Organisation's purposes and activities are no longer compatible with the Aim of the Activity or the Program's Objectives.

- 10.2.3 If the Department terminates an Activity, but not the entire Agreement under this clause 10.2 [Termination for default], the Commonwealth:
- a. will not be liable to make any further payments to Your Organisation in respect of that Activity; and
 - b. will be entitled to recover from Your Organisation any part of the Funding provided to Your Organisation for that Activity that:
 - i. is not spent or due and payable by Your Organisation as at the date that the notice of termination is received; or

- ii. has, in the Department's opinion, been spent or is due and payable by Your Organisation other than for that Activity and in accordance with this Agreement.

10.2.4 If the Department terminates this Agreement under this clause 10.2 [Termination for default], the Commonwealth:

- a. will not be liable to make any further payments to Your Organisation in respect of this Agreement; and
- b. will be entitled to recover from Your Organisation any part of the Funding provided for an Activity that:
 - i. is not spent or due and payable by Your Organisation as at the date that the notice of termination is received; or
 - ii. has, in the Department's opinion, been spent or is due and payable by Your Organisation other than for that Activity and in accordance with this Agreement.

10.2.5 On termination of an Activity or this Agreement for any reason, Your Organisation must hold the Funding in utmost good faith for use only in accordance with the directions of the Department and Your Organisation must cease all other dealings with the Funding.

10.2.6 If a purported termination by the Department under this clause 10.2 [Termination for default] is determined by a competent authority not to be properly a termination under this clause 10.2 [Termination for default], then that termination by the Department will be deemed to be a termination for convenience under clause 10.1 [Termination or reduction in scope for convenience] with effect from the date of the notice of termination referred to in this clause 10.2 [Termination for default].

10.2.7 This clause 10.2 [Termination for default] does not affect the Commonwealth's other rights under this Agreement or otherwise at Law.

10.3 Procedure for dispute resolution

10.3.1 Except for the circumstances set out in clause 10.3.2, a Party must not commence any legal proceedings in respect of any dispute arising under this Agreement until the following procedure has been followed:

- a. the Party claiming that there is a dispute will send the other Party a notice setting out the nature of the dispute;
- b. the Parties will try to resolve the dispute through direct negotiation, including by referring the matter to persons who have authority to intervene and direct some form of resolution;
- c. if:
 - i. there is no resolution of the dispute within 30 days (or such other period as agreed in writing by the Parties) from the date of receipt of the notice referred to in clause 10.3.1.a;

- ii. there is no agreement on submission of the dispute to mediation or some alternative dispute resolution procedure within 30 days (or such other period as agreed in writing by the Parties) from the date of receipt of the notice referred to in clause 10.3.1.a; or
- iii. the Parties agree, within 30 days (or such other period as agreed in writing by the Parties) from the date of receipt of the notice referred to in clause 10.3.1.a, to submit to mediation or some other form of alternative dispute resolution procedure, but there is no resolution within 30 days of that submission, or such extended time as the Parties may agree in writing before the expiration of the 30 days,

then, either Party may commence legal proceedings.

10.3.2 Clause 10.3.1 does not apply to the following circumstances:

- a. either Party commences legal proceedings for urgent interlocutory relief;
- b. action is taken by the Department under, or purportedly under clauses 3.2 [Department's rights to withhold or reduce Funding], 3.3 [Your Organisation's use of Funding], 3.6 [Unspent or misspent Funds], 3.7 [Interest and debt], 6.1 [Access to premises and Material], 10.1 [Termination or reduction in scope for convenience] or 10.2 [Termination for default]; or
- c. an authority of the Commonwealth, a State or Territory is investigating a breach or suspected breach of the Law by Your Organisation.

10.3.3 Each Party will bear its own costs of complying with this clause 10.3 [Procedure for dispute resolution], and the Parties will bear equally the cost of any person engaged under clause 10.3.1.b.

10.3.4 Despite the existence of a dispute and subject to clause 10.3.5, both Parties must (except to the extent notified by the other Party not to do so) continue to perform their respective obligations under this Agreement.

10.3.5 Clause 10.3.4 does not require the Department to make a payment of Funding to Your Organisation during a dispute under this clause 10.3 [Procedure for dispute resolution] except to the extent the Department notifies Your Organisation otherwise.

11 Interpretation

11.1 General interpretation of this Agreement

11.1.1 In this Agreement, unless the contrary intention appears:

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

- c. the word 'person' includes an individual, partnership and a body (whether corporate or otherwise) and Government Agencies;
- d. clause headings are inserted for convenient reference only and have no effect in limiting or extending the language of provisions to which they refer;
- e. all references to dollars are to Australian dollars;
- f. where any word or phrase is given a defined meaning, any other form of that word or phrase has a corresponding meaning;
- g. an uncertainty or ambiguity in the meaning of a Provision of this Agreement will not be interpreted against a Party just because that Party prepared the provision;
- h. a reference to any statute or other legislation (whether primary or subordinate) is to a statute or other legislation of the Commonwealth as amended from time to time;
- i. a reference to the word 'including' in any form is not to be construed or interpreted as a word of limitation;
- j. a Provision of this Agreement that provides that it will not apply to the extent that the Department notifies Your Organisation, or agrees in writing otherwise, will also not apply to the extent that an Item of the Schedule specifies otherwise; and
- k. a reference to a 'clause' is to a clause in this document, a reference to 'Item' is to an Item in the Schedule to this Agreement, and a reference to 'Annexures' or 'Attachments' is a reference to documents attached to the Schedule.

11.1.2 If there is any conflict or inconsistency, the provisions in documents forming part of this Agreement take priority in the following order:

- a. the Supplementary Conditions (if any) in Annexure A to the Schedule;
- b. the Terms and Conditions;
- c. the Schedule;
- d. any Annexures or Attachments to the Schedule other than Annexure A;
- e. the Covering Letter; and
- f. any documents incorporated by reference into the above documents.

11.1.3 This Agreement is governed by the law of the Australian Capital Territory and the Parties submit to the jurisdiction of the courts of the Australian Capital Territory.

11.1.4 This Agreement:

- a. records the entire agreement between the Parties about its subject matter; and

- b. supersedes all prior communications, negotiations and agreements, whether oral or written, between the Parties about that subject matter.
- 11.1.5 This Agreement may only be varied by the signed written agreement of both Parties, subject to clause 11.1.6.
- 11.1.6 Clause 11.1.5 does not apply to a change to the Agreement, or an Activity, resulting from a Party exercising its existing rights under the Agreement.
- 11.1.7 Where Your Organisation is a partnership or unincorporated joint venture comprising two or more persons, any agreement, representation, warranty or indemnity given by Your Organisation binds those persons jointly and severally.
- 11.1.8 If part of this Agreement is found to be invalid, the rest of this Agreement continues in effect as if the invalid part were severed. Any reading down or severance of a particular provision does not affect the other provisions of this Agreement.
- 11.1.9 A waiver of any Provision of this Agreement must be in writing to be effective.
- 11.1.10 No waiver of a term or condition of this Agreement will operate as a waiver of another breach of the same, or of any other, term or condition contained in this Agreement.
- 11.1.11 A single or partial exercise by a Party of any of its rights under this Agreement or at Law does not prevent the further exercise of any right.
- 11.1.12 Your Organisation must not assign, novate or transfer Your Organisation's rights or obligations under this Agreement without the Department's prior written approval.
- 11.1.13 This Agreement may be executed in counterparts.
- 11.2 Schedule may contain multiple Activities**
- 11.2.1 The Schedule may contain one or more Activities for which Funding is provided under the Program.
- 11.2.2 These Terms and Conditions and the Supplementary Conditions apply to each Activity separately, except to the extent the contrary intention appears.
- 11.2.3 If the Parties wish to add an Activity to the Schedule after the Commencement Date, they must sign a variation as specified in clause 11.1.5.
- 11.3 Survival**
- 11.3.1 Neither the termination nor the expiry of an Activity or this Agreement will affect the continued operation of:
 - a. clauses 2.2 [Records] and 2.3 [Reports];

- b. clauses 2.4 [Provision of information and liaison], 2.5 [Acknowledgement of support], 2.6 [Use of Commonwealth logos], 2.7 [Copies of publications], 2.8 [Permission to publicise Funding], 2.9 [Protection of Personal Information] and 2.10 [Commonwealth collection of Personal Information];
- c. clauses 3.3.3, 3.3.5, 3.6 [Unspent or misspent Funds], 3.7 [Interest and debt] and 3.9 [Taxes, duties and government charges];
- d. clause 4.1 [Working with Vulnerable Persons];
- e. clauses 5.1.7 and 5.1.8;
- f. clause 6 [Access to premises and Material];
- g. clause 7 [Intellectual Property];
- h. clause 8 [Confidentiality];
- i. clauses 9.1 [Proportionate liability regime], 9.2 [Indemnity] and 9.3 [Insurance];
- j. clause 10 [Termination];
- k. this clause 11.3 [Survival]; nor
- l. any other Provision of this Agreement that is, expressly or by implication from its nature, intended to survive the termination or expiry of an Activity and this Agreement.

11.4 Definitions

- 11.4.1 Unless the contrary intention appears, in this Agreement, a term in bold type in this clause 11.4.1 has the meaning shown opposite it:

Activity	means the Activity described in Item B of the Schedule. If more than one Activity is described in Item B, a reference to an 'Activity' is a separate reference to each Activity described in Item B. Each Activity includes the provision of the Activity Material for that Activity;
Activity End Date	means the 'Activity End Date' specified in Item B of the Schedule for an Activity, being the date by which the Activity is to be completed;
Activity Material	means, in respect of an Activity, any Material (including any Intellectual Property rights in that Material): a. created for the purpose of the Activity (other than any Material that is identified in Item B of the Schedule as not being Activity Material for the Activity); b. provided, or required to be provided, to the

	Department in respect of the Activity (including the Reports and any other Material that is required by Item B of the Schedule to be provided to the Department in respect of the Activity); or c. derived at any time from the Material referred to in paragraphs a or b of this definition, but excludes Commonwealth Material;
Activity Period	means the period between the Activity Start Date and the Activity End Date, during which an Activity is to be completed;
Activity Start Date	means the 'Activity Start Date' specified in Item B of the Schedule for an Activity, being the date the Activity is to commence;
Acquire	in relation to an Asset, includes to create, purchase, lease or hire the Asset (including under a hire-purchase or other arrangement) and 'Acquisition' has a corresponding meaning;
Agreement	means this agreement, which comprises: a. the Covering Letter; b. these Terms and Conditions; c. the Schedule, including any Supplementary Conditions specified in the Schedule; and d. any documents incorporated by reference into these Terms and Conditions or the Schedule, and which is a deed unless the Schedule specifies it is a contract;
Aim of the Activity	means the aim and objectives of an Activity as described in Item B of the Schedule for that Activity;
Approved Auditor	means a person who is: e. registered as a company auditor under the <i>Corporations Act 2001</i> (Cth) or an appropriately qualified member of the Institute of Chartered Accountants in Australia, CPA Australia or the National Institute of Accountants; f. acting in a professional capacity as an auditor; and g. not (unless Item E.4 of the Schedule

	specifies, or the Department agrees in writing, otherwise) a principal, member, shareholder, officer, agent, contractor, employee or 'related entity' of Your Organisation or of Your Organisation's 'related body corporate'. For this definition the terms 'related entity' and 'related body corporate' have the same meaning as in section 9 of the <i>Corporations Act 2001</i> (Cth);
Asset	means, in respect of an Activity: h. an item of property, which: i. has been Acquired wholly or in part with the Funding for the Activity; and ii. at the time of its Acquisition, the value of the item is greater than the amount set out in Item H of the Schedule for the Activity, or, if no amount is set out in that Item H, \$10,000 (GST inclusive); or i. an item of property that is specified in Item H of the Schedule or in a Supplementary Condition as being an 'Asset' for the purposes of the Activity; but excludes Intellectual Property rights and Real Property;
Auditor-General	means the office established under the <i>Auditor-General Act 1997</i> (Cth) and includes any other entity that may, from time to time, perform the functions of that office;
Australian Auditing Standards	refers to the standards made by the Auditing and Assurance Standards Board created by section 227A of the <i>Australian Securities and Investments Commission Act 2001</i> (Cth);
Australian Privacy Principle	has the same meaning as in the <i>Privacy Act 1988</i> (Cth);
Budget	means, in respect of an Activity, the budget (if any) for expenditure of the Funding and Other Contributions for that Activity as specified in Item D of the Schedule or which is otherwise required by the Schedule to be provided for that Activity;
Commencement Date	means the date on which the Schedule was signed by the last Party to do so;
Committed	means, at a particular date, Funding that:

	j. Your Organisation is contractually and irrevocably obliged to pay to a third party in respect of any part of an Activity; and k. is identified in a written contractual arrangement between Your Organisation and that third party;
Commonwealth	means the Commonwealth of Australia and includes the Department;
Commonwealth Material	means any Material: l. provided by the Department to Your Organisation for the purposes of this Agreement; or m. copied or derived at any time from the Material referred to in paragraph a of this definition, including any Intellectual Property rights in that Material;
Completion Date	means 120 days after Your Organisation has done all that Your Organisation is required to do in respect of each Activity under clauses 2.1 [Conduct of the Activity], 2.3 [Reports], 3.6 [Unspent or misspent Funds] and 3.7 [Interest and debt] of this Agreement to the satisfaction of the Department;
Confidential Information	means information that: n. is described in Item K of the Schedule; o. the Parties agree in writing after the Commencement Date is confidential information for the purposes of this Agreement; or p. is Secret and Sacred Material, excluding any information that the Department has a right to publicise and report on under clause 2.8 [Permission to publicise Funding];
Conflict	means any matter, circumstance, interest or activity involving or affecting Your Organisation or Your Organisation's Personnel, which may or may appear to impair Your Organisation's ability to perform an Activity diligently, fairly and independently;
Covering Letter	means the letter from the Department that offers

	Your Organisation the Funding as set out in the Schedule attached to the letter;
Department	means the Australian Government department or agency specified on the execution page of the Schedule or any other agency that is, from time to time, responsible for administering this Agreement and includes the department or agency's officers, delegates, employees and agents;
Dispose	means to sell, license, 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, in respect of an Activity, all Material in existence prior to the Activity Start Date for that Activity that is: q. incorporated in; r. supplied with, or as part of; or s. required to be supplied with, or as part of, the Activity Material for that Activity and also includes: t. any Existing Material specified for the Activity in Item B of the Schedule; and u. any Intellectual Property rights in the above Material, but excludes Commonwealth Material;
Freedom of Information Commissioner	means any of the information officers appointed under the <i>Australian Information Commissioner Act 2010</i> (Cth) when performing the 'freedom of information functions' as defined in that Act;
Funding or Funds	means, in respect of an Activity: v. the amount or amounts (in cash or kind) payable or paid by the Department to Your Organisation under this Agreement for the Activity as specified in Item C and Item F of the Schedule; w. any amount calculated in accordance with clause 5.1.5 in respect of the Activity; and x. any other amounts that are required under Item C of the Schedule to be treated as Funds,

	and used, for the Activity.
Government Agency	means any governmental, semi-governmental, administrative, fiscal, judicial or quasi-judicial body, department, commission, authority, tribunal, agency or entity;
Guidelines	means any Program guidelines, manuals or other documentation referred to in Item A of the Schedule (if any) as they are amended from time to time by the Department;
Information Commissioner	means any of the information officers appointed under the <i>Australian Information Commissioner Act 2010</i> (Cth) when performing the 'information commissioner functions' as defined in that Act;
Intellectual Property	means: y. all copyright (including rights in relation to phonograms, sound recordings and broadcasts); z. all rights in relation to inventions (including patent rights), plant varieties, registered and unregistered trade marks (including service marks), registered and unregistered designs, circuit layouts; and - aa. all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields but does not include: - bb. Moral Rights; - cc. the rights of performers (other than a performer's right of co-ownership of copyright in the sound recording of a Performance); or - dd. rights in relation to Confidential Information;
Law	means all applicable statutes, regulations, by-laws, ordinances or subordinate legislation in force from time to time anywhere in Australia, whether made by the Commonwealth, a State, a Territory or a local government and, where the context permits, includes the common law and equity;
Material	means any thing in relation to which Intellectual Property rights arise or which incorporates a Performance or a recording of a Performance;

Milestone	means a milestone for an Activity as set out in Item F of the Schedule for the Activity;
Moral Rights	includes the following rights of an author or performer of copyright Material: ee. the right of attribution of authorship or performership; ff. the right of integrity of authorship or performership; and gg. the right not to have authorship or performership falsely attributed;
Ombudsman	means the office established under the <i>Ombudsman Act 1976</i> (Cth) and includes any other person who may, from time to time, perform the functions of that office;
Open Access Licence	means a licence to the public on broad open access terms that allows any member of the public to perform a wide range of acts in respect of the Material subject to certain restrictions. An Open Access Licence includes any Department or Australian Government open access licence and any creative commons attribution licence (see the Creative Commons Australia website);
Other Contributions	means, in respect of an Activity, the financial or in-kind resources (with in-kind resources valued at market rates) other than the Funds that are specified in Item D of the Schedule for the Activity and are contributed by Your Organisation or another party (including another Commonwealth agency) for the Activity;
Other Departmental Monies	means money provided by the Department to Your Organisation other than under this Agreement;
Party	means a party to this Agreement as specified on the execution page of the Schedule;
Performance	has the meaning given in section 248A of the <i>Copyright Act 1968</i> (Cth);
Performance Indicators	means, in respect of an Activity, the performance indicators (if any) set out in Item B of the Schedule for the Activity;
Personal Information	has the meaning given in the <i>Privacy Act 1988</i> (Cth);

Personnel	means: hh. in relation to Your Organisation: i. each Subcontractor; ii. any Sub-subcontractor; iii. any officer, employee, partner, volunteer or agent of Your Organisation, a Subcontractor or a Sub-subcontractor; and iv. if Your Organisation is an individual that individual, and ii. in relation to the Commonwealth: v. the natural persons who are officers, employees, volunteers, agents or contractors of the Department; and vi. any entity that is contracted by the Department, other than the persons and entities referred to in paragraph a of this definition;
Privacy Commissioner	means any of the information officers appointed under the <i>Australian Information Commissioner Act 2010</i> (Cth) when performing the 'privacy functions' as defined in that Act;
Program	means the program or fund referred to in Item A of the Schedule under which the Department is able to provide the Funding to Your Organisation;
Program's Objectives	means the Program's Objectives specified in Item A of the Schedule;
Provision of this Agreement	means a requirement in this Agreement including a requirement in: - jj. a clause in the Terms and Conditions; and - kk. the Schedule, including a Supplementary Condition or a requirement to complete a Milestone in accordance with (and by the date specified for it in) the Schedule;
RCTI	has the meaning given in clause 3.9.1.c;
Real Property	means, in respect of an Activity: ll. all real property that is acquired or created in whole or part with the Funding for the Activity, including buildings, land and fixtures;

	mm. any Works Location for the Activity; and nn. any other item of real property that is specified in Item B of the Schedule or in a Supplementary Condition as being 'Real Property' for the purposes of the Activity;
Reports	means the reports specified in Item E of the Schedule;
Schedule	means the document entitled ' <i>Enterprise Standard Funding Agreement Schedule</i> ' that has been signed by both of the Parties and includes any annexures or attachments to the Schedule and forms part of the Agreement;
Secret and Sacred Material	means all information and knowledge of special religious, spiritual or customary significance considered to be secret, exclusive or restricted by an Aboriginal person or according to Aboriginal Tradition as defined in the <i>Aboriginal and Torres Strait Islander Heritage Protection Act 1984</i> (Cth);
Specified Acts	means any of the following types of acts or omissions: a. directly or indirectly recording a Performance; b. using, reproducing, modifying, adapting, publishing, distributing, performing, broadcasting, communicating or exploiting all or any part of the Activity Material or Existing Material, with or without attribution of authorship or performership; c. supplementing the Activity Material or Existing Material with any other Material; d. using the Activity Material or Existing Material in a different context to that originally envisaged; e. releasing the Activity Material or the Existing Material to the public under an Open Access Licence; and f. any other acts or omissions specified in Item B of the Schedule in relation to the Activity, but does not include false attribution of authorship or performership. For the avoidance of doubt,

	'Activity Material' and 'Existing Material' may include a Performance or a recording of a Performance;
Specified Personnel	means, in respect of an Activity, any natural person who is a member of Your Organisation Personnel and is specified in Item J of the Schedule for that Activity and includes any replacement Specified Personnel who are approved in accordance with clause 4.3 [Your Organisation's Personnel and Specified Personnel] for that Activity;
Subcontractor	means, in respect of an Activity, any contractor, person or organisation who is engaged by Your Organisation to undertake any part of the Activity and 'Subcontract' means the written agreement between Your Organisation and the Subcontractor;
Sub-subcontractor	means, in respect of an Activity, any contractor, person or organisation who is engaged by a Subcontractor (or another subcontractor of the Subcontractor) to undertake any part of the Activity and 'Sub-subcontract' means the written agreement under which that contractor, person or organisation is so engaged;
Supplementary Conditions	means, in relation to an Activity, those Supplementary Conditions set out, or referred to, in Annexure A of the Schedule in respect of the Activity;
Term	means the period set out in clause 1.3 [Term of the Agreement];
Terms and Conditions	means all of the clauses in this document;
Undepreciated	means, in relation to an Asset, the value of the Asset that has not been depreciated in accordance with Australian Accounting Standards;
Works	means the design, repair, maintenance, renovation, modification, fit-out, refurbishment, upgrade, construction or extension of premises (including landscaping of, and installation of air-conditioning, fire and/or security systems at, existing premises);
Works Location	means, in respect of an Activity that involves Works, all of the land on, and/or premises in, which those Works are undertaken for the

	Activity and includes any land or premises specified as the 'Works Location' for that Activity in Item B of the Schedule as well as any land or premises that are subsequently agreed in writing by the Parties to be all or part of the 'Works Location' for that Activity; and
Your Organisation	means the entity specified as 'Your Organisation' on the execution page of the Schedule and includes, where the context permits its Personnel and successors.

