

s47F

AS TRUSTEES OF THE NORMAN SMORGON HOUSE TRUST

7 March 2019

By Email

s47F

Dear

s47F

Walpole Street, Kew

Further to our discussions over recent months regarding the Walpole St property, I am pleased to confirm the Trustees' support for the envisaged 'Giant Steps Melbourne Expansion Proposal'. This undoubtedly is an exciting and important endeavour for GS, its students and other potential users of the proposed facilities.

As we have discussed, the Trustees would be prepared to enter into a long term ground lease for the additional area, the terms of which will be negotiated in good faith, guided by independent advice and likely will mirror the current lease between KHC and GS. Notwithstanding our enthusiastic support for the project the Trustees own responsibilities and duties, of course, must remain paramount in our considerations. Depending on legal and other structuring requirements this may result in separate agreements or perhaps combined as one overall Deed.

We wish you success in your applications and plans, and as always, let us know if we can assist in any way.

Kind Regards

s47F

on behalf of the

Trustees of The Norman Smorgon House Trust

s22

From: s47F
Sent: Tuesday, 30 April 2019 12:57 PM
To: CDG
Subject: FW: Request for Information Giant Steps Melbourne
Attachments: Giant Steps Melbourne Expansion Proposal Final.pdf

Dear Sir/Madam

Final document for Giant Steps Melbourne.

Regards

s47F

From: s47F
Sent: Tuesday, 30 April 2019 12:33 PM
To: cdg@infrastructure.gov.au
Subject: FW: Request for Information Giant Steps Melbourne

Dear Sir/Madam

Additional documents relating to the Request for Information for Giant Steps Melbourne.

Kind regards

s47F

From: s47F
Sent: Tuesday, 30 April 2019 12:08 PM
To: 'cdg@infrastructure.gov.au' <cdg@infrastructure.gov.au>
Subject: FW: Request for Information Giant Steps Melbourne

Dear Sir/Madam

I attempted to send an email to you however the size of the files was too large. I have removed some attachments and will resend in another email.

Regards

s47F

From: s47F
Sent: Tuesday, 30 April 2019 11:23 AM
To: cdg@infrastructure.gov.au
Subject: Request for Information Giant Steps Melbourne

Dear Sir/Madam

Please find attached our Request for Information along with supporting documentation. We have submitted an ambitious timeline, assuming a smooth planning process, reflecting the fact that we were only at the preliminary stages of planning when we received the offer of funding.

Our audit for 2018 will commence next week and we should have the 2018 Financial Report ready to forward by the end of May. I have submitted the 2016 and 2017 Financial Reports for Giant Steps Melbourne. I have also submitted the Financial Reports for Giant Steps Australia and for the Giant Steps Sydney Endowment Fund for 2017.

Please do not hesitate to contact me if you require further information or support relating to any of the attached documents.

Yours sincerely

s47F



Giant Steps Australia
23 Punt Road
Gladesville NSW 2111

PO Box 209
Gladesville NSW 1675

s47F

...supporting children & young adults with autism



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Giant Steps Melbourne



3 December 2019

The Hon Dan Tehan
190 Gray Street
Hamilton VIC 3300
dan.tehan.mp@aph.gov.au

Dear Dan

It was good to speak to you in regard to development opportunities at Giant Steps Melbourne. Thank you for taking the time to discuss with me the thoughts I had shared with Treasurer Josh Frydenberg following the official opening of our new learning spaces at Giant Steps Melbourne school in Kew. Giant Steps is experiencing significant demand in Victoria for autism services offering a holistic approach. The Giant Steps transdisciplinary model has been developed over the past 23 years in Sydney and expanded to Melbourne 3 years ago.

We continue to see demand for young people with very complex needs across the autism spectrum who have limited access to appropriate services on a full-time basis and our waiting list for Primary and Secondary School as well as Post-School Provision grows daily.

Monash University is currently conducting research on school non-attendance in students with an intellectual disability. The early results indicate that up to 18% of students with an intellectual disability, majority with an ASD diagnosis, have been excluded in some form from government, independent and Catholic schools sectors including special schools.

We are grateful for the opportunity to present you with a proposal to expand our school footprint which will allow us to assist additional students and their families. The building program will include a new Secondary School with a commercial kitchen, a Community College, and, flexible spaces that allow the operation of early learning outreach services, a siblings program, a Mental Health Clinic and training and staff spaces.

Giant Steps Melbourne has enjoyed significant support from the Trustees of Kew Synagogue in the establishment of the school. We have approached the Trustees to discuss the opportunity of the expansion. The Trustees are very supportive and see this as an opportunity to provide much needed services to children with autism and their families whilst better utilising the site.

Our preliminary design allows for the provision of autism services for 80-100 children and young adults with autism. Further seamless expansion would be possible if we are able in the future, with the support of the Trustees, to utilize the Synagogue.

We appreciate your support and interest in our community, school and students. The expansion will make a significant difference to children and young adults with autism, their siblings and parents.

We would be delighted to discuss any question your office may have as this exciting opportunity is considered.
Yours sincerely

s47F

s47F

Giant Steps Melbourne Ltd
ABN 46 606 552 283

11 Malmsbury Street
Kew Victoria 3101

PO Box 586
Kew Victoria 3101

Ph: 03 9853 9578

Giant Steps Melbourne Expansion Proposal

Giant Steps Melbourne History

Giant Steps is a school for children with Autism Spectrum Disorder (ASD). Our school assists students with very complex to moderate autism. These children have limited opportunities to access quality education due to the complex nature of their disability.

Giant Steps Sydney, established in 1995, has an enrolment of 110 students supported by 100 staff members and in 2018 was awarded The Australian Special School of the Year – The Educator Awards.

After many years of enquiry from Melbourne based families about establishing a school, we finally made the decision to create Giant Steps Melbourne when one family from our Giant Steps Sydney community, moved back to Melbourne. After a challenging first year in Melbourne and with schools unable to support their son, the family contacted the Giant Steps Sydney Principal for help. On 1 February 2016, Giant Steps Melbourne opened with 11 students and a waiting list of 70.

Giant Steps Melbourne caters for students from all socio-economic backgrounds. The school does not charge fees. Government funding covers part of the costs and families help raise the balance required with the support of donors and through fundraising events.

Giant Steps Melbourne operates a Prep to Year 10 School Program. Late in 2018, Giant Steps successfully secured the registration for a Senior Secondary Program. The program is a unique social enterprise project under the Victorian Curriculum and Applied Learning for senior students.

The expansion of Giant Steps Melbourne will allow the organisation to:

- Increase student enrolments across all programs to approximately 100 students;
- Introduce our Community College Program to Melbourne;
- Respond to significant demand by extending our Mental Health Clinic;
- Support our students' families with the introduction of our Siblings Program;
- Establish an Early Learning Outreach Program to support pre-school aged children and their families;
- Build capacity and capability of our staff and graduate teachers and therapists;
- Lead attitudinal change and engagement of teaching staff with ASD children in mainstream programs;
- Work with research, universities and community organisations to further advance the development of best practice programs for children with ASD and;
- Provide professional training in ASD intervention and support to other professionals, including teachers, respite workers, families and other members of the community.

Giant Steps Melbourne Approach

The Giant Steps program is based on a transdisciplinary model that best supports students with autism. Highly trained teachers and therapists work as a team to develop, implement and assess learning programs, integrating both educational and therapy goals for all students. The learnings gained about each student are shared across all contexts including school, home and other environments.

The program incorporates a high staff to student ratio allowing for an intensity of support that is

not achieved in other educational settings. At Giant Steps, the ratio of professional staff, i.e. teachers and therapists, to students is currently 1 staff member per 2.5 students and the overall staffing ratio is 1 staff member to 1.3 students.

The school program incorporates evidence-based autism strategies including:

- Individual student learning programs based on the Victorian Curriculum;
- Authentic teaching and learning experiences that engage and challenge students;
- Family participation to establish goals and implement strategies around each student;
- A functional approach to challenging behaviours and emphasis on improving independence;
- Autism friendly strategies include the use of augmented and alternate communication systems, sensory supports, routines, environmental management strategies individualised for students;
- Inclusion of peers and siblings and;
- Transdisciplinary approach - Speech, Occupational and Music Therapists are on permanent staff to work with teachers and other professionals to design and implement Individual Education Plans.

Giant Steps Melbourne's Opportunity to Grow – Good Design Enhances Great Outcomes for Students

The Giant Steps Melbourne School occupies 900m². We have the opportunity to extend the footprint of the school to include an additional floor space of 1820m² and an additional playground area of 600m² at a cost of \$9.7m. The expansion will include growing our primary and secondary schools and establishing a post school program, early intervention outreach service, siblings program and a mental health clinic. We have significant experience in the provision of these services.

Students with ASD have strong visual processing skills and they are heavily reliant on information from their environment to support their comprehension, for example, what is expected of them in the environment, where they are going next and what they should be focusing on. The design of learning spaces needs to take into account the learning style of students with ASD. This building program gives us the opportunity to design an environment that carefully manages both noise and visual impacts so students are more available for successful learning. Failure to do this can be detrimental to students with ASD as continued exposure to negative sensory experiences can cause a student to withdraw from learning and is often the cause of them being unsuccessful in accessing regular learning environments. Careful design of learning spaces can also support the ongoing social development of students with ASD by creating motivating and predictable environments for them to interact with others more successfully.

With your support, we expect the development of the Giant Steps Melbourne site will provide support, training and education that will meaningfully impact many children, families, teachers and researchers. This development would allow Giant steps to:

- Grow to support 100 students;
- Support the transition of 15 preschool aged children and their families from diagnosis to school;
- Train 30 mainstream school teachers in supporting ASD students;
- Extend our collaboration with Deakin University and other research universities and;

- Share our facilities outside of school hours with other community groups.

The specific programs we seek to extend or commence as a result of the proposed support are outlined below and spaces would be designed to be flexible to allow the space to be responsive to the needs of the student cohort at any given time. This would also allow for the sharing of spaces with community groups.

Primary Program

The Primary Program helps students understand their role as students within the school context. The program of teaching and learning of the Victorian Curriculum is dynamic and innovative, engaging our students through meaningful content and resourcing using diverse teaching strategies. The focus of the program is to motivate students to be part of a class group, focusing on togetherness, smooth transitions, social learning and independence. Our students find it challenging to interact socially and develop friendships, but through dedicated class programs these opportunities are nurtured.

The proposed expansion plan would allow for the current 6 classrooms to be fully utilized for primary based education. We would expect to enrol up to 35 students in our Primary School.

Secondary Program

The Secondary Program delivers a variety of experiences while fostering the students' independence and wellbeing through the complexity of adolescence.

Working closely with families, the program helps navigate the challenging teen years for students. The program has an ongoing focus on developing social, emotional and physical development. Many of our secondary students require escalating support as their behaviour becomes more complex and challenging through adolescence.

Students in Years 10 - 12 will be offered a new Senior Secondary Program, allowing students to participate in an integrated social enterprise with outcomes that include a VET component. The program aims to provide pathways for students to their post school life.

The facilities required include 5 classrooms, 3 dedicated bathrooms including shower facilities, a commercial kitchen, a first aid room, a music room and small courtyard for combined indoor outdoor classrooms, allowing students to also engage in sensory based experiences and providing flexibility to meet the individual demands of students. We would expect to enrol students from both the Primary Program and other educational services in the Secondary Program.

Community College (Post School Program)

The proposed expansion plan would allow Giant Steps to provide a post school program, urgently needed by our existing students and more broadly across Melbourne in response to limited services available for young adults with ASD leaving secondary school. The Post School program will be open to students graduating from the GS Secondary Program, as well as to other young adults with autism from the wider community.

The model seeks to meet the individual needs of each client and adopts a 'person centred planning' approach. The post school program offers a range of programs with the intention of promoting self-determination and independence. The participant's day will involve offsite engagement in activities including Vocational experiences, Health & Fitness, Recreation & Leisure and Community Access. Confronted with the transition of leaving school, many of our

students have struggled with anxiety and their sense of purpose.

Located adjacent to the school, it will offer access to additional staff working in the Giant Steps context whilst creating an important separation of space between school aged students and adults.

The facilities required include a large common room, kitchen, music room, small break out room, small outdoor bbq area, office spaces, bathroom amenities, and separate entrance from the street.

As a new initiative, this expansion plan would allow for up to 25 post school participants with a model that is both centre and community based.

Early Intervention

The Early Intervention Outreach Program will provide outreach services to young children recently diagnosed with autism and their families. The service supports individuals and small groups. Each family is supported for 1-2 sessions per week, allowing the program to support 15-20 children each term. Highly trained professionals consider the individual edge of learning and needs of each child and develop strategies for families to use with their children as they prepare for the upcoming school years.

Additional Elements

Mental Health Clinic

Giant Steps has been operating an onsite mental health clinic for the past five years in Sydney and is currently reviewing the feasibility of establishing this much needed capacity in Melbourne.

Families face several issues when trying to access medical and mental health professionals. These include finding appropriate professionals who understand our unique population, long waiting times for appointments, having to take children to various unfamiliar medical settings, and trying to gather together all necessary information to present to professionals. The Mental Health Clinic will operate onsite at Giant Steps Melbourne, meaning that students do not need to be removed to medical settings for long appointments.

Our visiting professionals will visit the students in their classrooms or the playground to meet and observe them. The school team and parents are able to holistically provide information about the concerns for a student, which may include incidence data, video footage, functional assessments of behaviour and input from the therapists and class team.

Mental health concerns are difficult to diagnose in an autism population and require a multi-modal approach in terms of their treatment. Every young person is different and therefore requires an individual response to the issues that arise from this process.

The facilities required include large meeting room and adjoining small office space.

Administration

A section of the site will be used as office space for School Administration and the Executive Team. The facilities required include reception area, open planned office space for administration staff including Funding Co-ordinator, parent meeting room/board room, Principal's Office, kitchenette and bathroom amenities.

Staffroom

A section of the expanded site will be used to cater for up to 90 staff from the school program areas in a way that allows them to naturally collaborate whilst overseeing the safety of students involved in play sessions (facilitated playground sessions). The design will allow for meal facilities, small group meeting areas and individual workstations.

Training Centre and Community Hall

A space on the site will have a multi-purpose hall offering opportunities to share use of the space with other community groups.

Proposed Expansion Plan

The proposed expansion plan will allow for Giant Steps to expand to **100 students, 900m2 to 2720m2 of floorspace and 400m2 to 1000m2 playground** at a cost of \$9.7m

Thank you very much for considering this proposal. We believe it is extraordinarily timely and offers wonderful opportunities for children and young adults with autism and their families.

Please feel free to contact me if you have any questions as you consider your support for this proposal.

s47F

s47F

Reference Points - Supporting Data and Studies

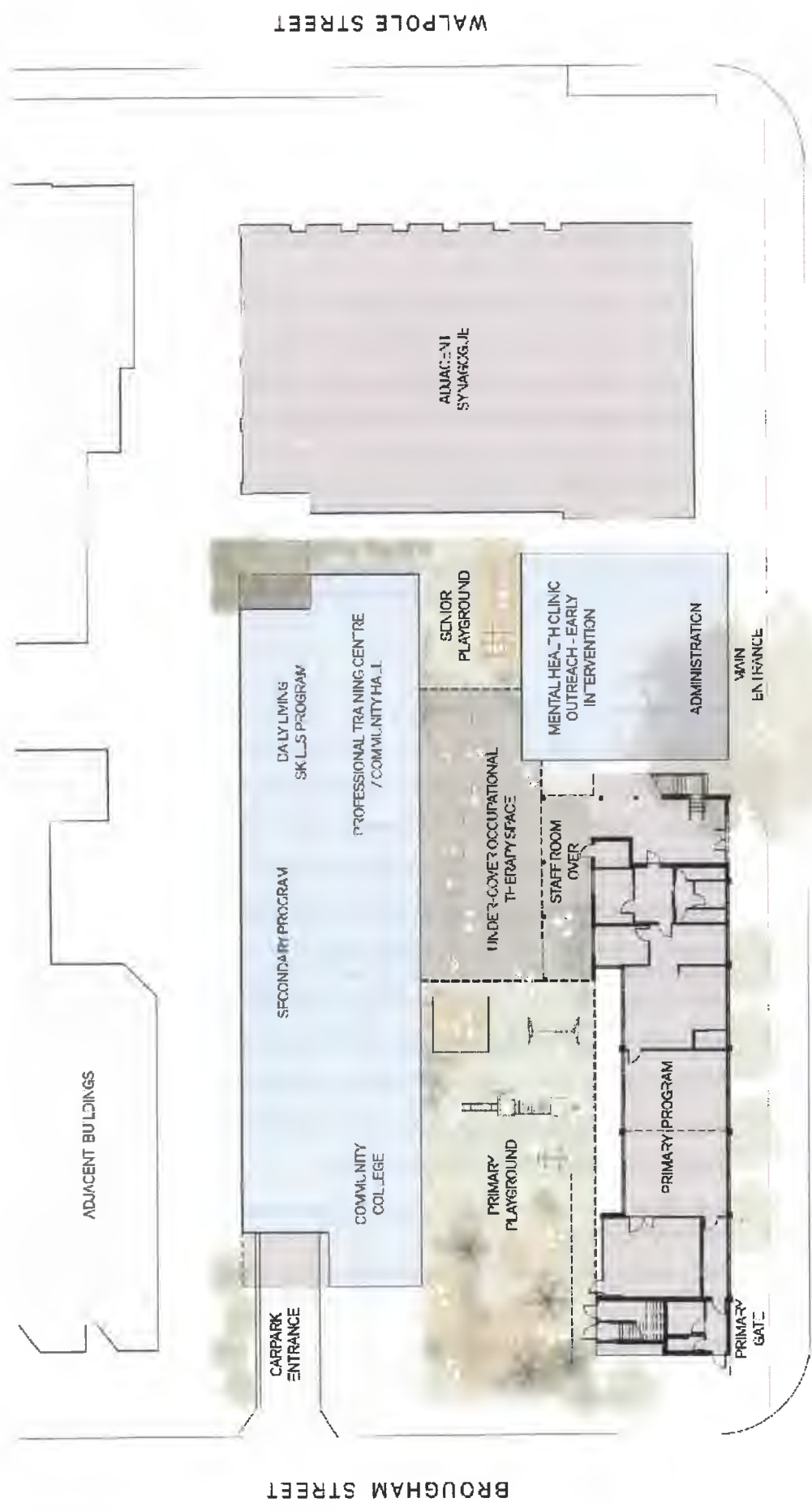
A number of studies have demonstrated the lack of equity between children with disabilities and their mainstream peers in accessing appropriate education opportunities, particularly for children with ASD and intellectual disability. The Australian Bureau of Statistics (2015) reported that 95% of students with ASD experienced educational restrictions because of their disability. Included in this report, was the doubling of students unable to attend school due to their ASD diagnosis, rising from 3% to 6% between 2009 and 2012 census.

The Youth Affairs Council of Victoria (2016) reported that 15% of students with a disability had been suspended from school with two thirds being suspended at least twice. They also found that 4% of students had been expelled. Parents drew attention to issues of 'informal' exclusion. This ranged from schools that would not enrol a student with a disability, to schools that sent students with disabilities out of class or back home without recording an official suspension.

Monash University is currently conducting research on school non-attendance in students with an intellectual disability. Researchers from this study recently presented their preliminary findings at the Society for the Study of Behavioural Phenotypes International Research Symposium in Melbourne earlier this year. The early results indicate that up to 18% of students with an intellectual disability, majority with an ASD diagnosis, have been excluded in some form from government, independent and Catholic schools sectors including special schools.

Some preliminary references below:

- Monash University Non-Attendance at School – Professor Bruce Tonge research:
<https://research.monash.edu/en/projects/school-non-attendance-in-students-with-intellectual-disability>
- ASD students underperforming at school compared to non-ASD students:
<https://www.sciencedirect.com/science/article/pii/S1750946709000798>
- Anxiety linked to aggression and higher suspension rates in students with ASD:
<https://www.sciencedirect.com/science/article/pii/S1750946715000938>
- Relationship between ASD, school discipline, police involvement and hospitalisation (US) – ie, students with ASD far more likely to encounter all three, with school discipline (suspension and expulsion) being linked to higher levels of police involvement (home and school) and hospitalisation.
<https://link.springer.com/article/10.1007/s10803-017-3359-y>
- Barriers to ASD students performing in school – exclusion rates
<https://ro.ecu.edu.au/cgi/viewcontent.cgi?article=3164&context=ajte>
- Newspaper article about rise in home-schooling:
<https://www.abc.net.au/news/rural/2017-08-28/homeschooling-debate-amid-rising-numbers/8829992>
- NSW Parliamentary paper finding that 15% of home schooled children due to special or medical needs:
<https://www.parliament.nsw.gov.au/researchpapers/Documents/home-education-in-nsw/Home%20schooling%20GG%203.pdf>



BROUGHAM STREET

MALMSBURY STREET

WALPOLE STREET



s22

From: s47F
Sent: Thursday, 11 Julv 2019 1:29 PM
To: s22
Subject: Cost Estimate for Giant Steps Melbourne Grant RFI
Attachments: Cost Estimate.pdf; ATT00001.txt

Hi s22

I hope all is well with you. I'll give you a call to discuss this cost estimate. It has been honed a little as a result of the last few design concept meetings with the architect.

We are close to a finalised concept that will be sent to a QS for coatings to be further refined.

I am interested in any feedback you may have before I place it in the table and resend the RFI doc back to you.

Also, as we are now selecting QS, project managers and other consultants, does the grant program or department have a "handbook" of requirements for consultants and builders etc. perhaps this is on the website, but wanted to check best place for this information so I can be sure we are appointing compliant consultants and contractors.

Thank you very much,

s47F



s22

From:

s47F

Sent:

Saturday, 10 August 2019 3:32 PM

To:

s22

Subject:

Re: CDG1085 - additional information [SEC=UNCLASSIFIED]

Hi s22

s47F

s47F was to be the “Project Manager”, or more correctly, the school board contact. s47F has handed this role to me and so the school contact details can probably now be updated to reflect this.

This week we have appointed 4 consultants (various engineers, traffic management etc) with a QS to be finalised by Friday.

The actual Project Manager, we are meeting with 3 professional Project Management firms suggested to us by the architect. We will be meeting with these Project Managers in the coming fortnight and once they have been engaged, I'll update you on both the Project Manager and the QS. For your reference, we are likely to choose from the following firms:

Montlaur

s47F

Duo Projects

s47F

Fontic

s47F

In relation to your query relating to the relocation expenses, this relates to the relocation of the Kew Hebrew Congregation President / Rabbi living quarters. Subject to council approval we plan to demolish the old buildings on the site. We have a pre-application meeting with the council this week and will present plans to demolish the old living quarters. We plan to replace this section of the site with a shared, Giant Steps School Community College / Kew Hebrew Congregation Hall and a new apartment that can be used by the President / Rabbi of the Synagogue, and for the school's life skills / respite programs. For the period during which building is occurring (~15-18 months), we will need to provide alternative living arrangements within walking distance of the building. We have costed local 2 bedroom apartments and estimated the cost based on this. Please let em know if you have any feedback on this costing/inclusion.

Kind Regards,

s47F

On 23 Jul 2019, at 12:13 pm, s22 wrote:

Hi s47F

s47F

Could you please provide some information about who will be managing the project and a bit about them (for example their experience, relevant qualifications etc)? The Request for Information lists s47F as the project manager but there isn't any information about his experience or what organisation he is from.

Also, I've noticed the cost estimate includes 'relocation expenses' - could you please provide a little more information about this?

Please note I'm out of the office tomorrow but I'll be back on Thursday, so there's no rush for you to get back to me.

Many thanks,
s22

s22

Community Development Grants
Regional Programs Branch | Regional Development and Local Government Division
Department of Infrastructure, Transport, Cities and Regional Development
GPO Box 594, Canberra ACT 2601

s22

w www.infrastructure.gov.au

The Department proudly acknowledges the Traditional Owners and Custodians of Australia, and their continuing connections to the land, waters and communities. We pay our respects to them and to their Elders past, present and emerging.

-----Original Message-----

From: s47F >

Sent: Thursday, 11 July 2019 1:29 PM

To s22

Subject: Cost Estimate for Giant Steps Melbourne Grant RFI

Hi s22

I hope all is well with you. I'll give you a call to discuss this cost estimate. It has been honed a little as a result of the last few design concept meetings with the architect.

We are close to a finalised concept that will be sent to a QS for coatings to be further refined.

I am interested in any feedback you may have before I place it in the table and resend the RFI doc back to you.

Also, as we are now selecting QS, project managers and other consultants, does the grant program or department have a "handbook" of requirements for consultants and builders etc. perhaps this is on the website, but wanted to check best place for this information so I can be sure we are appointing compliant consultants and contractors.

Thank you very much,

s47F

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s22

From: s47F
Sent: Thursday, 22 August 2019 3:27 PM
To: s22
Subject: Re: Cost Estimate for Giant Steps Melbourne Grant RFI [SEC=UNCLASSIFIED]

Thanks s22

I am well thank you! You are correct that we are planning to raise money for the additional costs of the project
s47G We have already raised funds for the project and are confident of raising more for the playground equipment etc.

I have been asked by s47F how we are going with the Grant. When we last spoke you were awaiting the final info from me to be ready to submit your submission paper for review. Are you able to give me an update on where we are in the process.

Regards,

s47F

> On 20 Aug 2019, at 10:41 am, s22 wrote:

>

> Hi s47F

>

> I hope you are well.

>

> I just wanted to check whether Giant Steps Melbourne will contribute \$105,663 towards the project, as the committed Australian Government funding is \$9,700,000 but the cost estimate has the total project cost as \$9,805,663? If there is another partner contributing to the project please let me know.

>

> Many thanks,

> s22

> Community Development Grants

> Regional Programs Branch | Regional Development and Local Government

> Division Department of Infrastructure, Transport, Cities and Regional

> Development GPO Box 594, Canberra ACT 2601 s22

> s22

> w www.infrastructure.gov.au

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>

>

> -----Original Message-----

> From: s47F

> Sent: Thursday, 11 July 2019 1:29 PM

> To: s22

> Subject: Cost Estimate for Giant Steps Melbourne Grant RFI

>

>
> Hi s22
>
> I hope all is well with you. I'll give you a call to discuss this cost estimate. It has been honed a little as a result of the last few design concept meetings with the architect.
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> Also, as we are now selecting QS, project managers and other consultants, does the grant program or department have a "handbook" of requirements for consultants and builders etc. perhaps this is on the website, but wanted to check best place for this information so I can be sure we are appointing compliant consultants and contractors.
>
> Thank you very much,
>
> s47F
>
>
> -----
> Disclaimer
>
> This message has been issued by the Department of Infrastructure, Regional Development and Cities.
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> and delete all copies of this transmission together with any attachments.
> -----
>

s22

From: s22
Sent: Wednesday, 18 September 2019 12:37 PM
To: s22
Subject: CDG 1085 - Giant Steps Autism School Expansion [SEC=UNCLASSIFIED]

Hi s22

I am currently Quality Checking the assessment for the proponent, Giant Steps Melbourne. You were not in today, so email instead.

Page 2 – “Project viability”

I think you may need to add more information to the project viability part of the assessment to show a strong business case for the expansion of the autism school. I would say something like:

“Giant Steps commenced operations in Melbourne in 2016 in a small primary and secondary school. The expansion to the current school is needed to meet the demand for autism services for both children and adults in the Kew area. Parents have shown support to expanding the current facilities and the addition of post-school programs

The template points to a requirement by the proponent to show a Business Case/feasibility study etc.