ANNEXURE A – SUPPLEMENTARY CONDITIONS FOR CAPITAL WORKS

CONTENTS

1. DEFINITIONS
2. REQUIREMENT TO OBTAIN LEGAL ADVICE AND ASSISTANCE
3. ADDITIONAL PROVISIONS IN RELATION TO FUNDS
4. PERFORMING THE ACTIVITY ON THE PROPERTY
5. THE PROPERTY
6. REQUIREMENTS IN RELATION TO SECURITIES
7. ADDITIONAL REQUIREMENTS IN RELATION TO OTHER CONTRIBUTIONS
8. PLANNING, DESIGN AND APPROVALS
9. ADDITIONAL REQUIREMENTS IN RELATION TO SUBCONTRACTORS FOR THE WORKS
10. CONDUCT OF THE ACTIVITY
11. ENVIRONMENTAL OBLIGATIONS
12. LATENT SITE CONDITIONS
13. THE BUILDING CODE 2016 AND SUPPORTING GUIDELINES
14. AUSTRALIAN GOVERNMENT BUILDING AND CONSTRUCTION OHS ACCREDITATION SCHEME
15. BUILDER SIDE DEED
16. COMMENCEMENT OF THE WORKS
17. LIAISON, PROJECT MANAGER, INFRASTRUCTURE PROJECTS FACILITATOR, INDEPENDENT CERTIFICATION AND PROJECT CONTROL GROUP
18. INSPECTION OF WORKS
19. VARIATIONS TO THE WORKS
20. PRACTICAL COMPLETION OF THE WORKS
21. ASSUMPTION OF RISKS FOR THE WORKS
22. PLAQUE FOR THE WORKS AND OPENING OF THE WORKS
23. DESIGNATED USE

- 24. REMEDIATION PLAN
- 25. STEP IN RIGHTS
- 26. ADDITIONAL PROVISIONS IN RELATION TO TERMINATION
- 27. SURVIVAL
- 28. REPLACEMENT PRIVACY PROVISION
- 29. TRUST REPRESENTATIONS AND WARRANTIES

CAPITAL WORKS

1. Definitions

See also clause 11.4 [Definitions] of the Terms and Conditions.

- 1.1 Notwithstanding any other definition in this Agreement, in this Schedule, unless the contrary intention appears:

Activity Plan means the plan prepared and updated in accordance with Supplementary Condition 8;

Agreement to Lease means a written agreement between Your Organisation and the owner of the Property which provides for the construction of the Works on the Property by Your Organisation and the subsequent grant of a Lease over the Property to Your Organisation upon completion of the Works;

Approval includes any consent, authorisation, registration, filing, agreement, notification, certificate, permission, licence, approval, permit, authority, determination, certificate, exemption or other requirement issued by, from or with any Proper Authority;

Budget means the budget prepared and updated in accordance with Supplementary Condition 8;

Builder Side Deed means a written agreement between the Department, Your Organisation and an entity with whom Your Organisation has entered into a contract in respect of the design and/or construction of the Works, in the form set out in Annexure E or in such other form that is acceptable to the Department;

Building Code means the Building Code 2016;

Building Work has the meaning given to it by section 5 of the *Fair Work (Building Industry) Act 2012* (Cth);

Capital Works Reporting Portal means the Department's web-based on-line reporting tool for capital works Activities;

Certificate of Occupancy means a certificate issued by the Proper Authority that the relevant Works comply with all relevant Laws, Approvals and other requirements for occupancy;

Certificate of Practical Completion means a certificate issued pursuant to Supplementary Condition 20.1.1e;

Certificate of Title means the documents of title to the Property including paper titles issued by the relevant land registry to the registered proprietor for Property in those jurisdictions where it is possible to obtain paper titles;

Commonwealth Requirements means the requirements set out in Supplementary Condition 5.2.1;

Contamination means the presence in, on or under the land, air or water of a substance (whether solid, liquid, gas, odour, heat, sound, vibration or radiation) at a concentration above the concentration at which the substance is normally present in, on or under (respectively) land, air or water in the same locality, being a presence that presents a risk of harm to human health or any other aspect of the

Environment, or could otherwise give rise to a risk of non-compliance or breach of any statutory requirements relating to the Environment;

Contract for Sale means a contract between Your Organisation and the vendor of the Property which provides for Your Organisation to purchase the Property;

Date for Practical Completion means the date specified in the Milestone Schedule by which Your Organisation must achieve Practical Completion of the Works;

Designated Use means the designated use specified in Item B.13 of the Schedule;

Designated Use Period means the period specified in Item B.14 of the Schedule;

The definition of **Dispose** in clause 11.4 [Definitions] of the Terms and Conditions is replaced with the following: **Dispose** means to sell, mortgage, encumber, lease or sub lease, license or sub-license, assign, create or grant any restrictive covenant, restriction on user, easement or other right or interest in, or otherwise deal with, 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;

Environment means components of the earth, including:

- a. land, air and water;
- b. any layer of the atmosphere;
- c. any organic or inorganic matter and living organism; and
- d. human-made or modified structures and areas,

and includes interacting natural ecosystems that include components referred to in paragraphs a. to d. of this definition;

Fair Work Building Industry Inspectorate means the Fair Work Building Industry Inspectorate established under the *Fair Work (Building Industry) Act 2012* (Cth);

The definition of **Funding or Funds** in clause 11.4 [Definitions] of the Terms and Conditions is replaced with the definition set out in Supplementary Condition 3.2.2;

Independent Certification Agreement means the agreement entered into between Your Organisation and an Independent Certifier for the performance of the Independent Certification Functions pursuant to Supplementary Condition 17.5;

Independent Certification Functions means those activities to be performed and carried out by the Independent Certifier under and in accordance with the Independent Certification Agreement;

Independent Certification Panel means the panel of Independent Certifiers established by the Department for the purposes of performing Independent Certification Functions;

Independent Certifier means the person or body appointed pursuant to Supplementary Condition 17.5;

Infrastructure Projects Facilitator means the person or body engaged by the Department to carry out certain oversight functions in relation to the Works;

Latent Condition means any ground conditions at the Property where the Works are to take place, excluding ground conditions resulting from inclement weather,

which differ materially from those which should have been anticipated by a prudent, competent and experienced building contractor.

Lease means a legally binding written agreement between Your Organisation and the owner of the Property for the exclusive use and occupation of the Property by Your Organisation for the Designated Use for at least the Designated Use Period;

Legal Adviser Certification Letter means the certification letter to be completed by Your Organisation's qualified legal adviser in the form set out in Annexure B;

Milestone means a milestone set out in the Milestone Schedule;

Milestone Schedule means the milestone schedule set out in the table in Item F of the Schedule;

Minister for Employment means the Commonwealth minister from time to time responsible for the Commonwealth Department of Employment or such other department or agency as may be responsible from time to time for the administration of the Building Code;

Practical Completion occurs in relation to the Works when the requirements of Supplementary Condition 20.1.1 have been met;

Project Control Group means the group described in Supplementary Condition 17.8;

Project Parties means all contractors, subcontractors, consultants and employees who perform on-site work in relation to the Works;

Proper Authority means any ministry, department, government, governmental or semi-governmental authority, agency, instrumentality, council, corporation or other legal entity which has jurisdiction or authority over or in connection with this Agreement, the Works, the Assets, the Activity, the Property or the Designated Use;

Property means the property on which the Works are to be undertaken and the Designated Use performed, that is:

- a. detailed in Item B.8 of the Schedule; or
- b. if no details identifying the property are set out in Item B.8 of the Schedule, a property in the region specified in Item B.8 of the Schedule identified by Your Organisation in accordance with Supplementary Condition 4.1.2,

and includes the land, and any buildings, fixtures and other improvements on the land, including the Works, but does not include items that would be regarded as tenant's fittings or chattels at Law;

Remediation Plan means a plan for the Activity, in a form and containing the information required by the Department, that details the actions that Your Organisation will take to address any concerns about the Activity that the Department has notified to Your Organisation under Supplementary Condition 24.1.1;

Schematic Design means the documents that establish the conceptual design of the Works, illustrating the scale and relationship of the Works components. The Schematic Design documents must include a conceptual site plan, floor plan and preliminary building plans, sections and elevations;

Scheme means the Scheme described at section 35 of the *Fair Work (Building Industry) Act 2012* (Cth);

Senior Executive Officer means a person who is in a senior position within Your Organisation with responsibility for the delivery of the Activity and is in a position to be fully informed of and aware of the progress of the Activity and Your Organisation's compliance with this Agreement;

Standard Independent Certifier Agreement means the form of agreement available for use as the Independent Certification Agreement, which is available from the Department if required by the parties;

Supporting Guidelines means the *Supporting Guidelines for Commonwealth Funding Entities*. The Supporting Guidelines can be downloaded from <http://employment.gov.au/building-code>;

Use Agreement means a written agreement between the Department and the owner of the Property, in the form set out in Annexure D or in such other form that is acceptable to the Department; and

The definition of **Works** in clause 11.4 [Definitions] of the Terms and Conditions is replaced with the following: **Works** means that part of an Activity which relates to the design, construction, modification, expansion, refurbishment, installation, furnishing, equipping or fit-out and related activities at the Property for an Activity, as contemplated by the Activity Plan and Budget accepted in accordance with Supplementary Condition 8 and as described in Item B.6 b. of the Schedule.

2 Requirement to obtain legal advice and assistance

- 2.1.1 In entering into this Agreement and in carrying out the Activity Your Organisation must obtain legal advice and assistance from a qualified legal adviser in relation to:
- a. securing legal tenure over the Property;
 - b. understanding Your Organisation's obligations under this Agreement, including in respect of the securities to be granted by Your Organisation to the Commonwealth as required by Supplementary Condition 6; and
 - c. the requirement for Your Organisation's legal representative to complete the Legal Adviser Certification Letter.

3. Additional provisions in relation to Funds

3.1 Funds not to be used for carrying out the Designated Use

- 3.1.1 Notwithstanding any other clause in this Agreement, Your Organisation must not use the Funds for the purpose of carrying out the Designated Use during the Designated Use Period in relation to the Activity. Your Organisation must use the Funds only to carry out all other aspects of the Activity as detailed in Item B.6 of the Schedule.
- 3.1.2 Your Organisation warrants that:
- a. the Funds, together with the Other Contributions made or received or to be made or received by Your Organisation, will be sufficient to enable the due

and proper completion of the Activity, apart from carrying out the Designated Use during the Designated Use Period; and

- b. Your Organisation has, or will obtain, sufficient other funds to enable Your Organisation to use the Property, the Works and the Assets for the Designated Use for the Designated Use Period.

3.2 Interest earned on Funding forms part of the Funding

3.2.1 Clause 3.3.5.a of the Terms and Conditions is replaced with the following:

"a. identify all receipts and payments for the Activity and all interest earned by Your Organisation on the Funding for that Activity;"

3.2.2 The definition of "Funding or Funds" in clause 11.4 [Definitions] of the Terms and Conditions is replaced with the following:

"Funding or Funds means, in respect of an Activity:

- a. the amount or amounts (in cash or kind) payable or paid by the Department to Your Organisation under this Agreement for the Activity as specified in Item C and Item F of the Schedule;
- b. any interest earned by Your Organisation on the Funding that is provided for the Activity;
- c. any amount calculated in accordance with clause 5.1.5 of the Terms and Conditions in respect of the Activity;
- d. the proceeds of any insurance claims received or receivable by Your Organisation in respect of loss or damage to the Property, the Works and the Assets; and
- e. any other amounts that are required under Item C of the Schedule to be treated as Funds, and used, for the Activity."

4. Performing the Activity on the Property

4.1.1 Your Organisation must perform the Activity, including carrying out the Works, on the Property.

4.1.2 Where no property has been identified in Item B.8, Your Organisation must, in consultation with the Department, identify a suitable property for carrying out the Activity by the date specified in the Milestone Schedule. Once a suitable property is identified and agreed by the Department:

- a. the property will become the Property for the purposes of this Agreement; and
- b. the Department will:
 - i. in consultation with Your Organisation, revise the Milestone Schedule for the Activity, which, when finalised, will be the Milestone Schedule for the purposes of this Agreement; and
 - ii. notify Your Organisation whether a Use Agreement and securities from the Property owner are required for the purposes of Supplementary Condition 5.4.

4.1.3 If Your Organisation proposes to perform the Activity on part only of the Property, Your Organisation must identify the relevant part of the Property on which the

Activity is to be performed and upon which the Designated Use is to be carried out by the date specified in the Milestone Schedule.

5. The Property

5.1 Information in relation to the Property

5.1.1 Your Organisation must promptly provide to the Department by the date specified in the Milestone Schedule, or where no date is specified, from time to time upon request:

- a. written certification from Your Organisation's qualified legal adviser in the form of a correctly completed Legal Adviser Certification Letter, together with the documents required to be attached to the Legal Adviser Certification Letter;
- b. details of the cost to Your Organisation of acquiring and holding its interest or proposed interest in the Property; and
- c. any other information in relation to the Property that the Department requires, including but not limited to a valuation of the Property prepared by a registered valuer, building inspection reports, searches of the Property including land titles office searches and contaminated waste searches, town planning information, survey reports in respect of the Property and copies of any documents or draft documents relating to Your Organisation's tenure or proposed tenure of the Property that the Department requires in order to determine if the Commonwealth Requirements are met.

5.2 Commonwealth Requirements

5.2.1 The Commonwealth Requirements are that:

- a. the Activity, the Property and the proposed Works meet the present and future needs of the Program's Objectives;
- b. the Property or the relevant part of the Property identified by Your Organisation pursuant to Supplementary Condition 4.1.3 is suitable for the Designated Use;
- c. the Property and the proposed Works are permitted to and can be used by Your Organisation for the Designated Use on terms and conditions satisfactory to the Department;
- d. the condition of the Property is satisfactory to the Department;
- e. the cost to Your Organisation of acquiring and holding an interest in the Property represents value for money;
- f. the Property and the Works, as applicable, can be designed, constructed, repaired, maintained, altered, refurbished and fitted out, as applicable, at a reasonable cost, for use for the Designated Use;
- g. Your Organisation has, or will have, tenure over the Property by way of fee simple or under a Lease or otherwise for at least the Designated Use Period that is satisfactory to the Department;

- h. where Your Organisation has entered into, or proposes to enter into a Lease, the Department approves the Lease, and the requirements of Supplementary Condition 5.4.2 and 5.4.3 in relation to the Lease have been met;
 - i. the Property, Your Organisation's use of the Property and the Commonwealth's rights and interests in relation to the Property will not be adversely affected by any restrictive covenants, restrictions on use, easements, encumbrances, interests, mortgages, charges, caveats, leases, rights or notifications;
 - j. the Commonwealth's rights and interest in relation to the Property and the Works will be adequately protected by securities and, where applicable, a Use Agreement or other agreement with the owner of the Property that is acceptable to the Department;
 - k. the Commonwealth's rights and entitlements under this Agreement will not be adversely affected by an agreement or arrangement entered into by Your Organisation with another body which contributes funds or land to the Activity, or the Department is able to negotiate arrangements to its satisfaction with that other body in relation to any priority of interests or inconsistency between this Agreement and the other body's requirements for contributing funds or land to the Activity; and
 - l. the provision of the Funds to Your Organisation meets the Program's Objectives and is consistent with the Department's obligations under the *Public Governance, Performance & Accountability Act 2013* (Cth) and other relevant Commonwealth legislation.
- 5.2.2 Your Organisation must not expend any part of the Funds to acquire an interest in the Property or carry out the Activity or the Works until Your Organisation has received notification from the Department in writing that the Department is satisfied that the Commonwealth Requirements are met.
- 5.2.3 Supplementary Condition 5.2.2 does not prevent Your Organisation from:
- a. expending part of the Funds on activities relevant and preparatory to acquiring the Property; or
 - b. if Your Organisation proposes to purchase the Property, entering into a Contract for Sale with the vendor of the Property to purchase the Property in accordance with the requirements at Supplementary Condition 5.3.1.
- 5.2.4 Without limiting any other right the Commonwealth may have under this Agreement or otherwise at law, where the Department considers that one or more of the Commonwealth Requirements as set out in Supplementary Condition 5.2.1 are not satisfied, the Department may, by notice in writing to Your Organisation:
- a. withhold a payment of Funds; or
 - b. require Your Organisation to suspend dealings with the Funds; or
 - c. terminate this Agreement in accordance with clause 10.2 of the Terms and Conditions; or
 - d. reduce the scope of this Agreement.

To avoid doubt a notification by the Department pursuant to Supplementary Condition 5.2.2 that it is satisfied that the Commonwealth Requirements have been met does not prevent the Department at a later date becoming unsatisfied with respect to the Commonwealth Requirements and taking action pursuant to this clause 5.2.4 on that basis.

5.3 Requirements for Contract for Sale of the Property

5.3.1 Where Your Organisation proposes to purchase the Property using all or part of the Funds, the Contract for Sale must include conditions having the effect that:

- a. the Contract for Sale is subject to Your Organisation receiving the Funds from the Department pursuant to this Agreement and can be rescinded by Your Organisation and the deposit refunded, in the event that Your Organisation does not receive the Funds from the Department pursuant to this Agreement to assist in respect of the purchase of the Property; and
- b. the Contract for Sale:
 - i. is subject to the Property being appropriately zoned for the Designated Use, and all necessary Approvals being obtained, on terms and conditions satisfactory to the Department, for the Property to be used for the Designated Use; and
 - ii. can be rescinded by Your Organisation and the deposit refunded, in the event that the Property is not appropriately zoned for the Designated Use or all necessary Approvals cannot be obtained on terms and conditions satisfactory to the Department.

5.3.2 Your Organisation must promptly provide a copy of the Contract for Sale to the Department by the date specified in the Milestone Schedule.

5.3.3 Your Organisation must notify the Department about the arrangements for settlement of the Contract for Sale so that the Department may attend the settlement to provide the Funds and receive the securities.

5.4 Requirements where Your Organisation does not own the Property

5.4.1 If Item B.9 of the Schedule states that a Use Agreement is required, or if the Department notifies Your Organisation pursuant to Supplementary Condition 4.1.2 that a Use Agreement is required, Your Organisation must deliver the Use Agreement, executed by the Property owner, to the Department by the date specified in the Milestone Schedule.