Page 3 – Costs estimates

I note that relocation expenses have not been included in the final cost. I checked the emails between the department and the proponent and you have asked for an explanation for the inclusion of ‘relocation expenses’. But the s47G has not been included in the assessment as part of the total costs.

Auditors may look at this assessment as this is a large amount, which is the reason for my close scrutiny. Hope that’s ok.

Regards

s22

Assistant Director | Community Development Grants
 Regional Program | Regional Development and Local Government
 Department of Infrastructure, Transport, Cities and Regional Development
 GPO Box 594, Canberra ACT 2601
 t s22
 w www.infrastructure.gov.au

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**Great Cities. Strong Regions.
 Connecting Australians.**

Threshold Three High Risk / Medium/High Value Project Assessment and Risk Report Assessment Report

Reference No: CDG1085 CDG Commitment: \$9,700,000 Total Cash Project Cost: 47G

Project Title: Giant Steps Autism School Expansion

Proponent: Giant Steps Melbourne

Project Description:

The project will construct a new secondary school building including teaching and therapy spaces, student and staff facilities and playground; and construct a post-school community facilities building, including teaching and therapy spaces, a commercial kitchen and community hall; and construct new car parking spaces.

Project and Outcomes

Is the Project consistent with the Australian Government?

The project is a 2019 Government commitment and is consistent with the joint media release by the Deputy Prime Minister and Minister for Infrastructure, Transport and Regional Development, the Hon Michael McCormack MP; the Treasurer of Australia, the Hon Josh Frydenberg MP; and the Hon Dan Tehan MP, Minister for Education, which states that Giant Steps Melbourne will receive \$9,700,000 for the Giant Steps Autism School Expansion.

Based on the information provided by the proponent the project is consistent with the intent of the Australian Government commitment.

What Outcomes will be achieved with the Project?

The proponent has advised the project will provide the following social and/or economic benefits to the community:

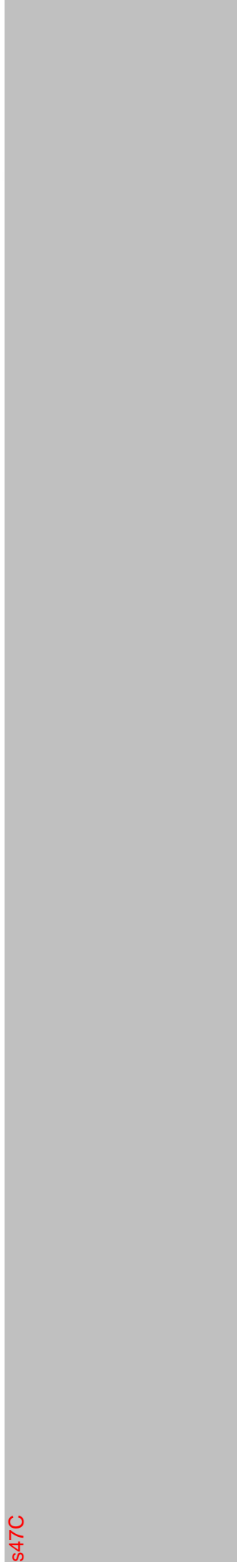
47G

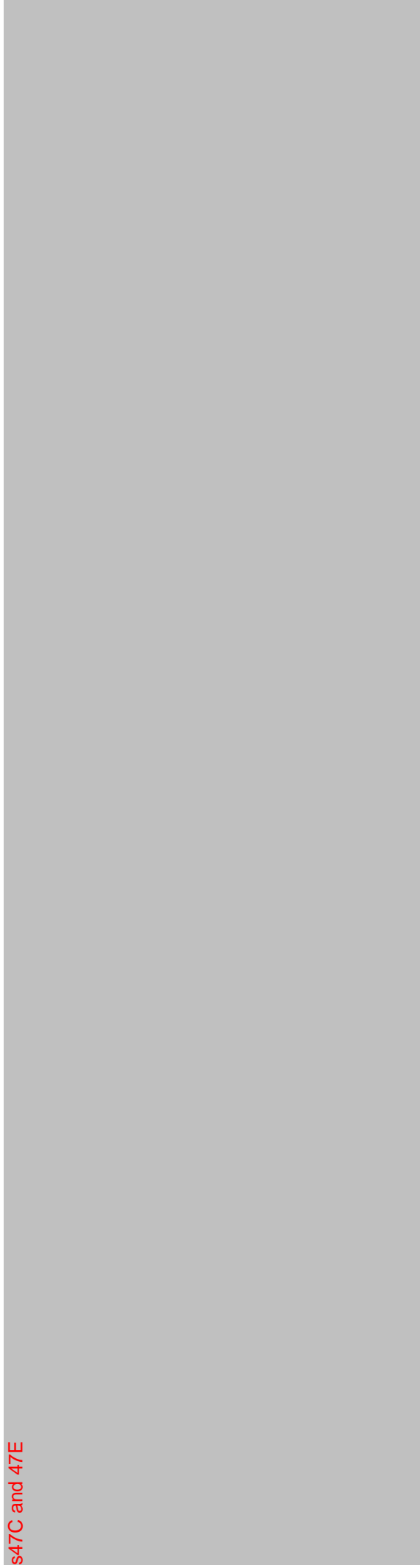


47C and 47G



s47C





47G

[Redacted]

Project Officer Recommendation:

s47F

[Redacted]

Date: 23/8/19

47C

[Redacted]

Program Manager Approval:

s47F

[Redacted]

Date: 27/9/19

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Lease of Real Estate

with Guarantee & Indemnity

(Commercial Property)

Important Notices To The Person Preparing This Lease

This lease is in a standard form. You may need to make changes to record the agreement of the landlord, tenant, and any guarantor. You should carefully check the whole document and make appropriate deletions, alterations, and/or additions so it agrees with the instructions you have received. You should note the warranty in clause 22 and record any alterations to the lease conditions in schedule item 22 and **not** in the lease conditions. If the lease is one to which the *Retail Leases Act 2003* (Vic) applies, the parties should refer to that Act for important rights and obligations that are not set out in this lease.

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The **landlord** leases the **premises** to the **tenant** for the **term** and at the **rent** and on the conditions set out in this lease together with all necessary access over any **common areas**.

The **guarantor**, if any, agrees to be bound by the **guarantor's** obligations set out in this lease.

Lease Conditions

1. DEFINITIONS AND INTERPRETATION

1.1 The listed expressions in **bold** print have the meaning set out opposite them -

EXPRESSION	MEANING
accounting period	the period of 12 months ending 30 June or other period of 12 months adopted by the landlord in respect of this lease for recovery of building outgoings and includes any broken periods at the start and end of the term
Act	the <i>Retail Leases Act 2003</i> (Vic)
Building	any building in which the premises are located, including the landlord's installations
Building outgoings	<p>any of the following expenses (excluding capital expenses and expenses whose recovery from the tenant would be contrary to applicable legislation) incurred in respect of the land, the building, the premises or any premises in the building which include the premises -</p> <ul style="list-style-type: none"> (a) rates, levies and assessments imposed by any relevant authorities; (b) taxes including land tax (unless the Act applies), calculated on the basis that the land is the only land of the landlord liable to tax and is not subject to a trust but excluding income tax and capital gains tax; (c) the costs of maintaining and repairing the building and the landlord's installations and carrying out works as required by relevant authorities (but excluding any amount recovered in respect of maintenance or repair by the landlord from its insurer); (d) premiums and charges for the following insurance policies taken out by the landlord - <ul style="list-style-type: none"> (i) damage to and destruction of the premises for their replacement value for the risks listed in item 11, (ii) removal of debris, (iii) breakdown of landlord's installations, (iv) breakage of glass, (v) public risk for any single event for the amount stated in item 12 (if none is stated, \$10 million) or other amount reasonably specified from time to time by the landlord, and (vi) loss of rent and outgoings for the period stated in item 13 or, if none is stated, 12 months, <p>and excesses paid or payable on claims,</p> <p>and, if the premises occupy only a part of the lettable area of the building, the following further items -</p> <ul style="list-style-type: none"> (e) costs incurred in providing services to the building and the land including - <ul style="list-style-type: none"> (i) heating, (ii) cooling, (iii) air-conditioning, (iv) cleaning, (v) pest control, (vi) waste collection, (vii) lighting, (viii) landscaping and garden maintenance, (ix) security, and (x) fire safety prevention, detection and control; (f) accountancy and audit fees; and (g) costs of whatever description, reasonably incurred by the landlord in the administration, management or operation of the building and the land, <p>whether incurred by the landlord directly or as owners corporation levies, at cost to the landlord on the basis that an expense is deemed to have been paid at the time it fell due for payment</p>

building rules	any rules adopted from time to time for the building , including the rules of any owners corporation affecting the premises
common areas	<p>areas in the building or on the land that are under the control of the landlord and are used or intended for use –</p> <p>(a) by the public; or</p> <p>(b) in common by tenants of premises in the building in relation to the carrying on of businesses on those premises,</p> <p>other than areas which are let or licensed, or intended to be let or licensed, other than on a casual basis</p>
Consumer Price Index	the consumer price index published by the Australian Government Statistician under the heading All Groups, Melbourne
CPI review date	a date specified in item 16(b)
fixed review date	a date specified in item 16(c)
GST	GST within the meaning of the GST Act
GST Act	<i>A New Tax System (Goods and Services Tax) Act 1999 (Cth)</i>
guarantor	the person named in item 3
item	an item in the schedule to this lease
land	the parcel of land on which the building is erected and which is described in item 4(b)
landlord	the person named in item 1 , or any other person who will be entitled to possession of the premises when this lease ends
landlord's installations	any property of the landlord , other than land or fixtures, from time to time in the premises or on the land and includes the property listed in item 5
lettable area	<p>unless the Act applies and requires otherwise –</p> <p>(a) in relation to the premises, the area let; and</p> <p>(b) in relation to the building, the total area of the building that is let or licensed or intended to be let or licensed, other than on a casual basis.</p> <p>When it is necessary to measure the lettable area of the building or any part of the building, the measurement is to be carried out using the most recent revision of the relevant Property Council of Australia method of measurement</p>
market review date	a date specified in item 16(a)
permitted use	the use specified in item 15
PPSA	the <i>Personal Property Securities Act 2009 (Cth)</i>
premises	the premises described in item 4(a) and fixed improvements and the landlord's installations within the premises
rent	the amount in item 6 , as varied in accordance with this lease
review date	a date specified in item 16
start of the lease	the first day of the term but, if this lease is a renewal under an option in an earlier lease (whether or not this lease is on terms that are materially different to those contemplated by the earlier lease), the starting date of the first lease to contain an option for renewal.
tenant	the person named in item 2 , or any person to whom the lease has been transferred
tenant's agents	the tenant's employees, agents, contractors, customers and visitors to the premises
tenant's installations	the items of equipment and fittings listed in item 7 and those introduced by the tenant after the lease starts
term	the period stated in item 8
valuer	a person holding the qualifications or experience specified under section 13DA(2) of the <i>Valuation of Land Act 1960 (Vic)</i> and, if the Act applies, a specialist retail valuer.

- 1.2 References to laws include statutes, regulations, instruments and by-laws and all other subordinate legislation or orders made by any authority with jurisdiction over the **premises**. Illegal means contrary to a law as defined in this sub-clause.
- 1.3 This lease must be interpreted so that it complies with all laws applicable in Victoria. If any provision of this lease does not comply with any law, then the provision must be read down so as to give it as much effect as possible. If it is not possible to give the provision any effect at all, then it must be severed from the rest of the lease.
- 1.4 The law of Victoria applies to this lease.
- 1.5 Any change to this lease must be in writing and signed by the parties.
- 1.6 If a party consists of more than one person –
 - (a) the acts and omissions of any of them bind all of them; and
 - (b) an obligation imposed by this lease on or in favour of more than one person binds or benefits them separately, together and in any combination.
- 1.7 The use of one gender includes the others and the singular includes the plural and vice versa.
- 1.8 If the **landlord**, **tenant** or **guarantor** is an individual, this lease binds that person's legal personal representative. If any of them is a corporation, this lease binds its transferees.
- 1.9 This lease, including all guarantees and indemnities, is delivered and operates as a deed.
- 1.10 The **tenant** is bound by and answerable for the acts and omissions of the **tenant's agents**.
- 1.11 If there is a conflict between a provision in the schedule and one of these lease conditions then the provision in the schedule is to prevail.
- 1.12 "Include" and every form of that word is to be read as if followed by "(without limitation)".
- 1.13 This lease includes the schedule.
- 1.14 The parties consider that the application of the **Act** to this lease is as specified in **item 15** and, if **item 15** states that the **Act** does not apply, that the reason is as specified in **item 15**.

2. TENANT'S PAYMENT, USE AND INSURANCE OBLIGATIONS

- 2.1 The **tenant** must –
 - 2.1.1 pay the **rent** without any set-off (legal or equitable) or deduction whatever to the **landlord** on the days and in the way stated in **item 9** without the need for a formal demand. The **landlord** may direct in writing that the **rent** be paid to another person. The **rent** is reviewed on each **review date** specified in **item 16** –
 - (a) on a **market review date**, the **rent** is reviewed in accordance with clause 11.
 - (b) on a **CPI review date**, the **rent** is reviewed in accordance with clause 18, and
 - (c) on a **fixed review date**, the **rent** is either increased by the fixed percentage or changed by or to the fixed amount, in either case as specified in **item 16** in respect of that **fixed review date**.
 - 2.1.2 produce receipts for paid **building outgoings** within 7 days of a request.
 - 2.1.3 pay when due all charges for the provision of services to the **premises** including gas, electricity, water and telephone.
 - 2.1.4 remove regularly from the **premises** all rubbish and waste generated by the **tenant's** operations.
 - 2.1.5 pay the proportion of the **building outgoings** specified in **item 10** in accordance with clause 5.4.
 - 2.1.6 pay or reimburse within 7 days of a request all increases in insurance premiums paid or payable by the **landlord** as the result of the **tenant's** use of the **premises**.
 - 2.1.7 pay within 7 days of a request interest at the rate stated in **item 14** on any **rent** or other money which the **tenant** has not paid within 7 days of the due date. Interest is to be calculated daily from the due date, continues until the overdue money is paid and is capitalised monthly.
 - 2.1.8 pay within 7 days of a request the **landlord's** reasonable expenses and legal costs in respect of –
 - (a) the negotiation, preparation, settling, execution and stamping (if applicable) of this lease,
 - (b) change to this lease requested by the **tenant** whether or not the change occurs,
 - (c) the surrender or ending of this lease (other than by expiration of the **term**) requested by the **tenant**, whether or not the lease is surrendered or ended,
 - (d) the transfer of this lease or subletting of the **premises** or proposed transfer or subletting whether or not the transfer or subletting occurs.


- (e) a request by the **tenant** for consent or approval, whether or not consent or approval is given,
 - (f) any breach of this lease by the **tenant**, or
 - (g) the exercise or attempted exercise by the **landlord** of any right or remedy against the **tenant**,

but, if the **Act** applies, only to the extent to which the **Act** permits recovery.
- 2.1.9 pay any stamp duty on this lease, on any renewal, and any additional stamp duty after a review of **rent**.
- 2.1.10 subject to clauses 3.3.2 and 3.3.3, comply with all laws relating to the use or occupation of the **premises**.
- 2.1.11 carry on the business of the **permitted use** efficiently and, subject to all applicable laws, keep the **premises** open during the business hours which are normal for the **permitted use** and not suspend or discontinue the operation of the business.
- 2.1.12 comply with the **landlord's** reasonable requirements in relation to the use of the **landlord's installations** and any services provided by the **landlord**.
- 2.1.13 subject to clauses 3.3.2 and 3.3.3, comply with the laws and requirements of relevant authorities relating to essential safety measures, occupational health and safety and disability discrimination relevant to the **premises** or the **building**.
- 2.2 The **tenant** must not, and must not let anyone else -
 - 2.2.1 use the **premises** except for the **permitted use**, but the **tenant** agrees that the **landlord** has not represented that the **premises** may be used for that use according to law or that the **premises** are suitable for that use.
 - 2.2.2 use the **premises** for any illegal purpose.
 - 2.2.3 carry on any noxious or offensive activity on the **premises**.
 - 2.2.4 do anything which might cause nuisance, damage or disturbance to a tenant, occupier or owner of any adjacent property.
 - 2.2.5 conduct an auction or public meeting on the **premises**.
 - 2.2.6 use radio, television or other sound-producing equipment at a volume that can be heard outside the **premises**.
 - 2.2.7 do anything which might affect any insurance policy relating to the **premises** by causing -
 - (a) it to become void or voidable,
 - (b) any claim on it being rejected, or
 - (c) a premium to be increased.
 - 2.2.8 keep or use chemicals, inflammable fluids, acids, or other hazardous things on the **premises** except to the extent necessary for the **permitted use**, or create fire hazards.
 - 2.2.9 do anything which might prejudicially affect the essential safety measures or the occupational health and safety or disability discrimination status of the **premises** or the **building**.
 - 2.2.10 place any sign on the exterior of the **premises** without the **landlord's** written consent.
 - 2.2.11 make any alteration or addition, or affix any object, to the **premises** except with the **landlord's** written consent; consent is at the **landlord's** discretion for any alteration, addition or affixation affecting the structure of the **building** or any of the infrastructure for the provision of services to the **building** but, otherwise, clause 9.1 applies. In undertaking any work for which the **landlord's** consent has been obtained, the **tenant** must strictly conform to plans approved by the **landlord** and comply with all reasonable conditions imposed on that consent by the **landlord** and the requirements of each authority with jurisdiction over the **premises**.
 - 2.2.12 bring onto the **premises** any object which, due to its nature, weight, size or operation, might cause damage to the **premises**, the **building**, or the effective operation of the infrastructure for the provision of services to the **premises** or the **building** without the **landlord's** written consent.
 - 2.2.13 except in an emergency, interfere with any infrastructure for the provision of services in the **premises**, the **building**, or in any property of which the **premises** are part.
- 2.3 The **tenant** must -
 - 2.3.1 take out and keep current an insurance cover for the **premises** in the name of the **tenant** and noting the interest of the **landlord**, for public risk for any single event for the amount stated in **item 12** or, if none is stated, for \$10 million, with an extension which includes the indemnities given by the **tenant** to the **landlord** in clauses 5.2 and 5.3.2 of this lease to the extent that such an extension is procurable on reasonable terms in the Australian insurance market.

- 2.3.2 maintain the insurance cover with an insurer approved by the **landlord**.
- 2.3.3 produce satisfactory evidence of insurance cover on written request by the **landlord**.

3. REPAIRS, MAINTENANCE, FIRE PREVENTION AND REQUIREMENTS OF AUTHORITIES

- 3.1 Subject to clause 3.3, the **tenant** must -
 - 3.1.1 keep the **premises** in the same condition as at the **start of the lease**, except for fair wear and tear; and
 - 3.1.2 comply with all notices and orders affecting the **premises** which are issued during the **term** except any notices or orders that applicable legislation makes the responsibility of the **landlord**.
- 3.2 In addition to its obligations under clause 3.1, the **tenant** must -
 - 3.2.1 repaint or refinish all painted or finished surfaces in a workmanlike manner with as good quality materials as previously at least once every 5 years during the **term** and any further term viewed as one continuous period.
 - 3.2.2 keep the **premises** properly cleaned and free from rubbish, keep waste in proper containers and have it removed regularly.
 - 3.2.3 immediately replace glass which becomes cracked or broken with glass of the same thickness and quality.
 - 3.2.4 immediately repair defective windows, light fittings, doors, locks and fastenings, and replace missing or inoperative light-globes and fluorescent tubes, keys and keycards.
 - 3.2.5 maintain in working order all plumbing, drainage, gas, electric, solar and sewerage installations.
 - 3.2.6 promptly give written notice to the **landlord** or **landlord's** agent of -
 - (a) damage to the **premises** or of any defect in the structure of, or any of infrastructure for the provision of services to, the **premises**,
 - (b) receipt of a notice or order affecting the **premises**,
 - (c) any hazards threatening or affecting the **premises**, and
 - (d) any hazards arising from the **premises** for which the **landlord** might be liable.
 - 3.2.7 immediately make good damage caused to adjacent property by the **tenant** or the **tenant's agents**.
 - 3.2.8 permit the **landlord**, its agents or workmen to enter the **premises** during normal business hours, after giving reasonable notice (except in cases of emergency) -
 - (a) to inspect the **premises**,
 - (b) to carry out repairs or agreed alterations, and
 - (c) to do anything necessary to comply with notices or orders of any relevant authority, bringing any necessary materials and equipment.
 - 3.2.9 carry out repairs within 14 days of being served with a written notice of any defect or lack of repair which the **tenant** is obliged to make good under this lease. If the **tenant** does not comply with the notice, the **landlord** may carry out the repairs and the **tenant** must repay the cost to the **landlord** within 7 days of a request.
 - 3.2.10 only use persons approved by the **landlord** to repair and maintain the **premises** but, if the Act applies, only use persons who are suitably qualified.
 - 3.2.11 comply with all reasonable directions of the **landlord** or the insurer of the **premises** as to the prevention, detection and control of fire.
 - 3.2.12 on vacating the **premises**, remove all signs and make good any damage caused by installation or removal.
 - 3.2.13 take reasonable precautions to secure the **premises** and their contents from theft, keep all doors and windows locked when the **premises** are not in use and comply with the **landlord's** directions for the use and return of keys or keycards.
 - 3.2.14 permit the **landlord** or its agent access to the **premises** at reasonable times by appointment to show the **premises** -
 - (a) to valuers and to the **landlord's** consultants,
 - (b) to prospective purchasers at any time during the **term**, and
 - (c) to prospective tenants within 3 months before the end of the **term** (unless the **tenant** has exercised an option to renew this lease)

- and to affix "for sale" or "to let" signs in a way that does not unduly interfere with the **permitted use**.
- 3.2.15 maintain any grounds and gardens of the **premises** in good condition, tidy, free from weeds and well-watered.
- 3.2.16 maintain and keep in good repair any heating, cooling or air conditioning equipment exclusively serving the **premises**.
- 3.3 The **tenant** is not obliged -
 - 3.3.1  to repair damage against which the **landlord** must insure under clause 6.2 or to reimburse the **landlord** for items of expense or damage that would be covered under insurance of the type specified unless the **landlord** loses or, where the **landlord** has failed to insure as required, would have lost, the benefit of the insurance because of acts or omissions by the **tenant** or the **tenant's agents**.
 - 3.3.2 to carry out structural or capital repairs or alterations or make payments of a capital nature unless the need for them results from -
 - (a) negligence by the **tenant** or the **tenant's agents**,
 - (b) failure by the **tenant** to perform its obligations under this lease,
 - (c) the **tenant's** use of the **premises**, other than reasonable use for the **permitted use**, or
 - (d) the nature, location or use of the **tenant's installations**,
 in which case the repairs, alterations or payments are the responsibility of the **tenant**.
 - 3.3.3 to carry out any work that applicable legislation makes the responsibility of the **landlord**.

4. LEASE TRANSFERS AND SUBLETTING

- 4.1 The **tenant** must not transfer this lease or sublet the **premises** without the **landlord's** written consent, and section 144 of the *Property Law Act 1958* (Vic) and clause 9.1 do not apply.
- 4.2 The **landlord** -
 - 4.2.1 subject to sub-clause 4.2.2, must not unreasonably withhold consent to a transfer of this lease or a sublease of the **premises** if the **tenant** has complied with the requirements of clause 4.3 and the proposed transferee or subtenant proposes to use the **premises** in a way permitted under this lease. If the **Act** applies, the **landlord** may only withhold consent to a transfer of this lease in accordance with the **Act**.
 - 4.2.2 may withhold consent at the **landlord's** discretion if the **Act** does not apply, and a transfer of this lease would result in the **Act** applying, or applying if this lease is renewed for a further term.
- 4.3 To obtain the **landlord's** consent to a transfer or sublease the **tenant** must -
 - 4.3.1 ask the **landlord** in writing to consent to the transfer or sublease,
 - 4.3.2 give the **landlord** -
 - (a) in relation to each proposed new tenant or sub-tenant such information as the **landlord** reasonably requires about its financial resources and business experience and if the **Act** does not apply, any additional information reasonably required by the **landlord** to enable it to make a decision, and
 - (b) a copy of the proposed document of transfer or sublease, and
 - 4.3.3 remedy any breach of the lease which has not been remedied and of which the **tenant** has been given written notice.
- 4.4 If the **Act** applies and -
 - 4.4.1 the **tenant** has asked the **landlord** to consent to a transfer and complied with clause 4.3 and section 61 of the **Act**, and
 - 4.4.2 the **landlord** fails to respond by giving or withholding consent to the transfer within 28 days,
 then the **landlord** is to be taken as having consented.
- 4.5 If the **landlord** consents to the transfer or sublease, the **landlord**, **tenant** and new tenant or sub-tenant and the **guarantor** must execute the documents submitted under sub-clause 4.3.2(b). The directors of the new tenant (if it is a corporation) must execute a guarantee and indemnity in the terms of clause 15.
- 4.6 The **tenant** must pay the **landlord's** reasonable expenses incurred in connection with an application for consent or the granting of consent and the completion of the documents, as well as any stamp duty on the documents.
- 4.7 Except by a transfer or sublease to which the **landlord** has consented, or is to be taken as having consented, the **tenant** must not give up possession or share occupancy of the **premises** or grant a licence

to anyone else or mortgage or charge its interest under this lease or enter into any arrangement that gives a person the right to enter into occupation of the **premises** without the **landlord's** written consent; consent is at the **landlord's** discretion.

- 4.8 Subject to the **Act**, if it applies, the obligations to the **landlord** of every **tenant** who has transferred this lease continue until this lease ends. They do not continue into any period of overholding after this lease ends, nor into any renewed term: at those times they are the responsibility only of the **tenant** in possession. This clause does not prevent the **landlord** from enforcing rights which arise before this lease ends.

5. GENERAL AGREEMENTS BETWEEN LANDLORD AND TENANT

- 5.1 When the **term** ends, the **tenant** must -

- 5.1.1 return the **premises** to the **landlord** clean and in the condition required by this lease, and
- 5.1.2 remove the **tenant's installations** and other **tenant's** property from the **premises** and make good any damage caused in installing or removing them.

If the **tenant** leaves any **tenant's installations** or other **tenant's** property on the **premises** after the end of the lease, unless the **landlord** and **tenant** agree otherwise -

- 5.1.3 all items of **tenant's installations** and **tenant's** property will be considered abandoned and will become the property of the **landlord**, but the **landlord** may remove any of the **tenant's installations** or other property of the **tenant** and recover the costs of removal and making good as a liquidated debt payable on demand; and
- 5.1.4 the parties intend that clause 5.1.3 operate in relation to **tenant's installations** and **tenant's** property in place of any legislation that might otherwise apply to goods remaining on the **premises**.

- 5.2 The **tenant** indemnifies the **landlord** against any claim resulting from any act or failure to act by the **tenant** or the **tenant's agents** while using the **premises**.

- 5.3 The **tenant** -

- 5.3.1 uses and occupies the **premises** at its own risk, and
- 5.3.2 releases the **landlord** from and indemnifies the **landlord** against all claims resulting from incidents occurring on the **premises** (except to the extent caused or contributed to by the **landlord**, or a person for whom the **landlord** is responsible) or resulting from damage to adjacent premises covered by clause 3.2.7.