5.4.2 Where Your Organisation does not own the Property, if Item B.9 of the Schedule states that securities from the Property owner are required, or if the Department notifies Your Organisation pursuant to Supplementary Condition 4.1.2 that securities from the Property owner are required, Your Organisation must arrange for the Property owner to provide the securities in favour of the Commonwealth by the date specified in the Milestone Schedule.

5.4.3 Where Your Organisation has or will enter into a Lease or Agreement to Lease in respect of the Property, Your Organisation must provide documentary evidence to the Department by the date specified in the Milestone Schedule, that the

requirements set out in Item B.15 of the Schedule in relation to the Lease or Agreement to Lease have been satisfied.

- 5.4.4 Your Organisation must not do anything during the Term of this Agreement that would give the owner of the Property the right to terminate Your Organisation's tenure of the Property or Your Organisation's right to use the Property and the Works for the purpose of the Designated Use for the Designated Use Period.

5.5 Evidence of Tenure

- 5.5.1 By the date specified in the Milestone Schedule, Your Organisation must substantiate to the reasonable satisfaction of the Department that Your Organisation has tenure, or has legally binding arrangements in place to obtain tenure, over the Property, or such part of the Property as is required for carrying out the Activity, by way of fee simple, registered Lease, Agreement to Lease or otherwise that:
- a. is acceptable to the Department;
 - b. enables Your Organisation to undertake the Activity and comply with its obligations under this Agreement, including without limitation under Supplementary Condition 23 [Designated Use]; and
 - c. entitles the Department to give effect to its rights under Supplementary Condition 25 [Step in rights].

5.6 Warranties in respect of Property

- 5.6.1 Your Organisation warrants and represents that, other than those matters notified to the Department:
- a. prior to the date of this Agreement; or
 - b. if the Property has not been identified at the Commencement Date, prior to the date on which Your Organisation enters into a binding entitlement to obtain tenure in relation to the Property:
 - i. there are and will be no restrictive covenants, restrictions on user, easements, encumbrances, interests, mortgages, caveats, leases, rights and notifications affecting the Property other than those notified to the Department;
 - ii. the whole of the improvements on the Property are within the title boundaries of the land and there are no encroachments by or upon the Property;
 - iii. all necessary Approvals have been or will be obtained in connection with the existing buildings and improvements on the Property and in connection with any alterations or additions to such buildings and improvements;
 - iv. the Designated Use of the Property is permitted by the currently applicable zoning of the Property and Your Organisation has obtained, or will obtain, the necessary Approval on terms and conditions agreed to by the Department, from the Proper Authority to the use of the Property for the Designated Use;

- v. where Your Organisation owns or will own the Property, it is, or will prior to the commencement of the Works (or, if no Works are to be performed, prior to the commencement of the Designated Use) be the sole owner of the Property and has, or will prior to the commencement of the Works (or, if no Works are to be performed, prior to the commencement of the Designated Use) have the right to exclusive use and occupation of the Property; and
- vi. where Your Organisation has or will have a Lease of the Property, Your Organisation and the owner of the Property will be the only parties to the Lease and Your Organisation will have the right to undertake the Works and the Activity on the Property and have the exclusive use and occupation of the Property for at least the Designated Use Period.

6 Requirements in relation to securities

6.1 Charge and caveat

6.1.1 Without in any way limiting or affecting Your Organisation's obligations or the Commonwealth's rights under this Agreement or otherwise at Law or in equity, Your Organisation:

- a. hereby irrevocably charges in favour of the Commonwealth, all of Your Organisation's right, title and interest in and to the Property, any Agreement to Lease, any Lease, the Works and the Assets to secure Your Organisation's obligations under this Agreement;
- b. agrees that the Department has the right to register and maintain an absolute caveat against Your Organisation's title to, or interest in, the Property and/or the Lease, preventing dealings with the Property and/or the Lease that the Department considers are or would be inconsistent with this Agreement, until such time as the conditions imposed under this Agreement have been fully satisfied or discharged; and
- c. agrees to sign and procure all consents, as required by the Department, to the lodgement of caveats against the title of the Property and/or the Lease and Your Organisation's right, title and interest in and to the Property and/or the Lease, in the form required by the Department from time to time to prevent the lapsing, or withdrawal, of any caveat.

6.2 Other securities specified in this Agreement

6.2.1 If it is specified at Item M of the Schedule that other securities are required to be granted, Your Organisation must, by the date specified in the Milestone Schedule, deliver to the Department such other securities as specified in Item M of the Schedule in registrable form, upon terms and conditions satisfactory to the Department, as security for Your Organisation's performance of Your Organisation's obligations under this Agreement.

6.3 Securities to be provided upon demand

6.3.1 Your Organisation must promptly upon demand by the Department grant to the Commonwealth such further or other securities, on terms and conditions satisfactory to the Department, that the Department may require from time to time

as security for Your Organisation's performance of Your Organisation's obligations under this Agreement.

6.4 Priority arrangements

- 6.4.1 Your Organisation must, if required by the Department, enter into a priority agreement with the Department and the holder of other relevant security interests, upon terms and conditions satisfactory to the Department, including, but not limited to, a condition requiring that the other security holder must not provide any additional finance to Your Organisation without the prior approval in writing of the Department.

6.5 Application of the Personal Property Security Act to Assets

- 6.5.1 Your Organisation agrees that:

- a. the Commonwealth has a security interest in any Asset or Intellectual Property that is:
 - i. to the extent the Asset or Intellectual Property is purchased using the Funding or Other Departmental Monies, a purchase money security interest; and
 - ii. within the meaning of the *Personal Property Securities Act 2009* (Cth) (PPS Act);
- b. the entering into of this Agreement is 'attachment' for the purposes of the PPS Act;
- c. Your Organisation must provide all information to the Commonwealth or its representative and provide anything or do any thing that the Commonwealth needs to receive or have done in order to be able to effectively register its security interest in any Asset or Intellectual Property on the Personal Property Securities Register established by section 147 of the PPS Act ('PPSR'), including any information set out in Item M of the Schedule within 5 days after the Commencement Date;
- d. if at any time the information provided under Supplementary Condition 6.5.1.c, or any other details, change that will have an impact on the Commonwealth's security interest in any Asset or Intellectual Property (including but not limited to any change in Your Organisation's name, any dealing with the Asset or Intellectual Property or purchasing of any additional Asset or Intellectual Property), Your Organisation must notify the Commonwealth as soon as reasonably practicable and provide all information and do any thing that the Commonwealth requires in order for its security interest to be maintained;
- e. any Asset or Intellectual Property in which the Commonwealth has a security interest is not to become 'accessions' or 'commingled goods' as defined in the PPS Act without the Department's prior written consent;
- f. for the purposes of section 31 of the PPS Act, the Department's security interest in the Asset or Intellectual Property extends to the proceeds of the Asset or Intellectual Property; and

- g. nothing in this Agreement is to be construed as an agreement to subordinate any security interest of the Department in favour of any other person.

6.5.2 Your Organisation must not, without the Department's prior written consent, grant or purport to grant a security interest as defined in the PPS Act over any Asset or Intellectual Property or do any other thing or allow any other dealing that will impact on the Department's security interest whether or not registered on the PPSR. For the avoidance of doubt Your Organisation must not grant a security interest as defined in the PPS Act to any third party without the Department's prior written consent. Any consent by the Department may be subject to conditions, including requiring Your Organisation to ensure that any other secured party enters into a subordination agreement with the Department to ensure the Department's security interest in the Asset or Intellectual Property is not subordinated to other interests.

6.6 Commonwealth's exercise of rights under securities

- 6.6.1 The Commonwealth may, in its absolute discretion and without limiting its rights under this Agreement or otherwise, exercise its rights under any or all of the securities:
 - a. to obtain compensation for any loss, damage, cost, liability or expense incurred or suffered in the event that Your Organisation fails to perform any or all of its obligations under this Agreement as and when they fall due, including upon termination of this Agreement under clause 10.2 of the Terms and Conditions; or
 - b. to recover any debts due to the Commonwealth under or in connection with this Agreement.
- 6.6.2 If the Commonwealth exercises any or all of its rights under any or all of the securities provided under this Supplementary Condition 6, the Commonwealth is not liable for, and Your Organisation releases the Commonwealth from liability for, any resultant loss, damage, cost, expense or liability of or to Your Organisation.

7. Additional requirements in relation to Other Contributions

7.1 Additional requirements

- 7.1.1 In addition to the requirements of clause 3.8.1 to 3.8.3 inclusive of the Terms and Conditions, by the dates specified in the Milestone Schedule:
 - a. where Other Contributions are to be contributed by another party, Your Organisation must provide evidence in writing satisfactory to the Department that:
 - i. Your Organisation has obtained written undertakings from that other party, under which that other party is legally obliged to make those Other Contributions to the Activity; and
 - ii. the terms on which the other party will make those Other Contributions are not inconsistent with the terms of this Agreement and do not, in any way, limit or affect Your Organisation's ability to comply strictly with Your Organisation's obligations, or the Department's ability to exercise its rights, under this Agreement;

- b. where the Other Contributions are to be contributed by Your Organisation, Your Organisation must provide evidence in writing satisfactory to the Department that Your Organisation holds those Other Contributions; and
- c. Your Organisation must provide evidence in writing satisfactory to the Department that Your Organisation has used or expended those Other Contributions for the purpose specified in the Budget and Item D of the Schedule.

7.1.2 In addition to the requirements of clause 3.8.4 and 3.8.5 of the Terms and Conditions, where Your Organisation receives, or is entitled to receive, additional monetary or in-kind contributions for an Activity, (other than for that part of the Activity that relates to carrying out the Designated Use during the Designated Use Period), that are not specified as Other Contributions for that Activity in Item D, Your Organisation must:

- a. obtain written undertakings from such additional contributor, under which the additional contributor is legally obliged to make their additional contribution to the Activity;
- b. if requested by the Department, promptly provide to the Department copies of any written arrangements entered into, or proposed to be entered into, in respect of such additional contributions;
- c. ensure that the terms on which such additional contributions are provided to Your Organisation for, or in connection with, the Activity are not inconsistent with the terms of this Agreement and do not, in any way, limit or affect Your Organisation's ability to comply strictly with Your Organisation's obligations, or the Department's ability to exercise its rights, under this Agreement;
- d. submit a revised Activity Plan and Budget including the amount of such additional contribution and the purpose for which it will be used, for approval by the Department under Supplementary Condition 8; and
- e. if requested by the Department, promptly provide evidence in writing satisfactory to the Department that Your Organisation has used or expended the additional contribution as specified in the approved revised Activity Plan and Budget.

7.2 Other Contributions to be included in Activity Plan and Budget

- 7.2.1 The total amount of all Other Contributions, and how and when the Other Contributions will be used or expended for an Activity, must be fully set out in the Activity Plan and the Budget submitted by Your Organisation in accordance with Supplementary Condition 8.
- 7.2.2 Your Organisation must do all acts and things necessary to ensure that the Other Contributions are made to the Activity in accordance with the Activity Plan and the Budget.

8. Planning, Design and Approvals

8.1 Activity Plan and Budget

- 8.1.1 Your Organisation must submit to the Department a:

- a. preliminary Activity Plan;
- b. preliminary Budget;
- c. construction ready Activity Plan; and
- d. construction ready Budget,

by the dates specified in the Milestone Schedule.

8.1.2 Notwithstanding clause 8.1.1, if in the Department's opinion, the applicable Activity Plan or Budget is not up to date, the Department may request that an updated Activity Plan or Budget be provided, in which case Your Organisation must submit a revised Activity Plan and Budget promptly after receipt of the Department's request.

8.1.3 Your Organisation must ensure that each Activity Plan and Budget:

- a. has been prepared diligently, effectively and to a high professional standard;
- b. will, if implemented in accordance with this Agreement, ensure that all timeframes arising under this Agreement will be met and the Works will meet all requirements of this Agreement and, in particular, will be fit for the Designated Use; and
- c. meet the specific requirements of Supplementary Conditions 8.2 and 8.3, as applicable.

8.1.4 The Department will review each Activity Plan and Budget submitted under Supplementary Condition 8.1.1 and 8.1.2 and notify Your Organisation that either:

- a. the Activity Plan and Budget are acceptable to the Department; or
- b. the Activity Plan and Budget, in the Department's opinion, require amendment.

8.1.5 On receipt of notification under Supplementary Condition 8.1.4 b., Your Organisation must amend the relevant Activity Plan and Budget to take into account the Department's comments and resubmit those documents within 30 days of the date of the Department's notification for re-consideration by the Department in accordance with Supplementary Condition 8.1.4.

8.1.6 Your Organisation must perform the Activity in accordance with the Activity Plan and Budget, subject to clause 3.5.2 of the Terms and Conditions.

8.2 Preliminary Activity Plan and Budget

8.2.1 The preliminary Activity Plan must, as a minimum:

- a. include details of the proposed delivery and contracting models for the Works;
- b. document the Works at Schematic Design stage, and provide a statement of how and when the Works are to be carried out, by showing the major sub – projects, Milestones, activities and resources required for the Works against a detailed development program that will guide the Works; and
- c. include a detailed risk management and contingency plan for the Activity including the Designated Use of the Works and the Property, which identifies the potential risks and sets out the proposed management and contingency strategies to address these risks, including but not limited to, risks arising from

or related to acquisition of the Property, procurement of a builder and other professional services, fund raising, financial viability, staffing and resource arrangements for the Activity including the Designated Use.

- 8.2.2 The preliminary Budget must, as a minimum, specify those aspects of the Activity in relation to which the Funding and Other Contributions will be expended in the form set out in Item D of the Schedule.

8.3 Construction ready Activity Plan and Budget

- 8.3.1 The construction ready Activity Plan must update the preliminary Activity Plan documenting the changes, if any, to the matters included in the preliminary Activity Plan including an update to the risk management and contingency plan for the Activity.
- 8.3.2 The construction ready Budget must update the preliminary Budget, further detailing actual costs and refining estimated costs associated with the Works endorsed by a quantity surveyor or other appropriate building professional.

8.4 Design of the Works

- 8.4.1 Your Organisation is responsible for the design of the Works and must ensure the design of the Works:
- a. is conducted with the level of skill and care of a prudent and competent design professional;
 - b. complies with the Building Code of Australia and other regulatory requirements of the relevant State or Territory and local government in the jurisdiction in which the Works are to be carried out;
 - c. will ensure that the Works are fit for the purpose of the Designated Use on and from the Date for Practical Completion, and throughout the Designated Use Period; and
 - d. will ensure that a Certificate of Occupancy will be issued in respect of the Works on their completion.

8.5 Activity Material

- 8.5.1 Your Organisation must develop, prepare and maintain copies of all documents necessary to complete the Works in accordance with this Agreement, in order to ensure the Works are, on completion, fit for use for the Designated Use throughout the Designated Use Period.
- 8.5.2 Your Organisation must deliver the Activity Material identified in Item B.11 of the Schedule to the Department no later than the date specified in the Milestone Schedule.

8.6 Approvals

- 8.6.1 Your Organisation must obtain all Approvals for:
- a. the development of the Property for the Designated Use;
 - b. the construction of the Works; and

- c. the use of the Works for the Designated Use during the Designated Use Period,

and must deliver a copy of each Approval to the Department by the date specified in the Milestone Schedule.

9. Additional requirements in relation to Subcontractors for the Works

- 9.1.1 In addition to the requirements of clause 4.2 of the Terms and Conditions and any other requirements in this Agreement in relation to Subcontracts, if Your Organisation subcontracts any part of the design, construction and fit-out of the Works, Your Organisation must:
- a. undertake a competitive process to procure appropriately qualified Subcontractors in accordance with the following principles:
 - i. a tender must be either an open, public tender or a select tender process;
 - ii. where a select tender process is used, not less than three quotations must be sought;
 - iii. the tender must be conducted fairly and transparently in accordance with commonly accepted principles of probity and in accordance with industry standards and practice; and
 - iv. the successful tenderer must be selected by Your Organisation on the basis of the value for money the tendered offer provides;
 - b. ensure that each Subcontract that Your Organisation has with a Subcontractor who is undertaking any part of the Works requires that Subcontractor to:
 - i. obtain and maintain the insurances specified in Item G of the Schedule on the terms specified in Item G of the Schedule and all other appropriate types and amounts of insurance to cover the Subcontractor's obligations and activities under the Subcontract;
 - ii. ensure that any Sub-subcontractor it engages in relation to the Works obtains and maintains the insurances specified in Item G of the Schedule on the terms specified in Item G of the Schedule and all other appropriate types and amounts of insurance to cover the Sub-subcontractor's obligations and activities under the Sub-subcontract; and
 - iii. provide security, retention moneys or performance undertakings in an amount or on terms sufficient for the purpose of ensuring the due and proper performance of the Subcontract (including remedial work and any work that the Subcontractor has Sub-subcontracted).
- 9.1.2 The Department may, by notice, request Your Organisation to provide evidence that Your Organisation and Your Organisation's Subcontractors (and any Sub-subcontractors) have complied with the requirements in this Agreement in relation to Subcontracts (and Sub-subcontracts) and Your Organisation must provide that evidence to the Department within 21 days after Your Organisation receives the Department's request.

10. Conduct of the Activity

- 10.1.1 Your Organisation must:
- a. perform the Activity within the timeframes specified in the Milestone Schedule and the Activity Plan and Budget accepted in accordance with Supplementary Condition 8.1;
 - b. ensure that the Works are carried out:
 - i. in accordance with the Approvals for the Works;
 - ii. in accordance with the requirements and standards of all Laws applicable to the Works;
 - iii. diligently, effectively and to a high professional standard; and
 - iv. so as to ensure that the Works will be fit for purpose of the Designated Use.
- 10.1.2 If there is an inconsistency between the timeframes specified in the Activity Plan accepted in accordance with Supplementary Condition 8.1 and the timeframes specified in the Milestone Schedule, the timeframes specified in the Milestone Schedule will prevail.
- 10.1.3 If it is stated in this Agreement that Your Organisation must do an act or thing by a date specified in the Milestone Schedule, and there is no such date specified in the Milestone Schedule, Your Organisation must do the act or thing by the date that the Department notifies Your Organisation the act or thing must be done.

10.2 Works partially completed at the Activity Start Date

- 10.2.1 If, at the Activity Start Date, part of the Works has already been performed or constructed, Your Organisation represents and warrants that that part of those Works has been performed or completed in accordance with all Laws and Approvals and to a high professional standard.

11. Environmental Obligations

- 11.1.1 In carrying out the Activity, Your Organisation must ensure that:
- a. Your Organisation complies with all applicable Laws regarding the protection of the Environment;
 - b. Your Organisation does not contaminate or otherwise damage the Environment; and
 - c. Your Organisation's Personnel comply with the requirements set out in this Supplementary Condition 11.1.
- 11.1.2 Your Organisation must make good any Contamination or damage to the Environment arising out of or in connection with the Activity, regardless of whether Your Organisation has complied with all applicable Laws regarding the protection of the Environment. Unless the Department specifically notifies Your Organisation otherwise, Your Organisation may not use the Funds to rectify any such Contamination or damage to the Environment.

11.1.3 Without detracting in any way from Your Organisation's obligations under this Agreement, the Department may take any action necessary to protect:

- a. the Activity;
- b. other property;
- c. the Environment; or
- d. third parties,

resulting from Your Organisation's conduct of the Activity and the Department may recover as a debt due from Your Organisation to the Commonwealth all costs, expenses and liabilities that the Commonwealth incurs as a result of taking action under this Supplementary Condition 11.1.3.

12. Latent Site Conditions

12.1.1 If, at any time during the performance of the Activity, a condition that may affect the completion of the Works (whether a Latent Condition or otherwise) is discovered at the Property, Your Organisation must:

- a. immediately notify the Department;
- b. provide the Department with any details the Department reasonably requires of the condition, its causes, and its effect on the Activity and the Works; and
- c. take all steps necessary to avoid (or, if Your Organisation is unable to avoid, to mitigate) the impacts of that condition on the performance of the Activity and the Works.

12.1.2 The Department may require Your Organisation to vary the Activity to overcome the impacts of any condition at the Property that would or may adversely affect Your Organisation's ability to complete the Activity in accordance with, or otherwise comply with, the Agreement. Any such requirement does not limit the Department's rights under Supplementary Condition 12.1.3 below.