- 5.4 In relation to **building outgoings** -

- 5.4.1 the **landlord** must pay the **building outgoings** when they fall due for payment but, if the **landlord** requires, the **tenant** must pay when due a **building outgoing** for which the **tenant** receives notice directly and reimburse the **landlord** within 7 days of a request all **building outgoings** for which notices are received by the **landlord**.
- 5.4.2 the **tenant** must pay or reimburse the **landlord** the proportion specified in item 10,
- 5.4.3 at least 1 month before the start of an **accounting period**, the **landlord** may, or if the **Act** applies must, give the **tenant** an estimate of **building outgoings** for the **accounting period**.
- 5.4.4 despite clause 5.4.1, if the **landlord** requires, the **tenant**, must pay its share of the estimated **building outgoings** by equal monthly instalments during the **accounting period** on the days on which **rent** is payable (after allowing for **building outgoings** paid directly or separately reimbursed by the **tenant**).
- 5.4.5 if the **Act** applies, the **landlord** must make a statement of **building outgoings** available during each **accounting period** as required by the **Act**.
- 5.4.6 within 3 months after the end of an **accounting period**, the **landlord** must give the **tenant** a statement of the actual **building outgoings** for the **accounting period** (if the **Act** applies and requires that the statement be accompanied by a report by a registered company auditor, the statement must be accompanied by a report complying with section 47(5); if the **Act** applies but does not require that the statement be accompanied by a report by a registered company auditor, the statement must be accompanied by the items specified in section 47(6)(b)).
- 5.4.7 the **tenant** must pay any deficiency or the **landlord** must repay any excess, within 1 month after a statement is provided under clause 5.4.6 or within 4 months after the end of the **accounting period**, whichever is earlier.
- 5.4.8 the parties must make an appropriate adjustment for any **building outgoing** incurred in respect of a period beginning before the start of the **term** or extending beyond the end of the **term**.

- 5.5 If the freehold of the **premises** (or the **building**) is transferred, the transferor **landlord** is released from all lease obligations falling due for performance on or after the date of the instrument of transfer.

- 5.6 Payment or tender by cheque is not effective until clearance of funds.

6. LANDLORD'S OBLIGATIONS

- 6.1 The **landlord** must give the **tenant** quiet possession of the **premises** without any interruption by the **landlord** or anyone connected with the **landlord** as long as the **tenant** does what it must under this lease.
- 6.2 The **landlord** must take out at the start of the **term** and keep current policies of insurance for the risks listed in **item 11** against -
- 6.2.1 damage to and destruction of the **building**, for its replacement value,
 - 6.2.2 removal of debris,
 - 6.2.3 breakdown of **landlord's installations**, and
 - 6.2.4 breakage of glass, for its replacement value.
- 6.3 The **landlord** must give to the **tenant** the written consent to this lease of each mortgagee whose interest would otherwise have priority over this lease by endorsement on this lease in the terms set out following the 'execution and attestation' section.
- 6.4 The **landlord** must keep the structure (including the external faces and roof) of the **building** and the **landlord's installations** in a condition consistent with their condition at the **start of the lease**, but is not responsible for repairs which are the responsibility of the **tenant** under clauses 3.1, 3.2 and 3.3.2.

7. EVENTS OF DEFAULT AND LANDLORD'S RIGHTS

- 7.1 The **landlord** may terminate this lease, by re-entry or notice of termination, if -
- 7.1.1 the **rent** is unpaid after the day on which it falls due for payment,
 - 7.1.2 the **tenant** does not meet its obligations under this lease,
 - 7.1.3 the **tenant** is a corporation and -
 - (a) an order is made or a resolution is passed to wind it up except for reconstruction or amalgamation,
 - (b) goes into liquidation,
 - (c) is placed under official management,
 - (d) has a receiver, including a provisional receiver, or receiver and manager of any of its assets or an administrator appointed,
 - (e) without the **landlord's** written consent, there is a different person in effective control of the **tenant** as a result of changes in -
 - (i) membership of the company or its holding company,
 - (ii) beneficial ownership of the shares in the company or its holding company, or
 - (iii) beneficial ownership of the business or assets of the company,

but this paragraph does not apply if the **tenant** is a public company listed on a recognised Australian public securities exchange, or a subsidiary of one.

"Effective control" means the ability to control the composition of the board of directors or having more than 50% of the shares giving the right to vote at general meetings,
 - 7.1.4 a warrant issued by a court to satisfy a judgement against the **tenant** or a **guarantor** is not satisfied within 30 days of being issued,
 - 7.1.5 a **guarantor** is a natural person and -
 - (a) becomes bankrupt,
 - (b) takes or tries to take advantage of Part X of the *Bankruptcy Act 1966* (Cth),
 - (c) makes an assignment for the benefit of their creditors, or
 - (d) enters into a composition or arrangement with their creditors,
 - 7.1.6 a **guarantor** is a corporation and one of the events specified in (a) to (e) of clause 7.1.3 occurs in relation to it, or
 - 7.1.7 the **tenant**, without the **landlord's** written consent -
 - (a) discontinues its business on the **premises**, or
 - (b) leaves the **premises** unoccupied for 14 days.
- 7.2 Termination by the **landlord** ends this lease, but the **landlord** retains the right to sue the **tenant** for unpaid money or for damages (including damages for the loss of the benefits that the **landlord** would have received if the lease had continued for the full **term**) for breaches of its obligations under this lease.

- 7.3 For the purpose of section 146(1) of the *Property Law Act 1958* (Vic), 14 days is fixed as the period within which the **tenant** must remedy a breach capable of remedy and pay reasonable compensation for the breach.
- 7.4 Breach by the **tenant** of any of the following clauses of this lease is a breach of an essential term and constitutes repudiation: 2.1.1, 2.1.5, 2.1.6, 2.1.10, 2.1.11, 2.2.1, 2.2.2, 2.2.7, 2.2.8, 2.2.9, 2.2.11, 2.2.12, 2.3, 3.2.11, 4.1, 4.7, 5.4.2, 5.4.7, 13 and 17. Other **tenant** obligations under this lease may also be essential.
- 7.5 Before terminating this lease for repudiation (including repudiation consisting of the non-payment of rent), or for an event to which section 146(1) of the *Property Law Act 1958* (Vic) does not extend, the **landlord** must give the **tenant** written notice of the breach and a period of 14 days in which to remedy it (if it is capable of remedy) and to pay reasonable compensation for it. A notice given in respect of a breach amounting to repudiation is not an affirmation of the lease.
- 7.6 Even though the **landlord** does not exercise its rights under this lease on one occasion, it may do so on any later occasion.

8. DESTRUCTION OR DAMAGE

- 8.1 If the **premises** or the **building** are damaged so that the **premises** are unfit for use for the **permitted use** or inaccessible-
- 8.1.1 a fair proportion of the **rent** and **building outgoings** is to be suspended until the **premises** are again wholly fit for the **permitted use**, and accessible, and
 - 8.1.2 the suspended proportion of the **rent** and **building outgoings** must be proportionate to the nature and extent of the unfitness for use or inaccessibility.
- 8.2 If the **premises** or the **building** are partly destroyed, but not substantially destroyed, the **landlord** must reinstate the **premises** or the **building** as soon as reasonably practicable.
- 8.3 If the **premises** or the **building** are wholly or substantially destroyed -
- 8.3.1 the **landlord** is not obliged to reinstate the **premises** or the **building**, and
 - 8.3.2 if the reinstatement does not start within 3 months, or is not likely to be completed within 9 months, the **landlord** or the **tenant** may end this lease by giving the other written notice.
- 8.4 The **tenant** will not be entitled to suspension of **rent** or **building outgoings** under sub-clause 8.1.1 nor to end the lease under sub-clause 8.3.2 and the **landlord** will not be obliged to reinstate the **premises** or the **building** under clause 8.2 if payment of an insurance claim is properly refused in respect of the damage or destruction because of any act or omission by the **tenant** or the **tenant's agents**.
- 8.5 If the **Act** does not apply and there is a dispute under this clause, the **landlord** or the **tenant** may request the President of the Australian Property Institute, Victorian Division, to nominate a practising valuer member of that Institute to determine the dispute or the **landlord** and **tenant** may refer the dispute to mediation under clause 16 unless item 21 states that the mediation procedure does not apply to this lease. The valuer acts as an expert and not as an arbitrator and the determination is binding.

9. CONSENTS AND WARRANTIES BY THE PARTIES

- 9.1 Subject to the **Act** (if it applies), the **landlord** must not unreasonably withhold its consent or approval to any act by the **tenant** or matter which needs consent or approval unless any other clause provides otherwise, but -
- 9.1.1 the **landlord** may impose reasonable conditions on any consent or approval, and
 - 9.1.2 the **tenant** must reimburse the **landlord's** reasonable expenses resulting from an application for its consent or approval, including fees paid to consultants.
- 9.2 This lease, together with (if the **Act** applies) any disclosure statement, contains the whole agreement of the parties. Neither the **landlord** nor the **tenant** is entitled to rely on any warranty or statement in relation to -
- 9.2.1 the conditions on which this lease has been agreed,
 - 9.2.2 the provisions of this lease, or
 - 9.2.3 the **premises**
- which is not contained in those documents.

10. OVERHOLDING AND ABANDONMENT OF THE PREMISES

- 10.1 If the **tenant** remains in possession of the **premises** without objection by the **landlord** after the end of the **term** -
- 10.1.1 the **tenant**, without any need for written notice of any kind, is a monthly tenant on the conditions in this lease, modified so as to apply to a monthly tenancy,

- 10.1.2 the **landlord** or the **tenant** may end the tenancy by giving one month's written notice to the other which may expire on any day of the month,
- 10.1.3 the monthly rent starts at one-twelfth of the annual **rent** which the **tenant** was paying immediately before the **term** ended unless a different rent has been agreed, and
- 10.1.4 the **landlord** may increase the monthly rent by giving the **tenant** one month's written notice.
- 10.2 If the **tenant** vacates the **premises** during the **term**, whether or not it ceases to pay **rent** -
- 10.2.1 the **landlord** may -
- (a) accept the keys,
 - (b) enter the **premises** to inspect, maintain or repair them, or
 - (c) show the **premises** to prospective tenants or purchasers,
- without this being re-entry or an acceptance of repudiation or a waiver of the **landlord's** rights to recover **rent** or other money under this lease.
- 10.2.2 this lease continues until a new tenant takes possession of the **premises**, unless the **landlord**-
- (a) accepts a surrender of the lease, or
 - (b) notifies the **tenant** in writing that the **landlord** accepts the **tenant's** repudiation of the lease, or
 - (c) ends the lease in accordance with clause 7.1.

11. RENT REVIEWS TO MARKET

- 11.1 In this clause "review period" means the period following each **market review date** until the next **review date** or the end of this lease.

The review procedure on each **market review date** is -

- 11.1.1 each review of **rent** may be initiated by the **landlord** or the **tenant** unless item 17 states otherwise but, if the **Act** applies, review is mandatory.
- 11.1.2 the **landlord** or the **tenant** entitled to initiate a review does so by giving the other a written notice stating the current market rent which it proposes as the **rent** for the review period. If the **Act** does not apply and the recipient of the notice does not object in writing to the proposed rent within 14 days the proposed **rent** becomes the **rent** for the review period.
- 11.1.3 If -
- (a) the **Act** does not apply and the recipient of the notice serves an objection to the proposed rent within 14 days and the **landlord** and **tenant** do not agree on the **rent** within 14 days after the objection is served, or
 - (b) the **Act** applies and the **landlord** and **tenant** do not agree on what the **rent** is to be for the review period,

the **landlord** and **tenant** must appoint a **valuer** to determine the current market **rent**.

If the **Act** does not apply and if the **landlord** and **tenant** do not agree on the name of the **valuer** within 28 days after the objection is served, either may apply to the President of the Australian Property Institute, Victorian Division to nominate the **valuer**. If the **Act** applies, the **valuer** is to be appointed by agreement of the **landlord** and **tenant**, or failing agreement, by the Small Business Commissioner.

- 11.1.4 In determining the current market **rent** for the **premises** the **valuer** must -
- (a) consider any written submissions made by the **landlord** and **tenant** within 21 days of their being informed of the **valuer's** appointment, and
 - (b) determine the current market rent as an expert
- and, whether or not the **Act** applies, must make the determination in accordance with the criteria set out in section 37(2) of the **Act**.
- 11.1.5 The **valuer** must make the determination of the current market rent and inform the **landlord** and **tenant** in writing of the amount of the determination and the reasons for it as soon as possible after the end of the 21 days allowed for submissions by the parties.

- 11.1.6 If -
- (a) no determination has been made within 45 days (or such longer period as is agreed by the **landlord** and the **tenant** or, if the **Act** applies, as is determined in writing by the Small Business Commissioner) of the **landlord** and **tenant**
 - (i) appointing the **valuer**, or
 - (ii) being informed of the **valuer's** appointment, or
 - (b) the **valuer** resigns, dies, or becomes unable to complete the valuation,

then the **landlord** and **tenant** may immediately appoint a replacement **valuer** in accordance with sub-clause 11.1.3.

- 11.2 The **valuer's** determination is binding.
- 11.3 The **landlord** and **tenant** must bear equally the **valuer's** fee for making the determination and if either pays more than half the fee, may recover the difference from the other.
- 11.4 Until the determination is made by the **valuer**, the **tenant** must continue to pay the same **rent** as before the **market review date** and within 7 days of being informed of the **valuer's** determination, the parties must make any necessary adjustments.
- 11.5 If the **Act** does not apply, a delay in starting a market review does not prevent the review from taking place and being effective from the **market review date** but if the market review is started more than 12 months after the **market review date**, the review takes effect only from the date on which it is started.

12. FURTHER TERM(S)

- 12.1 The **tenant** has an option to renew this lease for the further term or terms stated in **item 18** and the **landlord** must renew this lease for that further term or those further terms if –
 - 12.1.1 there is no unremedied breach of this lease by the **tenant** of which the **landlord** has given the **tenant** written notice at the time the **tenant** requests renewal as required by clause 12.1.13.
 - 12.1.2 the **tenant** has not persistently committed breaches of this lease of which the **landlord** has given written notice during the **term**, and
 - 12.1.3 the **tenant** has exercised the option for renewal in writing not more than 6 months nor less than 3 months before the end of the **term**. The earliest and latest dates for exercising the option are stated in **item 19**.
- 12.2 The lease for the further term –
 - 12.2.1 starts on the day after the **term** ends,
 - 12.2.2 has a starting **rent** determined in accordance with clause 11 as if the first day of the further term were specified as a **market review date** in **item 16(a)**, and
 - 12.2.3 must contain the same terms as this lease (but with no option for renewal after the last option for a further term stated in **item 18** has been exercised) including any provisions appearing in this document that may have been read down or severed to comply with any applicable law that has ceased to be applicable, as if they had not been read down or severed.
- 12.3 If the **tenant** is a corporation and was required to provide directors' guarantees for this lease, the **tenant** must provide guarantees of its obligations under the renewed lease by its directors, and by each person who has provided a guarantee for the expired **term**, in the terms of clause 15.

13. SECURITY DEPOSIT

- 13.1 The **tenant** must pay a security deposit to the **landlord** of the amount stated in **item 20** and must maintain the deposit at that amount.
- 13.2 Any security deposit not in the form of a guarantee must be invested in an interest bearing deposit and all interest accruing on it is treated as a supplementary payment of security deposit. When the **term** starts, the **tenant** must provide the **landlord** with the **tenant's** tax file number.
- 13.3 The **landlord** may use the deposit to make good the cost of remedying breaches of the **tenant's** obligations under this lease (or any of the events specified in clause 7.1) and the **tenant** must pay whatever further amount is required to bring the deposit back to the required level.
- 13.4 As soon as practicable after this lease has ended and the **tenant** has vacated the **premises** and performed all of its obligations under the lease, the **landlord** must refund the unused part of the deposit.
- 13.5 The **tenant** may, and if the **landlord** requires must, provide the security deposit by means of a guarantee by an ADI within the meaning of the *Banking Act 1959* (Cth).
- 13.6 If the freehold of the **premises** is transferred
 - 13.6.1 the **tenant** must provide a replacement guarantee in exchange for the existing guarantee if requested by the **landlord** in writing to do so, but the **landlord** must pay the reasonable fees charged by the ADI for the issue of the replacement guarantee, and
 - 13.6.2 the **landlord** must transfer any security deposit held under this lease to the transferee.

14. NOTICES

- 14.1 A notice given under this lease may be given –
 - 14.1.1 by pre-paid post,
 - 14.1.2 by delivery

- 14.1.3 by email, or
- 14.1.4 in any manner authorised by law or the Supreme Court for service of documents, including any manner authorised for service on or by a legal practitioner,

to the party's last known address, registered office, or (if to the **tenant**) at the **premises**.

- 14.2 Posted notices will be taken to have been received on the second day after posting that is not a Saturday, Sunday or bank holiday in place of intended receipt, unless proved otherwise.
- 14.3 Notices delivered or sent by email are taken to have been served or given at the time of receipt as specified in section 13A of the *Electronic Transactions (Victoria) Act 2000*.

15. OBLIGATIONS OF GUARANTOR(S) UNDER GUARANTEE AND INDEMNITY

- 15.1 The **guarantor** in consideration of the **landlord** having entered into this lease at the **guarantor's** request —
 - 15.1.1 guarantees that the **tenant** will perform all its obligations under this lease for the **term** and any further term or terms and during any period of overholding after the end of the **term**,
 - 15.1.2 must pay on demand any amount which the **landlord** is entitled to recover from the **tenant** under this lease whether in respect of the **term**, any further term or further terms or any period of overholding, and
 - 15.1.3 indemnifies the **landlord** against all loss resulting from the **landlord's** having entered into this lease whether from the **tenant's** failure to perform its obligations under it or from this lease being or becoming unenforceable against the **tenant** and whether in respect of the **term**, any further term or any period of overholding.
- 15.2 The liability of the **guarantor** will not be affected by —
 - 15.2.1 the **landlord** granting the **tenant** or a **guarantor** time or any other indulgence, or agreeing not to sue the **tenant** or another **guarantor**,
 - 15.2.2 failure by any **guarantor** to sign this document,
 - 15.2.3 transfer (except in accordance with the **Act**, if the **Act** applies) or variation of this lease, but if this lease is transferred the **guarantor's** obligations, other than those which have already arisen, end when the **term** ends and do not continue into a term renewed by a new tenant nor a period of overholding by a new tenant,
 - 15.2.4 the fact that this lease is subsequently registered at the Land Registry or not registered, or, for any reason, is incapable of registration, or
 - 15.2.5 transfer of the freehold of the **premises**.
- 15.3 The **guarantor** agrees that —
 - 15.3.1 the **landlord** may retain all money received including dividends from the **tenant's** bankrupt estate, and need allow the **guarantor** a reduction in its liability under this guarantee only to the extent of the amount received,
 - 15.3.2 the **guarantor** must not seek to recover money from the **tenant** to reimburse the **guarantor** for payments made to the **landlord** until the **landlord** has been paid in full,
 - 15.3.3 the **guarantor** must not prove in the bankruptcy or winding up of the **tenant** for any amount which the **landlord** has demanded from the **guarantor**, and
 - 15.3.4 the **guarantor** must pay the **landlord** all money which the **landlord** refunds to the **tenant's** liquidator or trustee in bankruptcy as preferential payments received from the **tenant**.
- 15.4 If any of the **tenant's** obligations are unenforceable against the **tenant**, then this clause is to operate as a separate indemnity and the **guarantor** indemnifies the **landlord** against all loss resulting from the **landlord's** inability to enforce performance of those obligations. The **guarantor** must pay the **landlord** the amount of the loss resulting from the unenforceability.
- 15.5 If there is more than one **guarantor**, this guarantee binds them separately, together and in any combination.
- 15.6 Each of the events referred to in clauses 7.1.5 and 7.1.6 is deemed to be a breach of an essential term of this lease.

16. DISPUTE RESOLUTION

- 16.1 Unless the **Act** applies, if the words "The mediation procedure applies to this lease" are included in item 21, the mediation procedure applies to this lease. In that event the **landlord** and the **tenant** must attempt to resolve any dispute by the mediation procedure, except disputes about —
 - 16.1.1 unpaid **rent** and interest charged on it,
 - 16.1.2 review of **rent**, and

- 16.1.3 a dispute to be resolved in another way prescribed by any other provision of this lease.
- 16.2 The mediation procedure is -
- 16.2.1 the **landlord** or **tenant** may start mediation by serving a mediation notice on the other.
- 16.2.2 the notice must state that a dispute has arisen and identify what the dispute is.
- 16.2.3 the **landlord** and **tenant** must jointly request appointment of a mediator. If they fail to agree on the appointment within 7 days of service of the mediation notice, either may apply to the President of the Law Institute of Victoria or the nominee of the President to appoint a mediator.
- 16.2.4 once the mediator has accepted the appointment the **landlord** and **tenant** and each **guarantor** must comply with the mediator's instructions.
- 16.2.5 if the dispute is not resolved within 30 days of the appointment of the mediator, or any other period agreed by the **landlord** and **tenant** in writing, the mediation ceases.
- 16.3 The mediator may fix the charges for the mediation which must be paid equally by the **landlord** and **tenant**.
- 16.4 If the dispute is settled, the **landlord** and **tenant** and each **guarantor** must sign the terms of agreement and the signed terms are binding.
- 16.5 The mediation is confidential and -
- 16.5.1 statements made by the mediator or the parties, and
- 16.5.2 discussions between the participants to the mediation, before after or during the mediation, cannot be used in any legal proceedings.
- 16.6 It must be a term of the engagement of the mediator that the **landlord** and **tenant** and each **guarantor** release the mediator from any court proceedings relating to this lease or the mediation.
- 16.7 The mediator is not bound by the rules of natural justice and may discuss the dispute with a participant in the absence of any others.
- 16.8 If the **Act** applies, so that a dispute must be referred to the Victorian Civil and Administrative Tribunal, the **landlord** and **tenant** agree that each may be represented by a legal practitioner or legal practitioners of its choice.

17. GST

- 17.1 Expressions used in this clause 17 and in the **GST Act** have the same meanings as when used in the **GST Act** unless the context requires otherwise.
- 17.2 Amounts specified as payable under or in respect of this lease are expressed exclusive of **GST**.
- 17.3 The recipient of a taxable supply made under or in respect of this lease must pay to the supplier, at the time payment for the supply is due, the **GST** payable in respect of the supply. This obligation extends to supply consisting of entry into this lease.
- 17.4 An amount payable by the **tenant** in respect of a creditable acquisition by the **landlord** from a third party must not exceed the sum of the value of the **landlord's** acquisition and the additional amount payable by the **tenant** under clause 17.3 on account of the **landlord's** liability for **GST**.
- 17.5 A recipient of supply is not obliged, under clause 17.3, to pay the **GST** on a taxable supply to it under this lease, until given a valid tax invoice for it.

18. CONSUMER PRICE INDEX

- 18.1 On a **CPI review date**, the **rent** is adjusted by reference to the **Consumer Price Index** using the following formula -

$$AR = R \times \frac{CPIB}{CPIA}$$

Where: "AR" means adjusted **rent**,

"R" means **rent** before adjustment,

"CPIB" means the **Consumer Price Index** number for the quarter immediately preceding the **CPI review date**, and

"CPIA" means the **Consumer Price Index** number for the quarter immediately preceding the most recent earlier **review date** or, where there is no earlier **review date**, the quarter immediately preceding the start of the **term**.

- 18.2 If CPIB is not published until after the **CPI review date**, the adjustment is made when it is published but the adjustment takes effect from the relevant **CPI review date**. In the meantime, the **tenant** must continue to pay the **rent** at the old rate and, when the adjustment is made, the **tenant** must immediately pay any deficiency or the **landlord** must immediately repay the excess.
- 18.3 If the base of the **Consumer Price Index** is changed between the two comparison dates an appropriate compensating adjustment must be made so that a common base is used.
- 18.4 Unless the **Act** applies and requires otherwise, if the **Consumer Price Index** is discontinued or suspended, then the calculation is to be made using whatever index is substituted for it. If no other index is substituted for it, the calculation is to be made using the index or calculation which the President of the Australian Property Institute, Victorian Division (acting as an expert and not as an arbitrator), determines is appropriate in the circumstances. This determination is binding.
- 18.5 Unless the **Act** applies, the adjustment is not made if it would result in a decrease in the **rent** payable.

19. IF PREMISES ONLY PART OF THE LETTABLE AREA OF THE BUILDING

- 19.1 If the **premises** are only a part of the **lettable area** of the **building**, the provisions of this clause apply.
 - 19.2 The **landlord** -
 - 19.2.1 may adopt whatever name it chooses for the **building** and change the name from time to time, and
 - 19.2.2 reserves all proprietary rights to the name of the **building** and any logo adopted for the **building**.
 - 19.3 The **landlord** reserves for itself the use of all external surfaces of the **building** and areas outside the **building**.
 - 19.4 The **building**, **common areas** and **landlord's installations** remain under the absolute control of the **landlord** which may manage them and regulate their use as it considers appropriate. In particular the **landlord** has the right -
 - 19.4.1 to close off the **common areas** as often as the **landlord** reasonably considers appropriate to prevent rights of way or user arising in favour of the public or third parties,
 - 19.4.2 to exclude persons whose presence the **landlord** considers undesirable,
 - 19.4.3 to grant easements over any parts of the **land** which do not materially and adversely affect the **tenant's** use,
 - 19.4.4 to install, repair and replace, as necessary, the infrastructure necessary or desirable for the provision of services to the various parts of the **building**, and
 - 19.4.5 to repair, renovate, alter or extend the **building** but, in doing so, the **landlord** must not cause more inconvenience to the **tenant** than is reasonable in the circumstances.
- If the **Act** applies, these rights may only be exercised in a manner consistent with the **Act**.
- 19.5 The **tenant** must not obstruct the **common areas** or use them for any purpose other than the purposes for which they were intended.
 - 19.6 The **tenant** must comply with the **building rules**. The **landlord** may change the **building rules** from time to time and the **tenant** will be bound by a change when it receives written notice of it. The **landlord** must not adopt a **building rule** or change the **building rules** in a way that is inconsistent with this lease. To the extent that a **building rule** is inconsistent with this lease, the lease prevails.

20. PERSONAL PROPERTY SECURITIES ACT

- 20.1 Expressions used in this clause that are defined in the **PPSA** have the meanings given to them in the **PPSA**.
 - 20.2 The **landlord** may, at any time, register a financing statement for any security interest arising out of or evidence by this lease over any or all of -
 - 20.2.1 the **landlord's installations**,
 - 20.2.2 any security deposit provided by the **tenant**, and
 - 20.2.3 **tenant's installations** and other **tenant's** property left on the **premises** after the end of the lease,
- that are personal property, and must identify the property affected by the financing statement in the free text field of the statement.
- *The tenant waives the right to receive notice under section 157(1) of the PPSA. [*Delete if inapplicable]
- 20.3 When this lease -

- 20.3.1 ends and the **tenant** has vacated the premises and performed all of its obligations under it, or
- 20.3.2 is transferred,
- the **landlord** must register a financing change statement with respect to any security interest for which the **landlord** has registered a financing statement other than those to which sub-clause 20.2.3 relates.
- 20.4 The **tenant must** sign any documents and do anything necessary to enable the **landlord** to register the statements referred to in the preceding sub-clause and to enforce its rights and perform its obligations under this clause and the **PPSA**. In particular, if the **tenant** is a natural person, the **tenant** must provide the **landlord** with the **tenant's** date of birth and a certified copy of a Victorian driver's licence (or other evidence acceptable to the **landlord**) to confirm the **tenant's** date of birth. The **landlord** must keep the **tenant's** date of birth and any evidence provided to confirm it secure and confidential.
- 20.5 The **tenant** must not register, or permit to be registered, a financing statement in favour of any person other than the **landlord**, for any security deposit provided by the **tenant** or any of the **landlord's installations**.
- 20.6 The **tenant** must pay the **landlord's** reasonable expenses and legal costs in respect of anything done or attempted by the **landlord** in the exercise of its rights or performance of its obligations under this clause or the **PPSA**
*except the landlord's costs of registering a financing statement under sub-clause 20.2 which are to be borne by the landlord
[*Delete if inapplicable]
- 20.7 In accordance with section 275(6)(a) of the **PPSA**, the parties agree that neither of them will disclose information of the kind mentioned in subsection 275(1).
- 20.8 Subject to any requirement to the contrary in the **PPSA**, notices under this clause or the **PPSA** may be served in accordance with clause 14 of this lease.