12.1.3 If, in the Department's reasonable opinion, a condition referred to in Supplementary Condition 12.1.1 is a Latent Condition:

- a. then all steps Your Organisation takes (and that any third party takes on Your Organisation's behalf) to avoid or mitigate the impacts of the Latent Condition in accordance with Supplementary Condition 12.1.1c are entirely at Your Organisation's own risk and expense and must not be paid for using any of the Funding; and
- b. the Department may, at any time following the identification of the Latent Condition, terminate this Agreement under clause 10.2 [Termination for default] of the Terms and Conditions provided that the Department considers that:
 - i. the impacts of the Latent Condition are unable to be avoided or mitigated cost effectively in a manner that will enable the Activity to be completed as contemplated in this Agreement; or
 - ii. Your Organisation has failed to avoid or mitigate the impacts of the Latent Condition in accordance with Supplementary Condition 12.1.1c

within a reasonable time after the discovery of the Latent Condition or such other time as may be allowed by the Department.

13. The Building Code 2016 and Supporting Guidelines

13.1 Compliance with the Building Code

- 13.1.1 Where the Funding for the Activity specifically relates to building and construction activity, subject to the thresholds specified in the Building Code, Your Organisation must comply and ensure that the Project Parties comply with the Building Code.
- 13.1.2 The Building Code requires Your Organisation to ensure that:
- a. all requests for tender, expressions of interest, submissions and invitations to join Common Use Arrangements in relation to the Works made by Your Organisation, or any of the Project Parties, contain the commitment to apply the Building Code; and
 - b. all contracts entered into in relation to the Works by Your Organisation, or any of the Project Parties, contain the commitment to apply the Building Code.

13.2 Your Organisation must maintain Records and permit access

- 13.2.1 Your Organisation must maintain adequate records of compliance by Your Organisation, and each of the Project Parties, with the Building Code. Your Organisation must permit the Department and those authorised by the Department, including a person occupying a position in the Fair Work Building Industry Inspectorate, full access to premises and records of Your Organisation and the Project Parties to:
- a. inspect any work, material, machinery, appliance, article or facility;
 - b. inspect and copy any record relevant to the Activity and Works governed by this Agreement;
 - c. interview any person,
- as is necessary to monitor compliance with the Building Code.

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

- 13.2.2 The Department and those authorised by it may publish or otherwise disclose information in relation to compliance by Your Organisation and the Project Parties with the Building Code. Your Organisation must obtain the consent of the Project Parties to the publication or disclosure of information under this clause.

13.3 Assessing and appointing Project Parties

- 13.3.1 While acknowledging that value for money is the core principle underpinning decisions on government procurement, when assessing tenders Your Organisation may preference contractors, subcontractors and consultants that have a demonstrated commitment to:
- a. adding and/or retaining trainees and apprentices;

- b. increasing the participation of women in all aspects of the industry; or
 - c. promoting employment and training opportunities for Indigenous Australians in regions where significant indigenous populations exist.
- 13.3.2 Your Organisation must not appoint a Subcontractor, or permit the appointment of a Sub-subcontractor, in relation to the Activity where:
- a. the appointment would breach a sanction imposed by the Minister for Employment; or
 - b. the Subcontractor, or Sub-subcontractor, has had a judicial decision against them relating to employee entitlements, not including decisions under appeal, and has not paid the claim.

14. Australian Government Building and Construction OHS Accreditation Scheme

- 14.1.1 Subject to the exclusions specified in the *Fair Work (Building Industry-Accreditation Scheme) Regulations 2005*, the Scheme applies to the Activity and each of the Activity's head contracts for Building Work that is valued at \$3 million 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); and
 - b. contain a requirement that the head building contractor:
 - i. is accredited under the Scheme;
 - ii. maintains Scheme accreditation for the life of the contract; and
 - iii. must comply with all conditions of the Scheme accreditation.

15. Builder Side Deed

- 15.1.1 If Item B.10 of the Schedule states that a Builder Side Deed is required, Your Organisation must, by the date specified in the Milestone Schedule:
- a. enter into a Builder Side Deed with the Department; and
 - b. arrange for an entity required by the Department, with whom Your Organisation has entered or proposes to enter into a contract in respect of the Works, to enter into a Builder Side Deed with the Department.
- 15.1.2 Your Organisation agrees not to do anything during the Term of this Agreement that would give any entity with whom Your Organisation has a contract in respect of the Works the right to terminate that contract.
- 15.1.3 Notwithstanding any other clause in this Agreement, Your Organisation acknowledges and agrees that it is not entitled to receive, and the Department is not obliged to pay, any part of the Funds for Works, and, if Your Organisation has been paid Funds, no Funds are to be expended by Your Organisation for Works, unless and until Your Organisation has complied with Supplementary Condition 15.1.1.

16. Commencement of the Works

- 16.1.1 Without limiting Your Organisation's obligations under Supplementary Condition 16.1.2, Your Organisation must not commence construction of the Works, other

than in relation to the design of the Works, until Your Organisation has obtained written confirmation from the Department that the Department is satisfied that Your Organisation has met all of the requirements in the Milestone Schedule up to and including the Milestone which is headed 'Commencement of the Works'.

16.1.2 Your Organisation must:

- a. obtain written confirmation from the Department under Supplementary Condition 16.1.1; and
- b. commence the Works;

on or before the date specified for the commencement of the Works in the Milestone Schedule.

17. Liaison, project manager, Infrastructure Projects Facilitator, Independent Certification and Project Control Group

17.1 Department's Contact Officer

- 17.1.1 Your Organisation must liaise with and report to the Department's contact officer specified in Item L of the Schedule in relation to the Activity as reasonably required by the Department for the purposes of this Agreement.

17.2 Provision of information

- 17.2.1 Upon request, Your Organisation must within the timeframe stipulated in the request, or promptly if no timeframe is stipulated in the request, provide all information in relation to the Activity or Your Organisation requested by the Department's contact officer specified in Item L of the Schedule, for the purposes of this Agreement, including for monitoring and evaluation purposes.

17.3 Appointment of a project manager

- 17.3.1 Your Organisation must appoint an independent, suitably qualified project manager who is not a principal, employee or officer of Your Organisation or the building Subcontractor, to supervise the Works, including but not limited to, particular tasks such as labour and material cost control and scheduling of the Works.

17.4 Oversight of the Works by Infrastructure Projects Facilitator

- 17.4.1 Where it is specified in Item B.12 of the Schedule that the Department has appointed an Infrastructure Projects Facilitator in relation to the Works, Your Organisation must:
- a. obtain the written approval of the Infrastructure Projects Facilitator to the appointment of a project manager under Supplementary Condition 17.3.1;
 - b. provide to the Infrastructure Projects Facilitator, and ensure that the project manager provides to the Infrastructure Projects Facilitator, promptly upon request, all reports, documentation, information and material requested by the Infrastructure Projects Facilitator in relation to the Works;
 - c. provide the Infrastructure Projects Facilitator with access to the Property and the Works;

- d. obtain the written approval of the Infrastructure Projects Facilitator before issuing requests for tender in relation to the design and construction of the Works;
- e. consider the advice and recommendations of the Infrastructure Projects Facilitator in relation to the tenders received by Your Organisation for the design and construction of the Works;
- f. obtain the written approval of the Infrastructure Projects Facilitator before entering into contracts for the design and construction of the Works;
- g. obtain the written approval of the Infrastructure Projects Facilitator before making payments to contractors for the design and construction of the Works;
- h. obtain written certification from the Infrastructure Projects Facilitator that the Works have reached Practical Completion for the purposes of Supplementary Condition 20.1.1 e. iii; and
- i. obtain written certification from the Infrastructure Projects Facilitator when Your Organisation has satisfied the requirements for each of the Milestones in the Milestone Schedule.

17.5 Requirement for Independent Certification

17.5.1 This clause applies where it is specified in Item B.12 of the Schedule that an Independent Certifier must be engaged in relation to the Activity.

17.5.2 Your Organisation must:

- a. engage an Independent Certifier from the list of providers on the Department's Independent Certification Panel, in accordance with Supplementary Condition 17.6;
- b. provide all necessary assistance to the Independent Certifier to carry out the Independent Certification Functions, which includes permitting access to:
 - i. all Reports and other information of Your Organisation prepared for and pursuant to this Agreement; and
 - ii. any of Your Organisation's work sites or the Property; and
- c. ensure that the Independent Certifier performs the Independent Certification Functions, which includes providing quarterly reports which certify as correct Your Organisation's monthly reports onto the Capital Works Reporting Portal.

17.6 Engagement of Independent Certifier

17.6.1 Where it is specified in Item B.12 of the Schedule that Your Organisation is required to engage an Independent Certifier, Your Organisation must ensure that the Independent Certifier is engaged at least one month prior to the first quarterly reporting cycle. The Independent Certifier must be engaged until Your Organisation has achieved Practical Completion of the Works, subject to:

- a. the Independent Certifier continuing to be a member of the Independent Certification Panel; or
- b. the earlier termination of the Independent Certification Agreement.

- 17.6.2 Your Organisation must, if possible, obtain at least two quotes from the list of providers on the Department's Independent Certification Panel for the provision of Independent Certification Functions for the first quarterly report required in relation to the Activity (**Quote**). This will require Your Organisation to provide sufficient information to the Independent Certifiers as is necessary in order for the Independent Certifiers to accurately assess the scope of the services required in relation to the Works in order to carry out the Independent Certification Functions.
- 17.6.3 Once the Quotes are received, the Organisation must provide the Quote or Quotes to the Department for review.
- 17.6.4 If the Department requires further information or clarification as to a Quote obtained by Your Organisation, Your Organisation must provide the Department with further details and information as the Department reasonably requires. Your Organisation must not engage an Independent Certifier until the Department has approved the Quote.
- 17.6.5 The Department will endeavour to approve one Quote within 4 days of receiving the Quote or Quotes, or receiving any clarification information requested.
- 17.6.6 For subsequent quarterly reporting requirements under this Agreement, Your Organisation may seek a quotation from the Independent Certifier to carry out the Independent Certification Functions covering the remainder of the quarterly reporting periods for the Works, provided that the quotation details the anticipated payments for each such quarter and Your Organisation must comply with the requirements of Supplementary Conditions 17.6.3 to 17.6.5 in relation to that quotation.
- 17.6.7 Following approval by the Department pursuant to Supplementary Condition 17.6.5 Your Organisation must engage the Independent Certifier:
- a. for the fees provided in the Quote (**Agreed Fee**); and
 - b. on the terms of the Standard Independent Certifier Agreement; or
 - c. if Your Organisation and Independent Certifier agree to use a different form of agreement than the Standard Independent Certifier Agreement, the agreement as agreed by the parties, provided always that any alternative form of agreement must maintain the obligation on the Independent Certifier to carry out and perform the services as described and set out in the Standard Independent Certifier Agreement.
- 17.6.8 For the purpose of Supplementary Condition 17.6.7, if either Your Organisation or the Independent Certifier objects to using a form of agreement other than the Standard Independent Certifier Agreement, Your Organisation and Independent Certifier must use the Standard Independent Certifier Agreement.
- 17.6.9 Notwithstanding the above, Your Organisation may engage an Independent Certifier to carry out other functions or provide other services to Your Organisation, beyond the Independent Certification Functions, in relation to the Activity. In such circumstances:
- a. Your Organisation and the Independent Certifier may agree terms and requirements independent of the requirements of this Agreement;

- b. Your Organisation warrants that such additional services will not impact on the ability of the Independent Certifier to properly and diligently carry out the Independent Certification Functions; and
- c. payment for such services will be for the account of Your Organisation.

17.7 Payment of Independent Certifier

- 17.7.1 Upon receipt of a tax invoice from the Independent Certifier for each quarterly certification, Your Organisation will forward a copy of the tax invoice to the Department.
- 17.7.2 If the Department is satisfied with the tax invoice, the Department will provide Your Organisation, within 30 days of receipt of the tax invoice and certification provided by Your Organisation pursuant to Supplementary Condition 17.7.1, Funding in the amount of the tax invoice.
- 17.7.3 The Parties acknowledge that the reimbursement of the Agreed Fee by the Department for the performance of the Independent Certification Functions pursuant to this Supplementary Condition 17 is in addition to the Funds otherwise payable under this Agreement.

17.8 Project Control Group

- 17.8.1 By the date specified in the Milestone Schedule, Your Organisation must establish a Project Control Group to monitor the progress of the Works.
- 17.8.2 A Project Control Group should comprise, where appropriate, the following positions:
 - a. one representative of Your Organisation;
 - b. one representative of the architect;
 - c. one representative of the quantity surveyor;
 - d. one representative of the project manager; and
 - e. one representative of the contracted construction company (once engaged).
- 17.8.3 The Project Control Group must facilitate communications, receive and consider all reports and information about the Activity and the Works and give and make all necessary approvals, notices, consents and decisions in relation to the Works.
- 17.8.4 The Project Control Group must, from its establishment until the date of Practical Completion, meet at least monthly or at such other times as the Parties may agree for the purpose of reviewing and monitoring the Works' progress.

18. Inspection of Works

- 18.1.1 At all reasonable times during the construction of the Works upon giving reasonable notice and subject to Your Organisation's reasonable requirements in relation to safety and security:
 - a. the Department or persons authorised by the Department may enter the Property to inspect and examine the Works; and
 - b. the Department may give notice to Your Organisation of any omission, fault or defect in the Works.

- 18.1.2 Within 15 days, or such longer time as may be agreed to in writing by the Department, having regard to the nature of the omission, fault or defect, after the receipt of a notice under Supplementary Condition 18.1.1, Your Organisation must cause all matters specified in that notice to be rectified and must notify the Department when rectification has been effected.
- 18.1.3 Despite the Department's right to inspect and examine the construction of the Works:
- a. the Department is not obliged to check the construction of the Works for any defect, fault or omission; and
 - b. Your Organisation is not relieved of responsibility for any defect, fault or omission in respect of the Works.

19. Variations to the Works

- 19.1.1 Your Organisation must not vary the scope of the Works (as detailed in the Activity Plan accepted in accordance with Supplementary Condition 8.1 and Item B.6 of the Schedule) in a manner that would or might reasonably be expected to have an effect on:
- a. Your Organisation achieving the Milestones by the dates required in the Milestone Schedule, including the Date for Practical Completion of the Works;
 - b. the price of the Works;
 - c. the fitness of the Works for the purpose of the Designated Use;
 - d. the Activity Plan and Budget accepted in accordance with Supplementary Condition 8.1; and
 - e. the Approvals obtained in relation to the Works,
- without the consent in writing of the Department, which will not be unreasonably withheld or delayed.

20. Practical Completion of the Works

- 20.1.1 In order to achieve Practical Completion of the Works:
- a. the Works must be complete and free from errors, omissions and defects, except for errors, omissions or defects:
 - i. that are of a minor nature;
 - ii. the immediate making good of which is not reasonably practicable;
 - iii. the existence of which or the making good of which will not significantly inconvenience users of the Property or the Works for the Designated Use; and
 - iv. do not cause any legal or physical impediment to the use and occupation of the Property and the Works for the Designated Use;
 - b. the Works must be fit for the purpose of the Designated Use;
 - c. Your Organisation must have provided to the Department a copy of the Certificate of Occupancy in respect of the Works;

- d. the Designated Use of the Works must have commenced;
- e. Your Organisation must obtain from:
 - i. your authorised representative; and
 - ii. a suitably qualified and independent person engaged for the purposes of inspecting the Works on their completion and determining whether, in the professional opinion of that person, the Works have reached Practical Completion, or
 - iii. where Supplementary Condition 17.4.1 applies, the Infrastructure Projects Facilitator;

written certification that the Works have reached Practical Completion, and provide each such written certification to the Department.

20.2 Date for Practical Completion

- 20.2.1 Your Organisation must achieve Practical Completion of the Works on or before the Date for Practical Completion set out in the Milestone Schedule.

20.3 Defects after Practical Completion

- 20.3.1 Your Organisation must promptly rectify any defects, faults or omissions in the Works which:
 - a. are referred to in Supplementary Condition 20.1.1 a; or
 - b. otherwise become apparent after the Date for Practical Completion.

21. Assumption of risks for the Works

- 21.1.1 Your Organisation must ensure that:
 - a. the relevant insurance specified in Item G of the Schedule in respect of the Works and the Property is taken out and maintained during the specified time periods;
 - b. the Works and the Property are insured by Your Organisation and/or the owner of the Works and the Property, against loss, damage and destruction for its full reinstatement value, which must include the reinstatement value of the Works at all times during and after their completion; and
 - c. if Your Organisation is undertaking any of the Works, Your Organisation takes out and maintains insurance policies covering all of Your Organisation's obligations and responsibilities regarding the performance of those Works, and the death or injury of any of Your Organisation's employees, until those Works (including any remedial work) are completed.
- 21.1.2 If there is any loss of or destruction or damage to the Works or Property, including to any plant, equipment or materials acquired or used for the Works, Your Organisation must promptly:
 - a. make the Works and the Property safe and secure;
 - b. notify the relevant insurers and comply with their instructions;

- c. claim and obtain payment of insurance monies to which Your Organisation is entitled under the relevant insurance policies in respect of the loss, damage or destruction;
 - c. consult with the Department to discuss the steps to be taken to comply with Your Organisation's obligations under this Supplementary Condition 21; and
 - d. apply all relevant insurance proceeds:
 - i. if required by the Department, to replace, repair or otherwise make good the loss, destruction or damage and, unless the Department agrees otherwise in writing, not use other parts of the Funds to meet the cost of that replacement, repair or making good; or
 - ii. otherwise, pay to the Department an amount calculated in accordance with Item N of the Schedule, or where the insurance proceeds are less than the amount calculated in accordance with Item N of the Schedule, the total insurance proceeds.
- 21.1.3 Your Organisation accepts all risks in respect of the design, construction, commissioning and use of the Works, including without limitation the risk of:
- a. the actual cost of the design, construction and commissioning of the Works being greater than anticipated;
 - b. the design, construction and commissioning of the Works not being completed in accordance with the requirements of any Subcontract or Sub-subcontract;
 - c. liabilities associated with:
 - i. work health and safety;
 - ii. environmental issues;
 - iii. payments to Subcontractors and/or Sub-subcontractors;
 - iv. liabilities to third parties; and
 - v. compliance with all Laws and Approvals relating to the Works or the Property.

22. Plaque for the Works and opening of the Works

- 22.1.1 Your Organisation must place a plaque in a prominent position on the Works to acknowledge that it was, in whole or in part, created or acquired with the assistance of Commonwealth Funding under the Program.
- 22.1.2 The contents of the wording, locations and specifications of the plaque must be approved in writing by the Department.
- 22.1.3 Your Organisation must retain the plaque on the Works for the duration of the Designated Use Period.
- 22.1.4 Your Organisation must invite representatives of the Commonwealth (including the Minister) to any formal public opening of the Works.

23. Designated Use

23.1 Use of the Property, the Works and the Assets for the Designated Use

23.1.1 Your Organisation agrees and undertakes for the Designated Use Period:

- a. to fully and effectively use the Property, the Works and the Assets, or to ensure that the Property, the Works and the Assets are fully and effectively used, for the Designated Use;
- b. to ensure the Property, the Works and the Assets are not left unused or unoccupied for a period in excess of four weeks without first obtaining the written consent of the Department; and
- c. not to use the Property, the Works or the Assets, or permit the Property, the Works or the Assets to be used for any purpose other than the Designated Use, without first obtaining the written consent of the Department.

23.1.2 Your Organisation agrees and undertakes, at all times during the Term of this Agreement:

- a. to safeguard the Property, the Works and the Assets against loss, damage and unauthorised use;
- b. to maintain the Property, the Works and the Assets in good condition;
- c. subject to Supplementary Condition 21.1.2, to reinstate the Property, the Works and the Assets if they are damaged or destroyed;
- d. not to grant or Dispose of any interest in the Property, the Works or the Assets, without first:
 - i. obtaining the Department's consent in writing (such consent may be withheld at the Department's sole and unfettered discretion); and
 - ii. if required by the Department, procuring the purchaser, transferee, lessee, licensee, mortgagee, chargee or other disponent, to enter into a deed of covenant with the Department, on terms acceptable to the Department under which the purchaser, transferee, lessee, licensee, mortgagee, chargee or other disponent covenants in favour of the Commonwealth to complete any part of the Works that are not completed and to use the Property, the Works and the Assets for the Designated Use until the expiry of the Designated Use Period;
- e. to develop and implement a 'no-smoking' policy for any building, workplace, vehicles, facilities and any other place or part thereof that Your Organisation owns or leases at which the Activity, or part thereof, is performed.