21. ADDITIONAL PROVISIONS

Any additional provisions set out in **item 22** -

- 21.1 bind the parties, and
- 21.2 if inconsistent with any other provisions of this lease, override them.

22. LANDLORD WARRANTY

The **landlord** warrants that clauses 1 to 21 appearing in this lease are identical to clauses 1 to 21 of the copyright Law Institute of Victoria Lease of Real Estate August 2014 Revision and that any modifications to them are set out as additional provisions in **item 22**.

SCHEDULE

Important Notice to the Person Completing This Schedule

This lease is in a standard form. You may need to make changes to record the agreement of the landlord, tenant, and any guarantor. You should carefully check the whole document and make appropriate deletions, alterations, and/or additions so it agrees with the instructions you have received. You should record any deletions, alterations, and/or additions to the standard lease conditions as additional provisions in item 22 and **not** in the lease conditions.

Item 1
[1.1]

Landlord:

s47F

s47F

as trustees of The Norman Smorgon House Trust

Item 2
[1.1]

Tenant:

Kew Hebrew Congregation Inc Reg No. A0040890W
of 53 Walpole Street, Kew VIC 3101

Item 3
[1.1]

Guarantor:

Nil

Item 4
[1.1]

(a) **Premises:**

53 Walpole Street, Kew VIC 3101

(b) **Land:**

The land in Certificates of Title Volume 5509 Folio 647 and Volume 4761 Folio 156

Item 5
[1.1]

Landlord's installations:

Nil

Item 6
[1.1]

Rent:

\$1.00 per annum plus GST (which has been paid).

Item 7
[1.1]

Tenant's installations:

Nil

Item 8
[1.1]

Term of the lease:

The period of 20 years and one day commencing on 1 January 2018 ("Commencement Date") and expiring on 1 January 2036

Item 9
[2.1.1]

How rent is to be paid:

The **tenant** must pay the **rent** to the **landlord** in the manner and at such place as the **landlord** directs from time to time and must authorise payment of the **rent** by direct debit from its bank account if asked to do so by the **landlord**.

The **rent** must be paid by equal consecutive monthly instalments in advance by not later than the first day of each month (and the first and last payments if necessary will be proportionate ones). The first **rent** payment must be made on or before the first day of the **term**.

Item 10
[1.1, 2.1.2,
2.1.5 & 5.4]

Building outgoings which the tenant must pay or reimburse:

Subject to the Act, if applicable, the proportion of **building outgoings** payable by the **tenant** is the proportion determined by the **landlord** having regard to the proportion which the lettable value or area of the **premises** bears to the total lettable value or area of the property to which such item relates, or which derives benefit from that item, and taking into account any special factors.

Item 11
[1.1 & 6.2]

Risks which the insurance policies must cover:

- . Fire
- . Flood
- . Lightning
- . Storm and tempest
- . Explosion
- . Riots and civil commotion
- . Strikes
- . Malicious damage
- . Earthquake
- . Impact by vehicles
- . Impact by aircraft and articles dropped from them
- . Internal flood water

and such other risks as the **landlord** reasonably specifies from time to time

Item 12
[2.1 & 2.3.1]

Amount of public risk insurance cover:

\$20,000,000 or other amount reasonably specified from time to time by the **landlord**

Item 13
[1.1]

Period of loss of rent and outgoings insurance:

Nil

Item 14
[2.1.7]

Interest rate on overdue money:

Nil

Item 15
[2.2.1]

Permitted use:

Any use permitted by law for the **tenant**

[1.14]

Application of Act

The **Act** does not apply

Reason why **Act** does not apply:

The **permitted use** is not predominantly retail in nature

Item 16 [2.2.1, 11 & 18]	Review date(s)
	Term
	Not applicable
	Further term(s)
	Not applicable
Item 17 [2.2.1, 11 & 18]	Who may initiate reviews
	Not applicable
Item 18 [12]	Further term(s):
	Not applicable
Item 19 [12]	Earliest and latest dates for exercising option for renewal:
	Not applicable
Item 20 [Clause 13]	Security deposit:
	Nil
Item 21 [Clause 16.1]	The mediation procedure does not apply to this lease
Item 22 [Clause 20]	Additional provisions:
	See attached Item 22

ITEM 22 - ADDITIONAL PROVISIONS

22.1 Definitions

In this **item 22** the listed expressions in bold print have the meaning set out opposite them:

EXPRESSION	MEANING
sub-lease	The sub-lease between the tenant (as sub-landlord) and the sub-tenant dated on or about the date of this lease
sub-lease premises	That part of the premises comprising the premises in the sub-lease
sub-tenant	Giant Steps Melbourne Limited ACN 605 552 283 of 53 Walpole Street, Kew VIC 3101 or any assignee pursuant to additional provision 22.8 (Assignment to Related Body Corporate) of the sub-lease
trust deed	The trust deed 12 August 1949 between s47F s47F as amended from time to time

22.2 Break clause

Subject to the provisions of the **trust deed**, the **landlord** may terminate this **lease** at any time by giving to the **tenant** not less than 30 days written notice of termination.

22.3 New lease

- (a) The **landlord** acknowledges the existence of the **sub-lease**.
- (b) In the event that the **landlord** terminates this **lease** pursuant to additional provision 22.2, the **landlord** agrees that the provisions of s 150 of the *Property Law Act 1958* (Vic) will apply to the effect that:
 - (i) the **landlord** will become the direct **landlord** under the **sub-lease**; and
 - (ii) the **sub-tenant** will become the tenant under the **sub-lease**.

22.4 Application of the Act

- (a) The **tenant** warrants to the **landlord** that this **lease** is not a retail premises lease to which the provisions of the **Act** apply because the **permitted use** is not predominantly retail in nature.
- (b) The **tenant** must not at any time during the **term** use the **premises** in a manner which results in the **premises** being "retail premises" as that term is defined in the **Act**.

22.5 Sub-Letting

- (a) The **landlord** acknowledges that the **tenant** may sub-let the **premises** in whole or in part to the **sub-tenant** without the consent of the **landlord**.
- (b) The **sub-tenant** must:

- (i) obtain the **landlord's** consent to any construction works undertaken on the **premises**;
- (ii) obtain all necessary permits prior to undertaking any construction works;
and
- (iii) ensure that any construction works comply with all laws.

EXECUTED AS A DEED ON

DATE: the day of 2017

LANDLORD

SIGNED SEALED and DELIVERED by
s47F in the presence of

)

)

) s47F

s47F

Signature of witness

Barry John Fink

s47F

Name of witness (print)

SIGNED SEALED and DELIVERED by
s47F in the presence of

)

)

)

s47F

s47F

Signature of witness

s47F

Name of witness (print)

SIGNED SEALED and DELIVERED by
s47F in the presence of

)

)

s47F

s47F

Signature of witness

s47F

Name of witness (print)

TENANT

SIGNED on behalf of **KEW HEBREW CONGREGATION INC** by its duly authorised representatives

s47F

Signature of representative

s47F

Name of representative (print)

)
)
)
)

s47F

Signature of representative

s47F

Name of representative (print)

MORTGAGEE CONSENT

MORTGAGEE

Not applicable

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Lease of Real Estate

with Guarantee & Indemnity

(Commercial Property)

Important Notices To The Person Preparing This Lease

This lease is in a standard form. You may need to make changes to record the agreement of the landlord, tenant, and any guarantor. You should carefully check the whole document and make appropriate deletions, alterations, and/or additions so it agrees with the instructions you have received. You should note the warranty in clause 22 and record any alterations to the lease conditions in schedule item 22 and **not** in the lease conditions. If the lease is one to which the *Retail Leases Act 2003* (Vic) applies, the parties should refer to that Act for important rights and obligations that are not set out in this lease.

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Ref:

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The **landlord** leases the **premises** to the **tenant** for the **term** and at the **rent** and on the conditions set out in this lease together with all necessary access over any **common areas**.

The **guarantor**, if any, agrees to be bound by the **guarantor's** obligations set out in this lease.

Lease Conditions

1. DEFINITIONS AND INTERPRETATION

1.1 The listed expressions in **bold** print have the meaning set out opposite them -

EXPRESSION	MEANING
accounting period	the period of 12 months ending 30 June or other period of 12 months adopted by the landlord in respect of this lease for recovery of building outgoings and includes any broken periods at the start and end of the term
Act	the <i>Retail Leases Act 2003</i> (Vic)
Building	any building in which the premises are located, including the landlord's installations
Building outgoings	<p>any of the following expenses (excluding capital expenses and expenses whose recovery from the tenant would be contrary to applicable legislation) incurred in respect of the land, the building, the premises or any premises in the building which include the premises -</p> <ul style="list-style-type: none"> (a) rates, levies and assessments imposed by any relevant authorities; (b) taxes including land tax (unless the Act applies), calculated on the basis that the land is the only land of the landlord liable to tax and is not subject to a trust but excluding income tax and capital gains tax; (c) the costs of maintaining and repairing the building and the landlord's installations and carrying out works as required by relevant authorities (but excluding any amount recovered in respect of maintenance or repair by the landlord from its insurer); (d) premiums and charges for the following insurance policies taken out by the landlord - <ul style="list-style-type: none"> (i) damage to and destruction of the premises for their replacement value for the risks listed in item 11, (ii) removal of debris, (iii) breakdown of landlord's installations, (iv) breakage of glass, (v) public risk for any single event for the amount stated in item 12 (if none is stated, \$10 million) or other amount reasonably specified from time to time by the landlord, and (vi) loss of rent and outgoings for the period stated in item 13 or, if none is stated, 12 months, <p>and excesses paid or payable on claims,</p> <p>and, if the premises occupy only a part of the lettable area of the building, the following further items -</p> <ul style="list-style-type: none"> (e) costs incurred in providing services to the building and the land including - <ul style="list-style-type: none"> (i) heating, (ii) cooling, (iii) air-conditioning, (iv) cleaning, (v) pest control, (vi) waste collection, (vii) lighting, (viii) landscaping and garden maintenance, (ix) security, and (x) fire safety prevention, detection and control; (f) accountancy and audit fees; and (g) costs of whatever description, reasonably incurred by the landlord in the administration, management or operation of the building and the land, <p>whether incurred by the landlord directly or as owners corporation levies, at cost to the landlord on the basis that an expense is deemed to have been paid at the time it fell due for payment.</p>

building rules	any rules adopted from time to time for the building , including the rules of any owners corporation affecting the premises
common areas	<p>areas in the building or on the land that are under the control of the landlord and are used or intended for use -</p> <p>(a) by the public; or</p> <p>(b) in common by tenants of premises in the building in relation to the carrying on of businesses on those premises,</p> <p>other than areas which are let or licensed, or intended to be let or licensed, other than on a casual basis</p>
Consumer Price Index	the consumer price index published by the Australian Government Statistician under the heading All Groups, Melbourne
CPI review date	a date specified in item 16(b)
fixed review date	a date specified in item 16(c)
GST	GST within the meaning of the GST Act
GST Act	<i>A New Tax System (Goods and Services Tax) Act 1999 (Cth)</i>
guarantor	the person named in item 3
item	an item in the schedule to this lease
land	the parcel of land on which the building is erected and which is described in item 4(b)
landlord	the person named in item 1 , or any other person who will be entitled to possession of the premises when this lease ends
landlord's installations	any property of the landlord , other than land or fixtures, from time to time in the premises or on the land and includes the property listed in item 5
lettable area	<p>unless the Act applies and requires otherwise -</p> <p>(a) in relation to the premises, the area let; and</p> <p>(b) in relation to the building, the total area of the building that is let or licensed or intended to be let or licensed, other than on a casual basis.</p> <p>When it is necessary to measure the lettable area of the building or any part of the building, the measurement is to be carried out using the most recent revision of the relevant Property Council of Australia method of measurement</p>
market review date	a date specified in item 16(a)
permitted use	the use specified in item 15
PPSA	the <i>Personal Property Securities Act 2009 (Cth)</i>
premises	the premises described in item 4(a) and fixed improvements and the landlord's installations within the premises
rent	the amount in item 6 , as varied in accordance with this lease
review date	a date specified in item 16
start of the lease	the first day of the term but, if this lease is a renewal under an option in an earlier lease (whether or not this lease is on terms that are materially different to those contemplated by the earlier lease), the starting date of the first lease to contain an option for renewal.
tenant	the person named in item 2 , or any person to whom the lease has been transferred
tenant's agents	the tenant's employees, agents, contractors, customers and visitors to the premises
tenant's installations	the items of equipment and fittings listed in item 7 and those introduced by the tenant after the lease starts
term	the period stated in item 8
valuer	a person holding the qualifications or experience specified under section 13DA(2) of the <i>Valuation of Land Act 1960 (Vic)</i> and, if the Act applies, a specialist retail valuer.