23.2 Where Part of the Property is not required for the Designated Use

23.2.1 Despite any provision to the contrary in this Agreement:

- a. Your Organisation's obligations relating to using the Property for the Designated Use do not apply in relation to the use of any part of the Property in which Your Organisation does not have an interest or that the Department has agreed is not required to be used for the Designated Use; and

- b. Your Organisation is not prevented from granting leases over any part of the Property that the Department has agreed is not required to be used for the Designated Use, provided that Your Organisation does not allow the Property to be used for any purpose that, in the Department's opinion is incompatible with, or would likely impede, the Designated Use.

23.3 Accreditation, registration and licensing during Designated Use Period

23.3.1 Your Organisation must take all reasonable steps to ensure that:

- a. the services provided and activities carried out in performing the Designated Use during the Designated Use Period meet all relevant industry accreditation standards; and
- b. if applicable, the personnel carrying out the Designated Use from the Property are at all times appropriately insured, licensed and registered in accordance with the requirements of relevant regulatory bodies in the jurisdiction in which the Property is situated.

24 Remediation Plan

24.1 The Department may request a Remediation Plan

- 24.1.1 If, following access to and a review of the Property, the Works, the Assets, Material or anything else used for the Activity, the Department is concerned about Your Organisation's performance of any aspect of the Activity, the Department may (but is not obliged to) give Your Organisation a notice summarising those concerns and requiring Your Organisation to provide the Department with a draft Remediation Plan for the Activity.
- 24.1.2 Your Organisation must provide a draft Remediation Plan to the Department for its approval within 14 days after Your Organisation receives the notice specified in Supplementary Condition 24.1.1 or if a later date is agreed in writing by the Parties, by that later date.
- 24.1.3 The Department may approve the draft Remediation Plan or it may require changes to the draft Remediation Plan before the Department approves it.
- 24.1.4 If the Department requires changes to a draft Remediation Plan, Your Organisation must make the changes and provide the modified Remediation Plan to the Department within 14 days after the Department notifies Your Organisation of the required changes, or if a later date is agreed in writing by the Parties, by that later date.
- 24.1.5 The Department may approve or reject a modified Remediation Plan.

24.2 Your Organisation's compliance with Remediation Plan

- 24.2.1 Your Organisation must comply with a Remediation Plan that has been approved by the Department.

24.3 Rejection of a modified Remediation Plan

- 24.3.1 If the Department rejects a modified Remediation Plan, it may terminate the Agreement under clause 10.2 [Termination for default] of the Terms and Conditions.

- 24.3.2 This Supplementary Condition 24 does not restrict or limit any other rights that the Department has under clause 10.1 [Termination or reduction in scope for convenience] or 10.2 [Termination for default] of the Terms and Conditions or otherwise at Law.

25. Step in rights

- 25.1.1 If the Department considers that:

- a. Your Organisation has breached an obligation that Your Organisation has under this Agreement in relation to the performance of the Activity;
- b. a termination event as specified in clause 10.2.2 of the Terms and Conditions has occurred;
- c. Your Organisation is or will be unable to perform an obligation that Your Organisation has under this Agreement in relation to the performance of the Activity; or
- d. Your Organisation requires operational funding from the Commonwealth in order to carry out the Designated Use, and Your Organisation does not receive, or ceases to receive such operational funding;

the Department may at any time during the Activity Period:

- e. step in and take control or management of the Activity in whole or in part for all or part of the remainder of the Activity Period; or
- f. make any other arrangements the Department considers necessary to carry out the Activity.

- 25.1.2 Any action the Department takes under Supplementary Condition 25.1.1 does not affect its other rights under this Agreement or otherwise at Law.

- 25.1.3 Your Organisation hereby irrevocably appoints the Department (or any nominee of the Department) as Your Organisation's attorney for the purpose of executing documents and doing all things necessary to allow the Department to take action under this Supplementary Condition 25, including enforcing or terminating as lessor or licensor any leases, subleases or licences, management agreements or service contracts granted by Your Organisation to a third party in respect of the Property.

- 25.1.4 Your Organisation must execute all documents and do all things that the Department considers necessary to give full force and effect to Supplementary Condition 25 and Your Organisation must ensure that the same term is included in all Subcontracts and Sub-subcontracts.

- 25.1.5 If the Department exercises its rights under this Supplementary Condition 25 in relation to the Activity, Your Organisation must, if directed by the Department, within the timeframe specified by the Department:

- a. novate or assign to the Department or its nominee any contracts with third parties (including any Subcontracts) relating to the Activity;
- b. assign to the Department or its nominee (or, where Your Organisation is unable to assign, assist the Department obtain) all licences, consents and approvals that the Department or its nominee requires to fully exercise the Department's rights under Supplementary Condition 25;

- c. novate, assign, sub-lease or sub-licence to the Department or the Department's nominee, on terms and conditions required by the Department, any leases or licences relating to the Property, the Works and the Assets that the Department considers are required to complete the Activity;
 - d. where Your Organisation owns the Property or the Assets, grant to the Department or the Department's nominee, any leases or licences over the Property, the Works and the Assets, on terms and conditions required by the Department, that the Department considers are required to complete the Activity;
 - e. give the Department and its nominee unfettered access to the Property and the Works where the Activity is to take place; and
 - f. repay to the Department all Funding provided for the Activity that:
 - i. is, at the time of the Department's request, not spent or due and payable by Your Organisation; or
 - ii. cannot be shown to the Department's reasonable satisfaction to have been spent or be due and payable by Your Organisation for the Activity in accordance with this Agreement.
- 25.1.6 The rent or licence fee payable in relation to a lease or sub lease, or licence or sub licence granted, novated or assigned to the Department or the Department's nominee in relation to the Property, the Works or the Assets under this Supplementary Condition 25 must not be greater than the market rent that would be payable for such Property, Works and the Assets less an amount that is reasonably attributable to the Department's funding of the Property, Works and Assets. For example, where the Department funded the full cost of acquiring the Property and the Assets and constructing the Works, the rent or licence fee must be nil.
- 25.1.7 Your Organisation agrees that the Department may authorise a nominee of the Department to exercise any right that the Department has under this Supplementary Condition 25.
- 25.1.8 Without limiting the Department's rights under this Agreement, the Department may recover from Your Organisation the costs incurred by the Department in exercising its rights under this Supplementary Condition 25.
- 25.1.9 Your Organisation agrees that the Commonwealth will not incur any liability to Your Organisation by the Department (or its nominee) exercising any of its rights under this Supplementary Condition 25.
- 25.1.10 Your Organisation agrees that the words “; or h. the exercise of the Department's rights under Supplementary Condition 25” are inserted before the full stop at the end of clause 9.2.1 [Indemnity] of the Terms and Conditions.
- 25.1.11 The rights of the Department under this Supplementary Condition 25 are in addition to, and do not derogate from, any rights of the Commonwealth under any other agreement between the Parties regarding the use of any land, building or premises (including any Real Property).
- 25.1.12 This Supplementary Condition 25 survives the expiry or earlier termination of the Activity or this Agreement.

26. Additional Provisions in relation to termination

- 26.1.1 The Commonwealth may terminate this Agreement or an Activity under clause 10.1 or 10.2 of the Terms and Conditions if the Property, the Works or the Assets cannot be used for the Designated Use.

26.2 Repayment Amount

- 26.2.1 Without limiting the Commonwealth's rights under this Agreement or otherwise at Law or in equity, if the Department terminates this Agreement or an Activity at any time otherwise than pursuant to clause 10.1 of the Terms and Conditions, the Department may by written notice to Your Organisation require Your Organisation to pay to the Department the relevant amount calculated in accordance with Item N of the Schedule.
- 26.2.2 If the Department issues Your Organisation with a notice to repay an amount of Funds under Supplementary Condition 26.2.1:
- a. Your Organisation must pay to the Department the amount set out in the notice, within 30 days of the date of the Department's notice;
 - b. if Your Organisation fails to make payment within 30 days, the Department may recover the amount specified in its notice as a debt due from Your Organisation; and
 - c. the Department is not required to provide Your Organisation with any remaining amount of Funding for the Activity or the Works that are the subject of the notice.

26.3 Your Organisation's acknowledgement

- 26.3.1 Your Organisation acknowledges and agrees that:
- a. the amounts payable by Your Organisation under Supplementary Condition 26.2 represent a genuine and reasonable pre-estimate of the loss to the Commonwealth; and
 - b. Your Organisation releases the Commonwealth from all claims arising out of or in connection with the Commonwealth's rights under Supplementary Condition 26.2.

27. Survival

- 27.1 Neither the termination nor the expiry of an Activity or this Agreement will affect the continued operation of Supplementary Conditions 5, 6, 11, 18, 20, 21, 22, 23, 25, 26 and 28.

28. Replacement privacy provision

- 28.1 Clause 2.9 [Protection of Personal Information] and clause 2.10 [Commonwealth collection of Personal Information] of the Terms and Conditions do not apply to any Activity in this Schedule.
- 28.2 Clause 11.4 [Definitions] of the Terms and Conditions is amended as follows:
- a. the definitions of "Information Privacy Principle" and "National Privacy Principle" are deleted;

- b. the following new definition of “Australian Privacy Principle” is inserted in its correct alphabetical location:

“**Australian Privacy Principle** has the meaning given in the *Privacy Act 1988* (Cth);” and

- c. the definition of "Personal Information" is deleted and replaced with the following new definition:

“**Personal Information** has the meaning given in the *Privacy Act 1988* (Cth);”.

28.3 Your Organisation must, in conducting an Activity:

- a. not do any act or engage in any practice which, if done or engaged in by the Department, would be a breach of an Australian Privacy Principle;
- b. comply with the obligations contained in the Australian Privacy Principles that apply to Your Organisation; and
- c. comply with any of the Department’s directions, guidelines, determinations or recommendations to the extent that they are consistent with the requirements referred to in this Supplementary Condition 28 [Replacement privacy provision].

28.4 Your Organisation must notify the Department immediately if Your Organisation becomes aware of a breach or possible breach of any of Your Organisation’s obligations under this Supplementary Condition 28 [Replacement privacy provision].

28.5 If Your Organisation provides a “health service” (as defined in the *Privacy Act 1988*) to an individual, Your Organisation must:

- a. comply with the requirements in that Act regarding the use and disclosure of “health information” or other “sensitive information” (as those terms are defined in that Act) about the individual to the extent those requirements apply to Your Organisation;
- b. disclose that “health information” and any other “sensitive information” to another Australian health service provider when the Department directs Your Organisation to do so; and
- c. inform the individual:
 - i. as required by the *Privacy Act 1988*; and
 - ii. at the time the information is collected;

that the information may be disclosed to a new health service provider if required by the Department.

28.6 Personal Information may be collected from or about Your Organisation’s Personnel and may be used to administer, monitor, review, promote and evaluate this Agreement, the Program and any other grant programs administered by the Department and for directly-related purposes.

28.7 Your Organisation agrees to notify Your Organisation’s Personnel that the Department may do the following for the purposes specified in Supplementary Condition 28.6:

- a. collect and use the Personal Information of Your Organisation’s Personnel; and

- b. supply information about Your Organisation's Personnel to, and receive information about Your Organisation's Personnel from, the Department of Social Services and any other agency that maintains the Department's electronic on-line grant management system.

28.8 This Supplementary Condition 28 [Replacement privacy provision] survives the expiry or earlier termination of the Activity or this Agreement.

29. Trust representations and warranties

29.1.1 In this clause 'Trust' means the trust that is specified on the signatory page of the Schedule and of which Your Organisation is trustee.

29.2. Your Organisation must be trustee of the Trust

29.2.1. Your Organisation carries out each Activity in Your Organisation's capacity as trustee of the Trust and, except for matters Your Organisation has disclosed to the Department and that the Department has accepted in writing, Your Organisation makes the representations and warranties set out in this Supplementary Condition 23 [Trust representations and warranties].

29.3. Right of indemnity

29.3.1. Your Organisation represents and warrants that:

- a. Your Organisation has the right to be indemnified out of, and has a lien over, the assets of the Trust for all liabilities incurred by Your Organisation under this Agreement;
- b. this right has not been limited in any way, and Your Organisation has no liability which may be set off against this right of indemnity;
- c. the assets of the Trust are sufficient to satisfy this right of indemnity and all other obligations and liabilities in respect of which Your Organisation has a right to be indemnified out of those assets; and
- d. the Commonwealth has the benefit of Your Organisation's rights of indemnity against, and lien over, the assets of the Trust, and has recourse to the assets of the Trust to satisfy Your Organisation's liabilities arising in connection with this Agreement and the carrying out of each Activity.

29.4. Representations and warranties

29.4.1. Your Organisation represents and warrants that:

- a. Your Organisation is the sole trustee of the Trust and no meeting has been called to remove Your Organisation as the trustee;
- b. the Trust has not been terminated and no beneficiary is presently entitled to any of the Trust's assets;
- c. the constituent documents of the Trust, including the Trust's deed of trust, comply with all applicable Laws; and

- d. no property of the Trust has been resettled or set aside or transferred to any other trust.

29.5. Proper administration and benefit

- 29.5.1. Your Organisation represents and warrants that Your Organisation has entered into this Agreement, and will enter into the transactions contemplated by it, for the proper administration of the Trust and for the benefit of all of the Trust's beneficiaries.

29.6. Trust undertakings

- 29.6.1. Throughout the Term of this Agreement, Your Organisation must:
 - a. maintain complete and correct records in relation to the Trust;
 - b. not vest, distribute or advance any property of the Trust (other than income) that is required for the performance of this Agreement;
 - c. not resetttle, set aside or transfer any property of the Trust that is required for the performance of this Agreement unless the Department agrees otherwise in writing;
 - d. not amend or revoke any of the terms of the Trust unless the Department agrees otherwise in writing;
 - e. not do anything, or permit or omit anything, which breaches the Trust or which would permit Your Organisation to be removed as trustee of the Trust; and
 - f. keep the assets of the Trust separate from other property and not do anything which results in the assets of the Trust being mixed with other property.

29.7. Trustee liability

- 29.7.1. Your Organisation acknowledges and agrees that, in respect of any liability to the Commonwealth arising under this Agreement, including the indemnity under clause 9.2 [Indemnity] of the Terms and Conditions, Your Organisation is liable in Your Organisation's own capacity and as trustee of the Trust.



Australian Government

Department of Health

SCHEDULE FOR CAPITAL WORKS

This Schedule must be read and interpreted in conjunction with the *"Terms and Conditions – Standard Funding Agreement: November, 2012"* and *"Annexure A – Supplementary Conditions for Capital Works"*.

Capitalised terms used in this Schedule that are not defined in the *Terms and Conditions – Standard Funding Agreement* are defined in *Annexure A - Supplementary Conditions for Capital Works*.

Agreement Id: 4- ENNFZ1P

Program Code: Sports Grant

Item A DEPARTMENT'S PROGRAM INFORMATION

A.1 Program Name: Female Facilities and Water Safety Stream Program.

A.2 Program Description and Program's Objectives:

The objectives of the grant are to:

- remove barriers to participation for women in sport; and
- Increase access to community swimming facilities.

The intended outcomes of the grant are:

- an increase in sporting facilities that provide female change rooms and amenities;
- an increase in the number of girls and women participating in sport at all levels; and
- an increase in community swimming facilities.

Item B YOUR ORGANISATION'S ACTIVITY INFORMATION (see also clause 11.4 of the Terms and Conditions)

B.1 Name of Your Organisation:

Port Macquarie Tidal Pool Committee Incorporated.

B.2 ABN: 81869067312.

B.3 Activity Name: Port Macquarie Tidal Pool.

B.4 Activity Start Date: The date this Agreement is executed.

B.5 Activity End Date: The date that is the last day of the Designated Use Period.

B.6 Activity Details:

- a. the construction of an Olympic size tidal pool a smaller ramped pool and change room facilities.
- b. carrying out the Works on the Property, being:
 - i. the design, development and construction of an Olympic sized tidal pool (50m x 25m approx), a smaller ramped pool and a splash pool; and
 - ii the design, development, construction of an amenities block for female and male change room facilities including toilets and showers.
- c. acquiring and installing the Assets into the Works; and
- d. the use of the Property, the Works and the Assets for the Designated Use throughout the Designated Use Period.

B.7 Aim of the Activity: (see clause 2.1.1 b of the Terms and Conditions)

The Aim of the Activity is to establish an Ocean Tidal Pool including amenities to:

- provide a safe, clean swimming enclosure for the community and tourists; and
- promote exercise and a healthy lifestyle to the community particularly to children, the elderly and people living with a disability.

that is used for the Designated Use for at least the Designated Use Period to help to achieve the Program's Objectives.

B.8 The Property (see Supplementary Condition 5)

The Property is the parcel of land known as Oxley Beach, Port Macquarie, NSW 2444 being the whole of the land.

B.9 Use Agreement (see Supplementary Condition 5.4)

A Use Agreement is not required.

B.10 Builder Side Deed (see Supplementary Condition 15)

A Builder Side Deed is not required.

B.11 Activity Material: (see Supplementary Condition 8.5)

Your Organisation must provide the following Activity Material to the Department by the date specified in the Milestone Schedule:

- a. development Approval for the Works;
- b. building Approval for the Works;
- c. all plans, drawings, specifications and other information relating to the Works which contain sufficient details and definition to enable a competent builder to construct the Works without further determination as to form, quality or quantity;
- d. a floor plan and a site plan including access arrangements for pedestrians and motor vehicles and, where relevant, car parking arrangements; and
- e. details of the Assets to be acquired for the Activity.

B.12 Infrastructure Projects Facilitator and Independent Certification: (see Supplementary Condition 17)

The Department has not appointed an Infrastructure Projects Facilitator in relation to the Works.

Your Organisation is not required to engage an Independent Certifier pursuant to Supplementary Condition 17.5 and 17.6.

B.13 Designated Use (see Supplementary Condition 23)

The Designated Use is the provision of the Port Macquarie Tidal Pool, to provide a safe enclosed swimming area and a great secure training place for water sports for the community and tourists used for the Designated Use for at least the Designated Use Period.

B.14 Designated Use Period (see Supplementary Condition 23)

The Designated Use Period is the period commencing on the date that Your Organisation achieves Practical Completion of the Works and expiring one year after that date.

B.15 Requirements in relation to Lease and Agreement for Lease (see Supplementary Condition 5.4.3)

- a. The term of the Lease ends no earlier than the end of the Designated Use Period;
- b. The Lease has been or will be registered in the relevant State or Territory land registry office.
- c. Your Organisation and the owner of the Property are the only parties to the Lease and Your Organisation will have the exclusive use and occupation of the Property for the term of the Designated Use Period.
- d. The Lease permits Your Organisation to conduct the Designated Use on the Property;

- e. The owner of the Property consents to Your Organisation assigning the Lease or Agreement to Lease or granting a sublease to the Department or the Department's nominee if such assignment or sublease is required by the Department;
- f. The owner of the Property consents to Your Organisation granting a charge and mortgage in favour of the Commonwealth over all of Your Organisation's right, title and interest in the Lease and Agreement to Lease as required by Supplementary Condition 6.1 and, if applicable, Item M of the Schedule;
- g. The owner of the Property consents to Your Organisation carrying out the Works on the Property;
- h. Your Organisation will not, at any time, be obliged to pay any additional rent as a consequence of the improvement in the value of the Property created by the performance of the Works and the value of such improvements will not be taken into account on any rent review; and
- i. The Lease and Agreement to Lease provide that the Property owner must not terminate the Lease or Agreement to Lease unless the Property owner has given the Department not less than 60 days prior notice of its intention to do so and an opportunity to rectify any default by Your Organisation.

Item C FUNDING AND BANK ACCOUNT INFORMATION

C.1 Funding (see also clause 3 of the Terms and Conditions and Supplementary Condition 3)

The maximum amount of Funds payable by the Department to Your Organisation under this Agreement is the amount set out in the table below.

The funding enclosed in this agreement constitutes the entirety of the funding allocated to this project under this Program.

The Department will pay the Funds specified in Item F when Your Organisation achieves the Milestones in the Milestone Schedule in Item F.

Funding Amount (GST exclusive)	GST component (if applicable)	Total amount (GST inclusive)
\$4,500,000	\$450,000	\$4,950,000

C.2 Bank Account Information

Your Organisation must notify the Department in writing of any changes to these account details:

BSB Number	s47G(1)(a)
Financial Institution	
Account Number	
Account Name	

Item D OTHER CONTRIBUTIONS AND BUDGET**D.1 Other Contributions (see clause 3.8 of the Terms and Conditions and Supplementary Condition 7)**

Not applicable.

a. Other Party Contributions provided by a party other than Your Organisation

Not applicable.

b. Other Contributions provided by Your Organisation

Not applicable.

D.2 Budget (see clause 3.5 of the Terms and Conditions and Supplementary Condition 8.1)

The Budget to be provided by Your Organisation must:

- be consistent with the Activity Plan;
- show proposed expenditure per financial year; and
- be in a format consistent with the following table (note that Your Organisation may delete inapplicable line items or specify other required line items):

Financial Year 2020-2022	
Budget Line Items to be paid from Funds payable under this Agreement	Budget Amount (\$GST exclusive)
Concept and planning	
Design and management fees	
Statutory and approval fees	
Consultants fees	
Detailed Design	
Design and management fees	
Design contingency	
Escalation	
Demolition, strip out and removal	
Construction	
Construction consultant and project management fees	

Site preparation works Demolition/excavation/decontamination works Decanting costs (if applicable) Construction of new building External works	
Fit – Out Fit – out of building [excluding non-fixed Assets]	
Assets (Non-fixed) – Furnishings, fittings and equipment Non fixed Assets to be installed in the Works	
General Administrative and other general costs (including salary costs of personnel engaged by Your Organisation to oversee the Activity)	
Contingency allowance	
Total of above items	
Funds Payable under this Agreement	
Interest earned on the Funds payable under this Agreement	
Total Funds plus interest	
Total	

D.3 Percentage for purposes of clause 3.5.2 of the Terms and Conditions:
10%.

Item E REPORTS (see clause 2.3 of the Terms and Conditions)

Your Organisation must provide the following Reports to the Department via email to the Department who will provide you with a reporting template.

E.1 Monthly Reports from Commencement Date to date that Your Organisation achieves Practical Completion of the Works

Not applicable.

E.2 Final Report after Practical Completion of the Works

The Final Report must be sent to the Department within three calendar months after the date that Your Organisation achieves Practical Completion of the Works.

E.3 Reports during the Designated Use Period

Not applicable

E.4 Financial Acquittal Reports (see clause 2.3 of the Terms and Conditions)

A Financial Acquittal Report in accordance with clause 2.3 of the Terms and Conditions must be sent to the Department within three calendar months after the date that Your Organisation achieves Practical Completion of the Works. The Department may, by reasonable prior written notice, vary the financial acquittal requirements that apply to Your Organisation.

E.5 Other Reports

Not applicable.

Item F MILESTONE SCHEDULE

Your Organisation must perform the Activity in accordance with the time frames specified in the Milestone Schedule below.

The amount of Funds specified in respect of each Milestone in the Milestone Schedule will be paid by the Department to Your Organisation within 30 days of Your Organisation achieving the Milestone to the satisfaction of the Department.

MILESTONE SCHEDULE

REQUIREMENTS FOR MILESTONE TO BE ACHIEVED	DATE BY WHICH MILESTONE REQUIREMENTS TO BE ACHIEVED	FUNDS TO BE PAID WHEN MILESTONE REQUIREMENTS ARE ACHIEVED (\$GST exclusive)
Execution of the Funding Agreement	September 2020	\$0
Milestone 1- Property Satisfaction and Securities Executed Your Organisation has provided the Department with: • where the Activity is to be performed on part only of the Property, a plan identifying that part of the Property to be used for the Activity in accordance with Supplementary Condition 4.1.3; • a signed and completed Legal Advisor Certification Letter together with documents required to be attached to the Legal Adviser Certification Letter, and other information required by the Department pursuant to Supplementary Condition 5.1.1; and The Department has provided Your Organisation with notice in writing that the Commonwealth Requirements have been met in relation to the Property (see Supplementary Condition 5.2)	14 October 2020	\$1,500,000

Milestone 2 - Activity Information Provided and Securities Registered Your Organisation has provided the Department with: • a draft Activity Plan and Budget accepted by the Department in accordance with Supplementary Condition 8.1; • documentary evidence of the appointment of a project manager in accordance with Supplementary Condition 17.3; • confirmation of the appointment of suitable construction professionals and consultants such as architect, quantity surveyor, engineer, town planner; and Your Organisation has obtained written confirmation from the Department that Your Organisation has satisfied all of the requirements in the Milestone Schedule up to and including this Milestone (see Supplementary Condition 16.1.1).	14 January 2021	\$0
Milestone 3 – Commencement of the Works Your Organisation has provided the Department with: • a construction ready Final Activity Plan and Budget accepted by the Department in accordance with Supplementary Condition 8.1; • a copy of the Activity Material specified in Item B.11; • confirmation of the appointment of a building contractor; • confirmation that all Approvals have been obtained from the Proper Authorities for the development of the Property, the construction of the Works and the use of the Works for the Designated Use (see Supplementary Condition 8.6);	14 May 2021	\$0

• confirmation of certificates of currency of relevant insurances required prior to commencement of the Works as specified in Item G; • confirmation that Your Organisation has complied with its obligations under Supplementary Conditions 13 and 14; • confirmation of the placement of order(s) for the Assets; and Your Organisation has obtained written confirmation from the Department that Your Organisation has satisfied all of the requirements in the Milestone Schedule up to and including this Milestone (see Supplementary Condition 16.1.1).		
Milestone 4 – Progress Report Your Organisation has provided the Department with: • a declaration signed by the Senior Executive Officer certifying that the Works as of this date are progressing with photographic evidence; and Your Organisation has obtained written confirmation from the Department that Your Organisation has satisfied all of the requirements in the Milestone Schedule up to and including this Milestone (see Supplementary Condition 16.1.1).	14 July 2021	\$3,000,000
Milestone 5 - Fit-out, Finishes & Fittings Complete and Assets installed Your Organisation has provided the Department with: • a declaration signed by the Senior Executive Officer certifying that all work for the fit out and finished stage of the Works has been completed with photographic evidence; and Your Organisation has obtained written confirmation from the Department that Your Organisation has satisfied all of the requirements in the Milestone Schedule up to	14 January 2022	\$0

and including this Milestone (see Supplementary Condition 16.1.1).		
Milestone 6 - Practical Completion Achieved Your Organisation has provided the Department with: • a copy of the Practical Completion of the Works (see Supplementary Condition 20.1.1 e); • a copy of the Certificate of Occupancy for the Works; • a declaration signed by the Senior Executive Officer certifying the testing and commissioning certification complete, together with copies of the relevant testing and commissioning certificates; • satisfactory Final Report in accordance with Item E.2 and Financial Acquittal Report in accordance with Item E.4; • confirmation of certificates of currency of relevant insurances required upon Practical Completion of the Works and at the commencement of the Designated Use Period as specified in Item G; • Photographic evidence of milestone completion; and Your Organisation has obtained written confirmation from the Department that Your Organisation has satisfied all of the requirements in the Milestone Schedule up to and including this Milestone (see Supplementary Condition 16.1.1).	14 June 2022	\$0

Item G INSURANCE REQUIREMENTS (see also clause 9.3 of the Terms & Conditions and Supplementary Conditions 9 and 21)

Prior to commencement of the Works:

Your Organisation must obtain and maintain the following types and amounts of insurance:

- a. to the extent required by Law, workers compensation insurance in respect of Your Organisation's liability for any loss or claim by a person employed or otherwise engaged, or deemed to be employed or otherwise engaged, by Your Organisation in connection with the Activity; and
- b. public liability insurance covering legal liability (including liability assumed under contract) for loss or damage to property or injury or death to persons arising out of or in connection with carrying out the Activity, up to a maximum limit of twenty million dollars (\$20,000,000), with no limit on any one claim or occurrence giving rise to a claim.

Your Organisation must ensure that the head contractor engaged to carry out the Works obtains and maintains the following types and amounts of insurance:

- c. contractor's all risks works policy covering loss or damage to the Works and any temporary work including materials stored off-site or in transit, for the full reinstatement and replacement cost of the Works including:
 - i. the full amount of the cost to Your Organisation to construct the Works (Works Cost);
 - ii. an amount reasonably providing for additional costs of demolition and of removal of debris (to be not less than 10% of the Works Cost); and
 - iii. a further amount reasonably sufficient for consultants' fees (to be not less than 5% of the Works Cost);
 - iv. a reasonable contingency for escalation costs,

and Your Organisation must ensure that the policy specified in this Item G c. to be taken out by the building contractor is project insurance under which the Commonwealth, Your Organisation, the builder, the Subcontractors, the Sub-subcontractors, the Property owner (where applicable) and the Property owner's mortgagee (where applicable) are named insureds for their various and respective, rights, interests and liabilities. The policy must cover each insured in respect of the whole of the Works. The policy must contain cross liability and waiver of subrogation clauses in respect of the parties comprising the named insureds;

- d. public and products liability policy covering legal liability (including liability assumed under contract) for loss or damage to property or injury or death to persons arising out of or in connection with carrying out the Works, up to a maximum limit of twenty million dollars (\$20,000,000), with no limit on any one claim or occurrence giving rise to a claim; and

- e. if asbestos decontamination work is required as part of the Works, an asbestos liability policy in respect of the risks associated with asbestos decontamination work, up to a maximum limit of twenty million dollars (\$20,000,000), with no limit on any one claim or occurrence giving rise to a claim.

Your Organisation must ensure that the building contractor causes each professional service provider to hold a professional indemnity policy in the amount of ten million dollars (\$10,000,000) or such other amount as agreed in writing by the Department, to cover its liability for breach of professional duty (if applicable) arising out of any negligence, whether in relation to errors in design, documentation, supervision or other professional duties. Such cover must extend to liability for personal injury, illness or death of anyone in connection with the provision of professional services or as a result of breach of professional duty and must be maintained for a period of at least 7 years following the achievement of Practical Completion of the Works.

Upon Practical Completion and during the Designated Use Period:

Your Organisation must obtain and maintain the following types and amounts of insurance:

- a. professional indemnity insurance for not less than ten million dollars (\$10,000,000) or such other amount as agreed in writing by the Department, to cover liability for personal injury, illness or death arising out of a breach of professional duty and which must be maintained until 7 years after the end of the Designated Use period;
- b. public liability policy covering legal liability (including liability assumed under contract) for loss or damage to property or injury or death to persons arising out of or in connection with carrying out the Activity, up to a maximum limit of twenty million dollars (\$20,000,000), with no limit on any one claim or occurrence giving rise to a claim;
- c. where it is the owner of the Property, building and contents insurance to cover loss, damage and destruction for their full reinstatement value, noting the Commonwealth's interest; and
- d. where it occupies the Property under a Lease, contents insurance to cover loss, damage and destruction for their full reinstatement value, noting the Commonwealth's interest.

Insurance requirements for Assets (see clause 5.1.4 e. of the Terms and Conditions)

In respect of each Asset for the Activity, for the duration of the Activity Period Your Organisation must maintain insurance for each Asset to its full replacement cost, noting the Commonwealth's interest.

Item H ASSETS (see clauses 5.1 and 11.4.1 of the Terms & Conditions)

The amount for the purposes of clause 11.4.1 of the Terms and Conditions definition of Asset a.ii is five thousand dollars (\$5,000).

Item I SUBCONTRACTORS (see clause 4.2 of the Terms & Conditions and Supplementary Condition 9)

Your Organisation may, without the Department's prior written consent, procure appropriately qualified Subcontractors to carry out the design, construction and fit-out of the Works in accordance with the terms and conditions of this Agreement.

Item J SPECIFIED PERSONNEL (see clause 4.3 of the Terms & Conditions)

Not applicable.

Item K CONFIDENTIAL INFORMATION (see clause 8.1 of the Terms & Conditions)

Information of, or provided by the Commonwealth that;

- I. is by its nature confidential;
- II. is designated by the Commonwealth as confidential; or
- III. the Organisation knows or ought to know is confidential;

other than material that;

- IV. is or becomes public knowledge other than by breach of this agreement or unlawful means;
- V. is in possession of the Organisation without restriction in relation to disclosure before the date of receipt from the Commonwealth; or
- VI. has been independently developed or acquired by the receiving Party.

Item L NOTICES (see clause 4.5 of the Terms & Conditions)

The Commonwealth's contact details and address for notices

Name or Position Director, Infrastructure Programs Section

Phone

s22(1)(a)(ii)

Email

s22(1)(a)(ii)

@health.gov.au

Postal Address

GPO Box 9848, Canberra ACT 2601

Your Organisation's contact details and address for notices

Name or Position

s47F

Phone

s47F

Email

s47F

Postal Address

s47F

Item M SECURITIES (see Supplementary Condition 6)

Not applicable.

Item N REPAYMENT AMOUNT (see Supplementary Condition 26.2)

The repayment amount will be calculated according to the following formula:

$$\text{Repayment} = F - (F \times Y / \text{DUP})$$

where:

F is the total of all Funds paid by the Department to Your Organisation for the Activity plus any interest earned on those Funds, but excluding all Funds that have been previously recovered under this Agreement from Your Organisation by the Department;

Y is the number of completed months since the commencement of the Designated Use Period that the Property and the Works have been used for the Designated Use, or if the Designated Use Period has not yet commenced Y is zero; and

DUP is the number of months in the Designated Use Period.

Item O RELEVANT QUALIFICATIONS, CHECKS, LICENCES OR SKILLS

The Grantee must ensure that a person does not perform work on any part of the Activity that involves working or contact with a Vulnerable Person if a Police Check indicates that the person at any time has:

- (a) a Serious Record; or
- (b) a Criminal or Court Record; and

the Grantee has not conducted a risk assessment and determined that any risk is acceptable.

In undertaking a risk assessment, the Grantee must have regard to:

- (a) the nature and circumstances of the offence(s) on the person's Criminal or Court Record and whether the charge or conviction involved Vulnerable Persons;
- (b) whether the person's Criminal or Court Record is directly relevant to, or reasonably likely to impair the person's ability to perform, the role that the person will, or is likely to, perform in relation to the Activity;
- (c) the length of time that has passed since the person's charge or conviction and his or her record since that time;
- (d) the circumstances in which the person will, or is likely to, have contact with a Vulnerable Person as part of the Activity; and
- (e) any other relevant matter, and must ensure it fully documents the conduct and outcome of the risk assessment.

The Grantee agrees to notify the Commonwealth of any risk assessment it conducts under this clause and agrees to provide the Commonwealth with copies of any relevant documentation on request.

If during the term a person involved in performing work on any part of the Activity that involves working or contact with a Vulnerable Person is:

- (a) charged with a Serious Offence or Other Offence, the Grantee must immediately notify the Commonwealth; or
- (b) convicted of a Serious Offence, the Grantee must immediately notify the Commonwealth and ensure that that person does not, from the date of the conviction, perform any work or role relating to the Activity.

In this Agreement:

Vulnerable Person means

- (a) an individual under the age of 18;
- (b) an individual aged 18 years and above who is or may be unable to take care of themselves, or is unable to protect themselves against harm or exploitation for any reason, including age, physical or mental illness, trauma or disability, pregnancy, the influence, or past or existing use, of alcohol, drugs or substances or any other reason.

Before any person commences performing work on any part of the Activity that involves working or contact with a Vulnerable Person, the Grantee must:

- (a) obtain a Police Check for that person;
- (b) confirm that the person is not prohibited by any law from being engaged in a capacity where they may have contact with a Vulnerable Person;
- (c) comply with all State, Territory or Commonwealth laws relating the employment or engagement of persons in any capacity where they may have contact with a Vulnerable Person; and
- (d) ensure that the person holds all licences or permits for the capacity in which they are to be engaged, including any specified in the Grant Details, and the Grantee must ensure that Police Checks and any licences or permits obtained remain current for the duration of their involvement in the Activity.

Annexures applicable to this Schedule

Annexure A - Supplementary Conditions for Capital Works.

Annexure B - Legal Adviser Certification Letter.

Signatories to this Agreement**Parties**

Commonwealth of Australia ("Commonwealth"), as represented by and acting through The Department of Health ABN 83 605 426 759, GPO Box 9848 CANBERRA ACT 2601 ("Department")

Port Macquarie Tidal Pool Committee Incorporate ACN 180068 ABN 81869067312 of 2/22 Newmarket Grove Port Macquarie NSW 2444 ("Your Organisation")

Executed by the Parties as a DEED on the 1 **day of** September **year** 2020

The Parties agree that by signing this Schedule they enter into the Agreement, which comprises this Schedule (including its Annexures and any Supplementary Conditions), the attached Cover Letter, the enclosed document entitled 'Terms and Conditions Standard Funding Agreement' and any other documents incorporated by reference.

Signed, Sealed and Delivered for and on behalf of the Commonwealth of Australia by the relevant Delegate, represented by and acting through the Department of Health ABN 83 605 426 759 in the presence of:

(Signature of Departmental Representative)

s22(1)(a)(ii)

1.9/2020

(Name of Departmental Representative)

s22(1)(a)(ii)

s22(1)(a)(ii)

(Signature of Witness)

1.9/2020

s22(1)(a)(ii)

(Name of Witness in full)

Signed, Sealed and Delivered by Port Macquarie Tidal Pool Committee Incorporated ABN 81869067312 by affixing its common seal in accordance with its rules in the presence of:

(Signature of Authorised Person)

s47F

27.1.8/2020

(Name of Authorised Person).

s47F

s47F

(Signature of Witness)

27.1.8/2020

s47F

(Name of Witness in full)



Australian Government

Department of Health

DEED OF VARIATION No. 1

Between the

COMMONWEALTH OF AUSTRALIA, as represented by the Department of Health
ABN 83 605 426 759

and

Port Macquarie Tidal Pool Committee Incorporated ABN 81 869 067 312

RECITALS:

- A. The parties wish to vary the agreement relating to the Port Macquarie Tidal Pool dated 1 September 2020 ('the Principal Agreement').
- B. Clause 11.1.5 of the Terms and Conditions states that no variation is binding unless it is agreed in writing between the parties.
- C. The parties wish to vary the Principal Agreement on the terms and conditions set out below.

OPERATIVE PART:

- 1. Unless the context indicates otherwise, capitalised words in this Deed of Variation have the same meaning as is given to those terms in the Principal Agreement.
- 2. The parties vary the Principal Agreement as follows:

(a) Delete Item F of the Schedule and replace with the following:

Item F MILESTONE SCHEDULE

Your Organisation must perform the Activity in accordance with the time frames specified in the Milestone Schedule below.

The Amount of Funds specified in respect of each Milestone in the Milestone Schedule will be paid by the Department to Your Organisation within 30 days of Your Organisation achieving the Milestone to the satisfaction of the Department.

Requirements for Milestone to be achieved (8 milestone requirements)	Date by which Milestone requirements to be achieved	Funds to be paid when Milestone requirements are achieved (\$GST exclusive)
Milestone 1 – Property Satisfactory and Securities (Part A) Your Organisation has provided the Department with: where the Activity is to be performed on part only of the Property, a plan identifying that part of the Property to be used for the Activity in accordance with Supplementary Condition 4.1.3; and The Department has provided Your Organisation with notice in writing that the Commonwealth Requirements have been met in relation to the Property (see Supplementary Condition 5.2)	December 2020	\$500,000 (Paid)
Milestone 2 – Progress Report Your Organisation has provided the Department with: a declaration signed by the Senior Executive Officer advising of the progress made since execution of the agreement; and Your Organisation has obtained written confirmation from the Department that Your Organisation has satisfied all of the requirements in the Milestone Schedule up to and including this Milestone (see Supplementary Condition 16.1.1).	15 May 2021	\$1,000,000
Milestone 3 - Property Satisfactory and Securities (Part B) Your Organisation has provided the Department with: a signed and completed Legal Advisor Certification Letter together with documents required to be attached to the Legal Adviser Certification Letter, and other information required by the	31 January 2022	\$0

Department pursuant to Supplementary Condition 5.1.1; and The Department has provided Your Organisation with notice in writing that the Commonwealth Requirements have been met in relation to the Property (see Supplementary Condition 5.2)		
Milestone 4 – Progress Report Your Organisation has provided the Department with: a declaration signed by the Senior Executive Officer advising of the progress made since last report; and Your Organisation has obtained written confirmation from the Department that Your Organisation has satisfied all of the requirements in the Milestone Schedule up to and including this Milestone (see Supplementary Condition 16.1.1).	30 May 2022	\$3,000,000
Milestone 5 - Activity Information and Securities Registered Your Organisation has provided the Department with: - a draft Activity Plan and Budget accepted by the Department in accordance with Supplementary Condition 8.1; - documentary evidence of the appointment of a project manager in accordance with Supplementary Condition 17.3; - confirmation of the appointment of suitable construction professionals and consultants such as architect, quantity surveyor, engineer, town planner; and Your Organisation has obtained written confirmation from the Department that Your Organisation has satisfied all of the requirements in the Milestone Schedule up to and including this Milestone (see Supplementary Condition 16.1.1).	15 December 2022	\$0

Milestone 6 - Commencement of the Works Your Organisation has provided the Department with: • a construction ready Final Activity Plan and Budget accepted by the Department in accordance with Supplementary Condition 8.1; • a copy of the Activity Material specified in Item B.11; • confirmation of the appointment of a building contractor; • confirmation that all Approvals have been obtained from the Proper Authorities for the development of the Property, the construction of the Works and the use of the Works for the Designated Use (see Supplementary Condition 8.6); • confirmation of certificates of currency of relevant insurances required prior to commencement of the Works as specified in Item G; • confirmation that Your Organisation has complied with its obligations under Supplementary Conditions 13 and 14; • confirmation of the placement of order(s) for the Assets; and Your Organisation has obtained written confirmation from the Department that Your Organisation has satisfied all of the requirements in the Milestone Schedule up to and including this Milestone (see Supplementary Condition 16.1.1).	15 July 2023	\$0
---	--------------	-----

Milestone 7 – Fit out, Finishes & Fittings Complete and Assets installed Your Organisation has provided the Department with: • a declaration signed by the Senior Executive Officer certifying that all work for the fit out and finished stage of the Works has been completed with photographic evidence; and Your Organisation has obtained written confirmation from the Department that Your Organisation has satisfied all of the requirements in the Milestone Schedule up to and including this Milestone (see Supplementary Condition 16.1.1).	15 December 2023	\$0
Milestone 8 - Practical Completion Achieved Your Organisation has provided the Department with: • a copy of the Practical Completion of the Works (see Supplementary Condition 20.1.1 e); • a copy of the Certificate of Occupancy for the Works; • a declaration signed by the Senior Executive Officer certifying the testing and commissioning certification complete, together with copies of the relevant testing and commissioning certificates; • satisfactory Final Report in accordance with Item E.2 and Financial Acquittal Report in accordance with Item E.4; • confirmation of certificates of currency of relevant insurances required upon Practical Completion of the Works and at	15 March 2024	\$0

the commencement of the Designated Use Period as specified in Item G; • Photographic evidence of milestone completion; and Your Organisation has obtained written confirmation from the Department that Your Organisation has satisfied all of the requirements in the Milestone Schedule up to and including this Milestone (see Supplementary Condition 16.1.1).		
--	--	--

3. This Deed of Variation takes effect on and from the date it is signed by the last party to do so.
4. The Principal Agreement, as amended by this Deed of Variation, constitutes the entire agreement between the parties.
5. The interpretation provisions in the Principal Agreement apply to this Deed of Variation.
6. This Deed of Variation may be signed in a number of counterparts and each counterpart shall, upon the last party signing, constitute one signed document.

This Deed of Variation is EXECUTED as a Deed.

SIGNED, SEALED AND DELIVERED for and on behalf of the
COMMONWEALTH OF AUSTRALIA as represented by the Department of Health,
 ABN 83 605 426 759, on:

27 April 2021
 Date

by:

s22(1)(a)(ii)

[Redacted]

Printed name of signatory

s22(1)(a)(ii)

[Redacted]

Signature

27-4-21

Director Health Infrastructure
 Position of signatory

in the presence of:

s22(1)(a)(ii)

Printed name of witness

s22(1)(a)(ii)

Signature of witness

SIGNED, SEALED AND DELIVERED by Port Macquarie Tidal Pool Committee
Incorporated ABN 81 869 067 312, in accordance with section 127 of the Corporations Act
2021:

16th April 2021
Date

by:

s47F

Printed name of Director

s47F

Signature of Director

and:

s47F

Printed name of witness

s47F

Signature of witness



Australian Government

Department of Health

Organisation ID:	4-DX1CMHC
Program Schedule ID:	4-EKH59H2

Notice of Change No.2

s47F

Port Macquarie Tidal Pool Committee Incorporated
PO Box 1149
PORT MACQUARIE NSW 2444

s47F

Dear s47F

Notice of Change in relation to the Female Facilities & Water Safety Stream Program

We have a grant agreement in place with you to carry out a grant activity under the Female Facilities & Water Safety Stream program dated 1 September 2020 between Port Macquarie Tidal Pool Committee Incorporated and the Commonwealth of Australia, represented by the Department of Health.

This Notice of Change is to advise you of the following:

- Revised Schedule at Attachment A, including an additional Progress Report Milestone due 14 December 2022, and the amendment to due dates for Milestones 3 onwards

We wish to advise you that this is a legally binding change that does not vary your existing obligations under the Grant Agreement, and does not require a formally executed variation to be carried out.

The parties agree that:

(a) the only change/s effected by this Notice of Change are those specified within.

If you have any questions regarding this Notice of Change, please contact Health.Capital@dss.gov.au

Yours sincerely

s22(1)(a)(ii)

s22(1)(a)(ii)

Team Leader
Capital Delivery Lead and Centralised Performance Team
Health Grants Branch
Community Grants Hub
Department of Social Services

22 March 2022

Attachment A Item F MILESTONE SCHEDULE

Your Organisation must perform the Activity in accordance with the time frames specified in the Milestone Schedule below.

The Amount of Funds specified in respect of each Milestone in the Milestone Schedule will be paid by the Department to Your Organisation within 30 days of Your Organisation achieving the Milestone to the satisfaction of the Department.

Requirements for Milestone to be achieved	Date by which Milestone requirements to be achieved	Funds to be paid when Milestone requirements are achieved (SGST exclusive)
Milestone 1 - Property Satisfactory and Securities (Part A) Your Organisation has provided the Department with: where the Activity is to be performed on part only of the Property, a plan identifying that part of the Property to be used for the Activity in accordance with Supplementary Condition 4.1.3; and The Department has provided Your Organisation with notice in writing that the Commonwealth Requirements have been met in relation to the Property (see Supplementary Condition 5.2)	December 2020	\$500,000 (Paid)
Milestone 2 - Progress Report Your Organisation has provided the Department with: a declaration signed by the Senior Executive Officer advising of the progress made since execution of the agreement; and Your Organisation has obtained written confirmation from the Department that Your Organisation has satisfied all of the requirements in the Milestone Schedule up to and including this Milestone (see Supplementary Condition 16.1.1).	15 May 2021	\$1,000,000 (Paid)

Milestone 3 - Progress Report Your Organisation has provided the Department with: a declaration signed by the Senior Executive Officer advising of the progress made since last report; and Your Organisation has obtained written confirmation from the Department that Your Organisation has satisfied all of the requirements in the Milestone Schedule up to and including this Milestone (see Supplementary Condition 16.1.1).	30 May 2022	\$3,000,000
Milestone 4 - Property Satisfactory and Securities (Part B) Your Organisation has provided the Department with: a signed and completed Legal Advisor Certification Letter together with documents required to be attached to the Legal Adviser Certification Letter, and other information required by the Department pursuant to Supplementary Condition 5.1.1; and The Department has provided Your Organisation with notice in writing that the Commonwealth Requirements have been met in relation to the Property (see Supplementary Condition 5.2).	30 November 2022	\$0
Milestone 5 - Progress Report Your Organisation has provided the Department with: a declaration signed by the Senior Executive Officer advising of the progress made since last report; and Your Organisation has obtained written confirmation from the Department that Your Organisation has satisfied all of the requirements in the Milestone Schedule up to and including this Milestone (see Supplementary Condition 16.1.1).	14 December 2022	\$0

Milestone 6 - Activity Information and Securities Registered Your Organisation has provided the Department with: • a draft Activity Plan and Budget accepted by the Department in accordance with Supplementary Condition 8.1; • documentary evidence of the appointment of a project manager in accordance with Supplementary Condition 17.3; • confirmation of the appointment of suitable construction professionals and consultants such as architect, quantity surveyor, engineer, town planner; and Your Organisation has obtained written confirmation from the Department that Your Organisation has satisfied all of the requirements in the Milestone Schedule up to and including this Milestone (see Supplementary Condition 16.1.1).	10 January 2023	\$0
Milestone 7 - Commencement of the Works Your Organisation has provided the Department with: • a construction ready Final Activity Plan and Budget accepted by the Department in accordance with Supplementary Condition 8.1; • a copy of the Activity Material specified in Item B.11; • confirmation of the appointment of a building contractor; • confirmation that all Approvals have been obtained from the Proper Authorities for the development of the Property, the construction of the Works and the use of the Works for the Designated Use (see Supplementary Condition 8.6); • confirmation of certificates of currency of relevant insurances required prior to commencement of the Works as specified in Item G; • confirmation that Your Organisation has complied with its obligations under Supplementary Conditions 13 and 14; • confirmation of the placement of order(s) for the Assets; and	12 May 2023	\$0

Your Organisation has obtained written confirmation from the Department that Your Organisation has satisfied all of the requirements in the Milestone Schedule up to and including this Milestone (see Supplementary Condition 16.1.1).		
Milestone 8- Fit out, Finishes & Fittings Complete and Assets installed Your Organisation has provided the Department with: a declaration signed by the Senior Executive Officer certifying that all work for the fit out and finished stage of the Works has been completed with photographic evidence; and Your Organisation has obtained written confirmation from the Department that Your Organisation has satisfied all of the requirements in the Milestone Schedule up to and including this Milestone (see Supplementary Condition 16.1.1).	16 January 2024	\$0
Milestone 9 - Practical Completion Achieved Your Organisation has provided the Department with: - a copy of the Practical Completion of the Works (see Supplementary Condition 20.1.1 e); - a copy of the Certificate of Occupancy for the Works; - a declaration signed by the Senior Executive Officer certifying the testing and commissioning certification complete, together with copies of the relevant testing and commissioning certificates; - confirmation of certificates of currency of relevant insurances required upon Practical Completion of the Works and at - the commencement of the Designated Use Period as specified in Item G; - photographic evidence of milestone completion; Your Organisation has obtained written confirmation from the Department that Your Organisation has satisfied all of the requirements in the Milestone Schedule up to and including this Milestone (see Supplementary Condition 16.1.1).	30 January 2024	\$0

Milestone 10 – Final Report Satisfactory Final Report in accordance with Item E.2	30 April 2024	\$0
Milestone 11 – Financial Acquittal Report Financial Acquittal Report in accordance with Item E.4;	30 April 2024	\$0



Australian Government

Department of Health and Aged Care

Organisation ID:	4-DX1CMHC
Agreement ID:	4-EKH59GZ
Program Schedule ID:	4-EKH59H2

Deed of Variation No.2 in relation to the Female Facilities & Water Safety Stream Program

1. Date

This Deed is made on the date of execution between all parties.

2. Parties

This Deed is made between:

1. The Commonwealth, as represented by Department of Health and Aged Care, ABN 83 605 426 759 (the 'Commonwealth'); and
2. Port Macquarie Tidal Pool Committee Incorporated, ABN 81 869 067 312 (the 'Grantee').

3. Context

- A. The Parties entered in an agreement on 1 September 2020 under which the Commonwealth gave a Grant to the Grantee for Female Facilities & Water Safety Stream (the 'Agreement').
- B. The Parties have agreed to amend the Agreement on the terms and conditions contained in this Deed.

4. Amendments

With effect from the date of execution of this Deed, the Agreement is amended:

The Program Schedule is deleted and replaced with the updated Program Schedule at Attachment A.

5. Entire agreement and interpretation

- 5.1 The parties confirm all the other provisions of the Agreement and, subject only to the amendments contained in this Deed, the Agreement remains in full force and effect.
- 5.2 This Deed and the Agreement, when read together, contain the entire agreement of the parties with respect to the parties' rights and obligations under the Agreement.
- 5.3 Unless otherwise specified or the context otherwise requires, terms that are defined in the Agreement have the same meaning in this Deed.

Signatures

Organisation ID:	4-DX1CMHC
Agreement ID:	4-EKH59GZ
Program Schedule ID:	4-EKH59H2

Executed as a deed

Signed, sealed and delivered for and on behalf of the Commonwealth of Australia by the relevant Delegate, represented by and acting through Department of Health and Aged Care, ABN 83 605 426 759 in the presence of:

s22(1)(a)(ii)

(Name of Departmental Representative)

s22(1)(a)(ii)

(Signature of Departmental Representative)

10/.../.....

(Position of Departmental Representative)

s22(1)(a)(ii)

s22(1)(a)(ii)

(Name of Witness in full)

(Signature of Witness)

.../.../.....

Signed, sealed and delivered by Port Macquarie Tidal Pool Committee Incorporated, ABN 81 869 067 312 in accordance with its rules and who warrants that he/she is authorised to sign this Deed:

s47F

s47F

Chairperson

(Name and position held by Signatory)

(Signature)

6.07.2023

s47F

SECRETARY

(Name and position held by second Signatory/Name of Witness)

s47F

(Signature of second Signatory/Witness)

6.07.2023

Explanatory notes on the signature block

- If you are an **incorporated association**, you must refer to the legislation incorporating the association as it will specify how documents must be executed. This process may differ between each State and Territory. If an authorised person is executing a document on behalf of the incorporated association, you should be prepared to provide evidence of this authorisation upon request.
- If you are a **company**, generally two signatories are required – the signatories can be two Directors or a Director and the Company Secretary. Affix your **Company Seal**, if required by your Constitution.
- If you are a **company with a sole Director/Secretary**, the Director/Secretary is required to be the signatory in the presence of a witness (the witness date must be the same as the signatory date). Affix your **Company Seal**, if required by your Constitution.
- If you are a **partnership**, the signatory must be a partner with the authority to sign on behalf of all partners receiving the grant. A witness to the signature is required (the witness date must be the same as the signatory date).
- If you are an **individual**, you must sign in the presence of a witness (the witness date must be the same as the signatory date).
- If you are a **university**, the signatory can be an officer authorised by the legislation creating the university to enter into legally binding documents. A witness to the signature is required (the witness date must be the same as the signatory date).
- If you are a **trustee of a Trust**, the signatory must be a trustee (NOT the Trust) – as the trustee is the legal entity entering into the Agreement. If requested by you, the words 'as trustee of the XXX Trust' could be included at the end of the name.

ATTACHMENT A: UPDATED SCHEDULE FOR CAPITAL WORKS

This Schedule must be read and interpreted in conjunction with the “*Terms and Conditions – Standard Funding Agreement: November, 2012*” and “*Annexure A – Supplementary Conditions for Capital Works*”.

Capitalised terms used in this Schedule that are not defined in the *Terms and Conditions – Standard Funding Agreement* are defined in *Annexure A - Supplementary Conditions for Capital Works*.

Agreement Id: 4- ENNFZ1P

Program Code: Sports Grant

Item A DEPARTMENT'S PROGRAM INFORMATION

A.1 Program Name: Female Facilities and Water Safety Stream Program.

A.2 Program Description and Program's Objectives:

The objectives of the grant are to:

- remove barriers to participation for women in sport; and
- Increase access to community swimming facilities.

The intended outcomes of the grant are:

- an increase in sporting facilities that provide female change rooms and amenities;
- an increase in the number of girls and women participating in sport at all levels; and
- an increase in community swimming facilities.

Item B YOUR ORGANISATION'S ACTIVITY INFORMATION

(see also clause 11.4 of the Terms and Conditions)

B.1 Name of Your Organisation:

Port Macquarie Tidal Pool Committee Incorporated.

B.2 ABN: 81869067312.

B.3 Activity Name: Port Macquarie Tidal Pool.

B.4 Activity Start Date: The date this Agreement is executed.

B.5 Activity End Date: The date that is the last day of the Designated Use Period.

B.6 Activity Details:

- a. the construction of an Olympic size tidal pool a smaller ramped pool and change room facilities.
- b. carrying out the Works on the Property, being:
 - i. the design, development and construction of an Olympic sized tidal pool (50m x 25m approx), a smaller ramped pool and a splash pool; and
 - ii the design, development, construction of an amenities block for female and male change room facilities including toilets and showers.
- c. acquiring and installing the Assets into the Works; and

- d. the use of the Property, the Works and the Assets for the Designated Use throughout the Designated Use Period.

B.7 Aim of the Activity: (see clause 2.1.1 b of the Terms and Conditions)

The Aim of the Activity is to establish an Ocean Tidal Pool including amenities to:

- provide a safe, clean swimming enclosure for the community and tourists; and
- promote exercise and a healthy lifestyle to the community particularly to children, the elderly and people living with a disability.

that is used for the Designated Use for at least the Designated Use Period to help to achieve the Program's Objectives.

B.8 The Property (see Supplementary Condition 5)

The Property is the parcel of land known as Oxley Beach, Port Macquarie, NSW 2444 being the whole of the land.

B.9 Use Agreement (see Supplementary Condition 5.4)

A Use Agreement is not required.

B.10 Builder Side Deed (see Supplementary Condition 15)

A Builder Side Deed is not required.

B.11 Activity Material: (see Supplementary Condition 8.5)

Your Organisation must provide the following Activity Material to the Department by the date specified in the Milestone Schedule:

- a. development Approval for the Works;
- b. building Approval for the Works;
- c. all plans, drawings, specifications and other information relating to the Works which contain sufficient details and definition to enable a competent builder to construct the Works without further determination as to form, quality or quantity;
- d. a floor plan and a site plan including access arrangements for pedestrians and motor vehicles and, where relevant, car parking arrangements; and
- e. details of the Assets to be acquired for the Activity.

B.12 Infrastructure Projects Facilitator and Independent Certification: (see Supplementary Condition 17)

The Department has not appointed an Infrastructure Projects Facilitator in relation to the Works.

Your Organisation is not required to engage an Independent Certifier pursuant to Supplementary Condition 17.5 and 17.6.

B.13 Designated Use (see Supplementary Condition 23)

The Designated Use is the provision of the Port Macquarie Tidal Pool, to provide a safe enclosed swimming area and a great secure training place for water sports for the community and tourists used for the Designated Use for at least the Designated Use Period.

B.14 Designated Use Period (see Supplementary Condition 23)

The Designated Use Period is the period commencing on the date that Your Organisation achieves Practical Completion of the Works and expiring one year after that date.

B.15 Requirements in relation to Lease and Agreement for Lease (see Supplementary Condition 5.4.3)

- a. The term of the Lease ends no earlier than the end of the Designated Use Period;
- b. The Lease has been or will be registered in the relevant State or Territory land registry office.
- c. Your Organisation and the owner of the Property are the only parties to the Lease and Your Organisation will have the exclusive use and occupation of the Property for the term of the Designated Use Period.
- d. The Lease permits Your Organisation to conduct the Designated Use on the Property;
- e. The owner of the Property consents to Your Organisation assigning the Lease or Agreement to Lease or granting a sublease to the Department or the Department's nominee if such assignment or sublease is required by the Department;
- f. The owner of the Property consents to Your Organisation granting a charge and mortgage in favour of the Commonwealth over all of Your Organisation's right, title and interest in the Lease and Agreement to Lease as required by Supplementary Condition 6.1 and, if applicable, Item M of the Schedule;
- g. The owner of the Property consents to Your Organisation carrying out the Works on the Property;
- h. Your Organisation will not, at any time, be obliged to pay any additional rent as a consequence of the improvement in the value of the Property created by the performance of the Works and the value of such improvements will not be taken into account on any rent review; and
- i. The Lease and Agreement to Lease provide that the Property owner must not terminate the Lease or Agreement to Lease unless the Property owner has given the Department not less than 60 days prior notice of its intention to do so and an opportunity to rectify any default by Your Organisation.

Item C FUNDING AND BANK ACCOUNT INFORMATION**C.1 Funding (see also clause 3 of the Terms and Conditions and Supplementary Condition 3)**

The maximum amount of Funds payable by the Department to Your Organisation under this Agreement is the amount set out in the table below.

The funding enclosed in this agreement constitutes the entirety of the funding allocated to this project under this Program.

The Department will pay the Funds specified in Item F when Your Organisation achieves the Milestones in the Milestone Schedule in Item F.

Funding Amount (GST exclusive)	GST component (if applicable)	Total amount (GST inclusive)
\$4,500,000	\$450,000	\$4,950,000

C.2 Bank Account Information

Your Organisation must notify the Department in writing of any changes to these account details:

BSB Number	s47G(1)(a)
Financial Institution	
Account Number	
Account Name	

Item D OTHER CONTRIBUTIONS AND BUDGET

D.1 Other Contributions (see clause 3.8 of the Terms and Conditions and Supplementary Condition 7)

Any arrangements or agreements Your Organisation enters into to receive additional monetary contributions for this Activity must be in accordance with 3.8 of the Terms and Conditions and Supplementary Condition 7.

a. Other Party Contributions provided by a party other than Your Organisation

Your Organisation must inform the Department within 14 days after entering into any arrangement or agreement under which Your Organisation receives, or is entitled to receive, any additional monetary contributions for this Activity. The notice must include the amount of any such additional contributions and the purpose for which they will be used.

Your Organisation is required to have secured sufficient funding to complete the Activity prior to the commencement of construction.

b. Other contributions provided by Your Organisation

Not applicable

D.2 Budget (see clause 3.5 of the Terms and Conditions and Supplementary Condition 8.1).

The below Budget applies until such time as the Activity Plan and Budget provided by Your Organisation are accepted by the Department in accordance with Supplementary Condition 8.1.

Budget line items to be paid from funds payable under the Agreement.	Budget Amount (\$GST exclusive)
Concept, planning, detailed design and head contractor procurement.	\$1,200,000

This activity includes works undertaken to support all planning and approval works prior to the commencement of construction, not limited to: site assessments, design, planning approvals, native title requirements, project status reporting, project management planning, head contractor procurement and associated legal costs and contingencies.	
Construction, fit out, assets This activity includes all works associated with the construction, not limited to site preparation works, excavation works, decontamination works, construction of assets as outlined at B.6, and non-fixed assets to be installed in the works.	\$3,300,000

The Budget to be provided by Your Organisation by the relevant milestone due date must:

- Be consistent with the Activity Plan;
- Show proposed expenditure per financial year; and
- Be in a format consistent with the following table.

Financial Year	
Budget Line Items to be paid from Funds payable under this Agreement	Budget Amount (\$GST exclusive)
Concept and planning Design and management fees Statutory and approval fees Consultants fees	
Detailed Design Design and management fees Design contingency Escalation	
Demolition, strip out and removal	
Construction Construction consultant and project management fees Site preparation works Demolition/excavation/decontamination works Decanting costs (if applicable) Construction of new building External works	
Fit-out Fit-out of building [excluding non-fixed Assets]	
Assets (Non-fixed) – furnishings, fittings and equipment Non-fixed assets to be installed in the works	
General Administrative and other general costs (including salary costs of personnel engaged by Your Organisation to oversee the Activity)	
Contingency allowance	
Total of above items	
Funds Payable under this Agreement	
Interest earned on the Funds payable under this Agreement	
Total Funds plus interest	
Total	

D.3 Percentage for purposes of clause 3.5.2 of the Terms and Conditions: 10%.

Item E REPORTS (see clause 2.3 of the Terms and Conditions)

Your Organisation must provide the following Reports to the Department via email to the Department who will provide you with a reporting template.

E.1 Monthly Reports from Commencement Date to date that Your Organisation achieves Practical Completion of the Works

Not applicable.

E.2 Final Report after Practical Completion of the Works

The Final Report must be sent to the Department within three calendar months after the date that Your Organisation achieves Practical Completion of the Works.

E.3 Reports during the Designated Use Period

Not applicable

E.4 Financial Acquittal Reports (see clause 2.3 of the Terms and Conditions)

A Financial Acquittal Report in accordance with clause 2.3 of the Terms and Conditions must be sent to the Department within three calendar months after the date that Your Organisation achieves Practical Completion of the Works. The Department may, by reasonable prior written notice, vary the financial acquittal requirements that apply to Your Organisation.

E.5 Other Reports

Not applicable.

Item F MILESTONE SCHEDULE

Your Organisation must perform the Activity in accordance with the time frames specified in the Milestone Schedule below.

The amount of Funds specified in respect of each Milestone in the Milestone Schedule will be paid by the Department to Your Organisation within 30 days of Your Organisation achieving the Milestone to the satisfaction of the Department.

Item F MILESTONE SCHEDULE

Your Organisation must perform the Activity in accordance with the time frames specified in the Milestone Schedule below.

The Amount of Funds specified in respect of each Milestone in the Milestone Schedule will be paid by the Department to Your Organisation within 30 days of Your Organisation achieving the Milestone to the satisfaction of the Department.

Requirements for Milestone to be achieved	Date by which Milestone requirements to be achieved	Funds to be paid when Milestone requirements are achieved (SGST exclusive)
Execution of the Funding Agreement	September 2020	\$0 (Completed)
Milestone 1 - Property Satisfactory and Securities (Part A) Your Organisation has provided the Department with: where the Activity is to be performed on part only of the Property, a plan identifying that part of the Property to be used for the Activity in accordance with Supplementary Condition 4.1.3; and The Department has provided Your Organisation with notice in writing that the Commonwealth Requirements have been met in relation to the Property (see Supplementary Condition 5.2)	December 2020	\$500,000 (Completed and Paid)

Milestone 2 - Progress Report Your Organisation has provided the Department with: a declaration signed by the Senior Executive Officer advising of the progress made since execution of the agreement; and Your Organisation has obtained written confirmation from the Department that Your Organisation has satisfied all of the requirements in the Milestone Schedule up to and including this Milestone (see Supplementary Condition 16.1.1).	15 May 2021	\$1,000,000 (Completed and Paid)
Milestone 3 - Progress Report Your Organisation has provided the Department with: a declaration signed by the Senior Executive Officer advising of the progress made since last report; and Your Organisation has obtained written confirmation from the Department that Your Organisation has satisfied all of the requirements in the Milestone Schedule up to and including this Milestone (see Supplementary Condition 16.1.1).	30 May 2022	\$3,000,000 (Completed and Paid)
Milestone 4 - Progress Report (formerly Milestone 5 Progress Report) Your Organisation has provided the Department with: a declaration signed by the Senior Executive Officer advising of the progress made since last report; and Your Organisation has obtained written confirmation from the Department that Your Organisation has satisfied all of the requirements in the Milestone Schedule up to and including this Milestone (see Supplementary Condition 16.1.1).	14 December 2022	\$0 (Completed)

Milestone 5 - Progress Report Your Organisation has provided the Department with: a declaration signed by the Senior Executive Officer advising of the progress made since last report; and Your Organisation has obtained written confirmation from the Department that Your Organisation has satisfied all of the requirements in the Milestone Schedule up to and including this Milestone (see Supplementary Condition 16.1.1).	30 November 2023	\$0
Milestone 6 - Property Satisfactory and Securities (Part B) Your Organisation has provided the Department with: a signed and completed Legal Advisor Certification Letter together with documents required to be attached to the Legal Adviser Certification Letter, and other information required by the Department pursuant to Supplementary Condition 5.1.1; and The Department has provided Your Organisation with notice in writing that the Commonwealth Requirements have been met in relation to the Property (see Supplementary Condition 5.2).	30 June 2024	\$0
Milestone 7 - Activity Information and Securities Registered Your Organisation has provided the Department with: - a draft Activity Plan and Budget accepted by the Department in accordance with Supplementary Condition 8.1. Note: The Budget component of this milestone is to be approved by Department of Health and Aged Care (DOHAC) prior to the milestone being accepted; - documentary evidence of the appointment of a project manager in accordance with Supplementary Condition 17.3; - confirmation of the appointment of suitable construction professionals and consultants such as architect, quantity surveyor, engineer, town planner; and Your Organisation has obtained written confirmation from the Department that Your Organisation has satisfied all of the requirements in the Milestone Schedule up to and including this Milestone (see Supplementary Condition 16.1.1).	30 June 2024	\$0

Milestone 8 - Commencement of the Works Your Organisation has provided the Department with: • a construction ready Final Activity Plan and Budget accepted by the Department in accordance with Supplementary Condition 8.1. Note: The Budget component of this milestone is to be approved by Department of Health and Aged Care (DOHAC) prior to the milestone being accepted; • a copy of the Activity Material specified in Item B.11; • confirmation of the appointment of a building contractor; • confirmation that all Approvals have been obtained from the Proper Authorities for the development of the Property, the construction of the Works and the use of the Works for the Designated Use (see Supplementary Condition 8.6); • confirmation of certificates of currency of relevant insurances required prior to commencement of the Works as specified in Item G; • confirmation that Your Organisation has complied with its obligations under Supplementary Conditions 13 and 14; • confirmation of the placement of order(s) for the Assets; and Your Organisation has obtained written confirmation from the Department that Your Organisation has satisfied all of the requirements in the Milestone Schedule up to and including this Milestone (see Supplementary Condition 16.1.1).	20 November 2024	\$0
Milestone 9 - Progress Report Your Organisation has provided the Department with: • a declaration signed by the Senior Executive Officer advising of the progress made since last report; and Your Organisation has obtained written confirmation from the Department that Your Organisation has satisfied all of the requirements in the Milestone Schedule up to and including this Milestone (see Supplementary Condition 16.1.1).	30 April 2025	\$0

Milestone 10 - Fit out, Finishes & Fittings Complete and Assets installed Your Organisation has provided the Department with: a declaration signed by the Senior Executive Officer certifying that all work for the fit out and finished stage of the Works has been completed with photographic evidence; and Your Organisation has obtained written confirmation from the Department that Your Organisation has satisfied all of the requirements in the Milestone Schedule up to and including this Milestone (see Supplementary Condition 16.1.1).	19 September 2025	\$0
Milestone 11 - Practical Completion Achieved Your Organisation has provided the Department with: - a copy of the Practical Completion of the Works (see Supplementary Condition 20.1.1 e); - a copy of the Certificate of Occupancy for the Works; - a declaration signed by the Senior Executive Officer certifying the testing and commissioning certification complete, together with copies of the relevant testing and commissioning certificates; - confirmation of certificates of currency of relevant insurances required upon Practical Completion of the Works and at - the commencement of the Designated Use Period as specified in Item G; - photographic evidence of milestone completion; Your Organisation has obtained written confirmation from the Department that Your Organisation has satisfied all of the requirements in the Milestone Schedule up to and including this Milestone (see Supplementary Condition 16.1.1).	27 November 2025	\$0
Milestone 12 – Final Report Satisfactory Final Report in accordance with Item E.2	27 February 2026	\$0
Milestone 13 – Financial Acquittal Report Financial Acquittal Report in accordance with Item E.4;	27 February 2026	\$0

Item G INSURANCE REQUIREMENTS (see also clause 9.3 of the Terms & Conditions and Supplementary Conditions 9 and 21)

Prior to commencement of the Works:

Your Organisation must obtain and maintain the following types and amounts of insurance:

- a. to the extent required by Law, workers compensation insurance in respect of Your Organisation's liability for any loss or claim by a person employed or otherwise engaged, or deemed to be employed or otherwise engaged, by Your Organisation in connection with the Activity; and
- b. public liability insurance covering legal liability (including liability assumed under contract) for loss or damage to property or injury or death to persons arising out of or in connection with carrying out the Activity, up to a maximum limit of twenty million dollars (\$20,000,000), with no limit on any one claim or occurrence giving rise to a claim.

Your Organisation must ensure that the head contractor engaged to carry out the Works obtains and maintains the following types and amounts of insurance:

- c. contractor's all risks works policy covering loss or damage to the Works and any temporary work including materials stored off-site or in transit, for the full reinstatement and replacement cost of the Works including:
 - i. the full amount of the cost to Your Organisation to construct the Works (Works Cost);
 - ii. an amount reasonably providing for additional costs of demolition and of removal of debris (to be not less than 10% of the Works Cost); and
 - iii. a further amount reasonably sufficient for consultants' fees (to be not less than 5% of the Works Cost);
 - iv. a reasonable contingency for escalation costs,

and Your Organisation must ensure that the policy specified in this Item G c. to be taken out by the building contractor is project insurance under which the Commonwealth, Your Organisation, the builder, the Subcontractors, the Sub-subcontractors, the Property owner (where applicable) and the Property owner's mortgagee (where applicable) are named insureds for their various and respective, rights, interests and liabilities. The policy must cover each insured in respect of the whole of the Works. The policy must contain cross liability and waiver of subrogation clauses in respect of the parties comprising the named insureds;

- d. public and products liability policy covering legal liability (including liability assumed under contract) for loss or damage to property or injury or death to persons arising out of or in connection with carrying out the Works, up to a maximum limit of twenty million dollars (\$20,000,000), with no limit on any one claim or occurrence giving rise to a claim; and
- e. if asbestos decontamination work is required as part of the Works, an asbestos liability policy in respect of the risks associated with asbestos decontamination work, up to a maximum limit of twenty million dollars (\$20,000,000), with no limit on any one claim or occurrence giving rise to a claim.

Your Organisation must ensure that the building contractor causes each professional service provider to hold a professional indemnity policy in the amount of ten million dollars (\$10,000,000) or

such other amount as agreed in writing by the Department, to cover its liability for breach of professional duty (if applicable) arising out of any negligence, whether in relation to errors in design, documentation, supervision or other professional duties. Such cover must extend to liability for personal injury, illness or death of anyone in connection with the provision of professional services or as a result of breach of professional duty and must be maintained for a period of at least 7 years following the achievement of Practical Completion of the Works.

Upon Practical Completion and during the Designated Use Period:

Your Organisation must obtain and maintain the following types and amounts of insurance:

- a. professional indemnity insurance for not less than ten million dollars (\$10,000,000) or such other amount as agreed in writing by the Department, to cover liability for personal injury, illness or death arising out of a breach of professional duty and which must be maintained until 7 years after the end of the Designated Use period;
- b. public liability policy covering legal liability (including liability assumed under contract) for loss or damage to property or injury or death to persons arising out of or in connection with carrying out the Activity, up to a maximum limit of twenty million dollars (\$20,000,000), with no limit on any one claim or occurrence giving rise to a claim;
- c. where it is the owner of the Property, building and contents insurance to cover loss, damage and destruction for their full reinstatement value, noting the Commonwealth's interest; and
- d. where it occupies the Property under a Lease, contents insurance to cover loss, damage and destruction for their full reinstatement value, noting the Commonwealth's interest.

Insurance requirements for Assets (see clause 5.1.4 e. of the Terms and Conditions)

In respect of each Asset for the Activity, for the duration of the Activity Period Your Organisation must maintain insurance for each Asset to its full replacement cost, noting the Commonwealth's interest.

Item H ASSETS (see clauses 5.1 and 11.4.1 of the Terms & Conditions)

The amount for the purposes of clause 11.4.1 of the Terms and Conditions definition of Asset a.ii is five thousand dollars (\$5,000).

Item I SUBCONTRACTORS (see clause 4.2 of the Terms & Conditions and Supplementary Condition 9)

Your Organisation may, without the Department's prior written consent, procure appropriately qualified Subcontractors to carry out the design, construction and fit-out of the Works in accordance with the terms and conditions of this Agreement.

Item J SPECIFIED PERSONNEL (see clause 4.3 of the Terms & Conditions)

Not applicable.

Item K CONFIDENTIAL INFORMATION (see clause 8.1 of the Terms & Conditions)

Information of, or provided by the Commonwealth that;

- I. is by its nature confidential;
- II. is designated by the Commonwealth as confidential; or
- III. the Organisation knows or ought to know is confidential;

other than material that;

- IV. is or becomes public knowledge other than by breach of this agreement or unlawful means;
- V. is in possession of the Organisation without restriction in relation to disclosure before the date of receipt from the Commonwealth; or
- VI. has been independently developed or acquired by the receiving Party.

Item L NOTICES (see clause 4.5 of the Terms & Conditions)

The Commonwealth's contact details and address for notices

Name or Position	Director, Programs Section, Office for Sport
Phone	s22(1)(a)(ii)
Email	s22(1)(a)(ii)
Postal Address	GPO Box 9848, Canberra ACT 2601

Your Organisation's contact details and address for notices

Name or Position	s47F, Committee Technical Lead
Phone	s47F
Email	s47F
Postal Address	s47F

Item M SECURITIES (see Supplementary Condition 6)

Not applicable.

Item N REPAYMENT AMOUNT (see Supplementary Condition 26.2)

The repayment amount will be calculated according to the following formula:

$$\text{Repayment} = F - (F \times Y / \text{DUP})$$

where:

F is the total of all Funds paid by the Department to Your Organisation for the Activity plus any interest earned on those Funds, but excluding all Funds that have been previously recovered under this Agreement from Your Organisation by the Department;

Y is the number of completed months since the commencement of the Designated Use Period that the Property and the Works have been used for the Designated Use, or if the Designated Use Period has not yet commenced Y is zero; and

DUP is the number of months in the Designated Use Period.

Item O **RELEVANT QUALIFICATIONS, CHECKS, LICENCES OR SKILLS**

The Grantee must ensure that a person does not perform work on any part of the Activity that involves working or contact with a Vulnerable Person if a Police Check indicates that the person at any time has:

- (a) a Serious Record; or
- (b) a Criminal or Court Record; and

the Grantee has not conducted a risk assessment and determined that any risk is acceptable.

In undertaking a risk assessment, the Grantee must have regard to:

- (a) the nature and circumstances of the offence(s) on the person's Criminal or Court Record and whether the charge or conviction involved Vulnerable Persons;
- (b) whether the person's Criminal or Court Record is directly relevant to, or reasonably likely to impair the person's ability to perform, the role that the person will, or is likely to, perform in relation to the Activity;
- (c) the length of time that has passed since the person's charge or conviction and his or her record since that time;
- (d) the circumstances in which the person will, or is likely to, have contact with a Vulnerable Person as part of the Activity; and
- (e) any other relevant matter, and must ensure it fully documents the conduct and outcome of the risk assessment.

The Grantee agrees to notify the Commonwealth of any risk assessment it conducts under this clause and agrees to provide the Commonwealth with copies of any relevant documentation on request.

If during the term a person involved in performing work on any part of the Activity that involves working or contact with a Vulnerable Person is:

- (a) charged with a Serious Offence or Other Offence, the Grantee must immediately notify the Commonwealth; or
- (b) convicted of a Serious Offence, the Grantee must immediately notify the Commonwealth and ensure that that person does not, from the date of the conviction, perform any work or role relating to the Activity.

In this Agreement:

Vulnerable Person means

- (a) an individual under the age of 18;
- (b) an individual aged 18 years and above who is or may be unable to take care of themselves, or is unable to protect themselves against harm or exploitation for any reason, including age, physical or mental illness, trauma or disability, pregnancy, the influence, or past or existing use, of alcohol, drugs or substances or any other reason.

Before any person commences performing work on any part of the Activity that involves working or contact with a Vulnerable Person, the Grantee must:

- (a) obtain a Police Check for that person;
- (b) confirm that the person is not prohibited by any law from being engaged in a capacity where they may have contact with a Vulnerable Person;
- (c) comply with all State, Territory or Commonwealth laws relating the employment or engagement of persons in any capacity where they may have contact with a Vulnerable Person; and
- (d) ensure that the person holds all licences or permits for the capacity in which they are to be engaged, including any specified in the Grant Details, and the Grantee must ensure that Police Checks and any licences or permits obtained remain current for the duration of their involvement in the Activity.

Annexures applicable to this Schedule

Annexure A - Supplementary Conditions for Capital Works.

Annexure B - Legal Adviser Certification Letter.