- 1.2 References to laws include statutes, regulations, instruments and by-laws and all other subordinate legislation or orders made by any authority with jurisdiction over the **premises**. Illegal means contrary to a law as defined in this sub-clause.
- 1.3 This lease must be interpreted so that it complies with all laws applicable in Victoria. If any provision of this lease does not comply with any law, then the provision must be read down so as to give it as much effect as possible. If it is not possible to give the provision any effect at all, then it must be severed from the rest of the lease.
- 1.4 The law of Victoria applies to this lease.
- 1.5 Any change to this lease must be in writing and signed by the parties.
- 1.6 If a party consists of more than one person –
 - (a) the acts and omissions of any of them bind all of them; and
 - (b) an obligation imposed by this lease on or in favour of more than one person binds or benefits them separately, together and in any combination.
- 1.7 The use of one gender includes the others and the singular includes the plural and vice versa.
- 1.8 If the **landlord**, **tenant** or **guarantor** is an individual, this lease binds that person's legal personal representative. If any of them is a corporation, this lease binds its transferees.
- 1.9 This lease, including all guarantees and indemnities, is delivered and operates as a deed.
- 1.10 The **tenant** is bound by and answerable for the acts and omissions of the **tenant's agents**.
- 1.11 If there is a conflict between a provision in the schedule and one of these lease conditions then the provision in the schedule is to prevail.
- 1.12 "Include" and every form of that word is to be read as if followed by "(without limitation)".
- 1.13 This lease includes the schedule.
- 1.14 The parties consider that the application of the **Act** to this lease is as specified in **item 15** and, if **item 15** states that the **Act** does not apply, that the reason is as specified in **item 15**.

2. TENANT'S PAYMENT, USE AND INSURANCE OBLIGATIONS

- 2.1 The **tenant** must –
 - 2.1.1 pay the **rent** without any set-off (legal or equitable) or deduction whatever to the **landlord** on the days and in the way stated in **item 9** without the need for a formal demand. The **landlord** may direct in writing that the **rent** be paid to another person. The **rent** is reviewed on each **review date** specified in **item 16** –
 - (a) on a **market review date**, the **rent** is reviewed in accordance with clause 11,
 - (b) on a **CPI review date**, the **rent** is reviewed in accordance with clause 18, and
 - (c) on a **fixed review date**, the **rent** is either increased by the fixed percentage or changed by or to the fixed amount, in either case as specified in **item 16** in respect of that **fixed review date**.
 - 2.1.2 produce receipts for paid **building outgoings** within 7 days of a request.
 - 2.1.3 pay when due all charges for the provision of services to the **premises** including gas, electricity, water and telephone.
 - 2.1.4 remove regularly from the **premises** all rubbish and waste generated by the **tenant's** operations.
 - 2.1.5 pay the proportion of the **building outgoings** specified in **item 10** in accordance with clause 5.4.
 - 2.1.6 pay or reimburse within 7 days of a request all increases in insurance premiums paid or payable by the **landlord** as the result of the **tenant's** use of the **premises**.
 - 2.1.7 pay within 7 days of a request interest at the rate stated in **item 14** on any **rent** or other money which the **tenant** has not paid within 7 days of the due date. Interest is to be calculated daily from the due date, continues until the overdue money is paid and is capitalised monthly.
 - 2.1.8 pay within 7 days of a request the **landlord's** reasonable expenses and legal costs in respect of –
 - (a) the negotiation, preparation, settling, execution and stamping (if applicable) of this lease,
 - (b) change to this lease requested by the **tenant** whether or not the change occurs,
 - (c) the surrender or ending of this lease (other than by expiration of the **term**) requested by the **tenant**, whether or not the lease is surrendered or ended,
 - (d) the transfer of this lease or subletting of the **premises** or proposed transfer or subletting whether or not the transfer or subletting occurs.

- (e) a request by the **tenant** for consent or approval, whether or not consent or approval is given,
 - (f) any breach of this lease by the **tenant**, or
 - (g) the exercise or attempted exercise by the **landlord** of any right or remedy against the **tenant**,

but, if the **Act** applies, only to the extent to which the **Act** permits recovery.
- 2.1.9 pay any stamp duty on this lease, on any renewal, and any additional stamp duty after a review of **rent**.
- 2.1.10 subject to clauses 3.3.2 and 3.3.3, comply with all laws relating to the use or occupation of the **premises**.
- 2.1.11 carry on the business of the **permitted use** efficiently and, subject to all applicable laws, keep the **premises** open during the business hours which are normal for the **permitted use** and not suspend or discontinue the operation of the business.
- 2.1.12 comply with the **landlord's** reasonable requirements in relation to the use of the **landlord's installations** and any services provided by the **landlord**.
- 2.1.13 subject to clauses 3.3.2 and 3.3.3, comply with the laws and requirements of relevant authorities relating to essential safety measures, occupational health and safety and disability discrimination relevant to the **premises** or the **building**.
- 2.2 The **tenant** must not, and must not let anyone else -
 - 2.2.1 use the **premises** except for the **permitted use**, but the **tenant** agrees that the **landlord** has not represented that the **premises** may be used for that use according to law or that the **premises** are suitable for that use.
 - 2.2.2 use the **premises** for any illegal purpose.
 - 2.2.3 carry on any noxious or offensive activity on the **premises**.
 - 2.2.4 do anything which might cause nuisance, damage or disturbance to a tenant, occupier or owner of any adjacent property.
 - 2.2.5 conduct an auction or public meeting on the **premises**.
 - 2.2.6 use radio, television or other sound-producing equipment at a volume that can be heard outside the **premises**.
 - 2.2.7 do anything which might affect any insurance policy relating to the **premises** by causing -
 - (a) it to become void or voidable,
 - (b) any claim on it being rejected, or
 - (c) a premium to be increased.
 - 2.2.8 keep or use chemicals, inflammable fluids, acids, or other hazardous things on the **premises** except to the extent necessary for the **permitted use**, or create fire hazards.
 - 2.2.9 do anything which might prejudicially affect the essential safety measures or the occupational health and safety or disability discrimination status of the **premises** or the **building**.
 - 2.2.10 place any sign on the exterior of the **premises** without the **landlord's** written consent.
 - 2.2.11 make any alteration or addition, or affix any object, to the **premises** except with the **landlord's** written consent; consent is at the **landlord's** discretion for any alteration, addition or affixation affecting the structure of the **building** or any of the infrastructure for the provision of services to the **building** but, otherwise, clause 9.1 applies. In undertaking any work for which the **landlord's** consent has been obtained, the **tenant** must strictly conform to plans approved by the **landlord** and comply with all reasonable conditions imposed on that consent by the **landlord** and the requirements of each authority with jurisdiction over the **premises**.
 - 2.2.12 bring onto the **premises** any object which, due to its nature, weight, size or operation, might cause damage to the **premises**, the **building**, or the effective operation of the infrastructure for the provision of services to the **premises** or the **building** without the **landlord's** written consent.
 - 2.2.13 except in an emergency, interfere with any infrastructure for the provision of services in the **premises**, the **building**, or in any property of which the **premises** are part.
- 2.3 The **tenant** must -
 - 2.3.1 take out and keep current an insurance cover for the **premises** in the name of the **tenant** and noting the interest of the **landlord**, for public risk for any single event for the amount stated in item 12 or, if none is stated, for \$10 million, with an extension which includes the indemnities given by the **tenant** to the **landlord** in clauses 5.2 and 5.3.2 of this lease to the extent that such an extension is procurable on reasonable terms in the Australian insurance market.

- 2.3.2 maintain the insurance cover with an insurer approved by the **landlord**.
- 2.3.3 produce satisfactory evidence of insurance cover on written request by the **landlord**.

3. REPAIRS, MAINTENANCE, FIRE PREVENTION AND REQUIREMENTS OF AUTHORITIES

- 3.1 Subject to clause 3.3, the **tenant** must -
 - 3.1.1 keep the **premises** in the same condition as at the **start of the lease**, except for fair wear and tear; and
 - 3.1.2 comply with all notices and orders affecting the **premises** which are issued during the **term** except any notices or orders that applicable legislation makes the responsibility of the **landlord**.
- 3.2 In addition to its obligations under clause 3.1, the **tenant** must -
 - 3.2.1 repaint or refinish all painted or finished surfaces in a workmanlike manner with as good quality materials as previously at least once every 5 years during the **term** and any further term viewed as one continuous period.
 - 3.2.2 keep the **premises** properly cleaned and free from rubbish, keep waste in proper containers and have it removed regularly.
 - 3.2.3 immediately replace glass which becomes cracked or broken with glass of the same thickness and quality.
 - 3.2.4 immediately repair defective windows, light fittings, doors, locks and fastenings, and replace missing or inoperative light-globes and fluorescent tubes, keys and keycards.
 - 3.2.5 maintain in working order all plumbing, drainage, gas, electric, solar and sewerage installations.
 - 3.2.6 promptly give written notice to the **landlord** or **landlord's** agent of -
 - (a) damage to the **premises** or of any defect in the structure of, or any of infrastructure for the provision of services to, the **premises**,
 - (b) receipt of a notice or order affecting the **premises**,
 - (c) any hazards threatening or affecting the **premises**, and
 - (d) any hazards arising from the **premises** for which the **landlord** might be liable.
 - 3.2.7 immediately make good damage caused to adjacent property by the **tenant** or the **tenant's** **agents**.
 - 3.2.8 permit the **landlord**, its agents or workmen to enter the **premises** during normal business hours, after giving reasonable notice (except in cases of emergency) -
 - (a) to inspect the **premises**,
 - (b) to carry out repairs or agreed alterations, and
 - (c) to do anything necessary to comply with notices or orders of any relevant authority, bringing any necessary materials and equipment.
 - 3.2.9 carry out repairs within 14 days of being served with a written notice of any defect or lack of repair which the **tenant** is obliged to make good under this lease. If the **tenant** does not comply with the notice, the **landlord** may carry out the repairs and the **tenant** must repay the cost to the **landlord** within 7 days of a request.
 - 3.2.10 only use persons approved by the **landlord** to repair and maintain the **premises** but, if the **Act** applies, only use persons who are suitably qualified.
 - 3.2.11 comply with all reasonable directions of the **landlord** or the insurer of the **premises** as to the prevention, detection and control of fire.
 - 3.2.12 on vacating the **premises**, remove all signs and make good any damage caused by installation or removal.
 - 3.2.13 take reasonable precautions to secure the **premises** and their contents from theft, keep all doors and windows locked when the **premises** are not in use and comply with the **landlord's** directions for the use and return of keys or keycards.
 - 3.2.14 permit the **landlord** or its agent access to the **premises** at reasonable times by appointment to show the **premises** -
 - (a) to valuers and to the **landlord's** consultants,
 - (b) to prospective purchasers at any time during the **term**, and
 - (c) to prospective tenants within 3 months before the end of the **term** (unless the **tenant** has exercised an option to renew this lease)

and to affix "for sale" or "to let" signs in a way that does not unduly interfere with the **permitted use**.

3.2.15 maintain any grounds and gardens of the **premises** in good condition, tidy, free from weeds and well-watered.

3.2.16 maintain and keep in good repair any heating, cooling or air conditioning equipment exclusively serving the **premises**.

3.3 The **tenant** is not obliged -

3.3.1 to repair damage against which the **landlord** must insure under clause 6.2 or to reimburse the **landlord** for items of expense or damage that would be covered under insurance of the type specified unless the **landlord** loses or, where the **landlord** has failed to insure as required, would have lost, the benefit of the insurance because of acts or omissions by the **tenant** or the **tenant's agents**.

3.3.2 to carry out structural or capital repairs or alterations or make payments of a capital nature unless the need for them results from -

- (a) negligence by the **tenant** or the **tenant's agents**,
- (b) failure by the **tenant** to perform its obligations under this lease,
- (c) the **tenant's** use of the **premises**, other than reasonable use for the **permitted use**, or
- (d) the nature, location or use of the **tenant's installations**,

in which case the repairs, alterations or payments are the responsibility of the **tenant**.

3.3.3 to carry out any work that applicable legislation makes the responsibility of the **landlord**.

4. LEASE TRANSFERS AND SUBLETTING

4.1 The **tenant** must not transfer this lease or sublet the **premises** without the **landlord's** written consent, and section 144 of the *Property Law Act 1958* (Vic) and clause 9.1 do not apply.

4.2 The **landlord** -

4.2.1 subject to sub-clause 4.2.2, must not unreasonably withhold consent to a transfer of this lease or a sublease of the **premises** if the **tenant** has complied with the requirements of clause 4.3 and the proposed transferee or subtenant proposes to use the **premises** in a way permitted under this lease. If the **Act** applies, the **landlord** may only withhold consent to a transfer of this lease in accordance with the **Act**.

4.2.2 may withhold consent at the **landlord's** discretion if the **Act** does not apply, and a transfer of this lease would result in the **Act** applying, or applying if this lease is renewed for a further term.

4.3 To obtain the **landlord's** consent to a transfer or sublease the **tenant** must -

4.3.1 ask the **landlord** in writing to consent to the transfer or sublease,

4.3.2 give the **landlord** -

- (a) in relation to each proposed new tenant or sub-tenant such information as the **landlord** reasonably requires about its financial resources and business experience and if the **Act** does not apply, any additional information reasonably required by the **landlord** to enable it to make a decision, and
- (b) a copy of the proposed document of transfer or sublease, and

4.3.3 remedy any breach of the lease which has not been remedied and of which the **tenant** has been given written notice.

4.4 If the **Act** applies and -

4.4.1 the **tenant** has asked the **landlord** to consent to a transfer and complied with clause 4.3 and section 61 of the **Act**, and

4.4.2 the **landlord** fails to respond by giving or withholding consent to the transfer within 28 days,

then the **landlord** is to be taken as having consented.

4.5 If the **landlord** consents to the transfer or sublease, the **landlord**, **tenant** and new tenant or sub-tenant and the **guarantor** must execute the documents submitted under sub-clause 4.3.2(b). The directors of the new tenant (if it is a corporation) must execute a guarantee and indemnity in the terms of clause 15.

4.6 The **tenant** must pay the **landlord's** reasonable expenses incurred in connection with an application for consent or the granting of consent and the completion of the documents, as well as any stamp duty on the documents.

4.7 Except by a transfer or sublease to which the **landlord** has consented, or is to be taken as having consented, the **tenant** must not give up possession or share occupancy of the **premises** or grant a licence

to anyone else or mortgage or charge its interest under this lease or enter into any arrangement that gives a person the right to enter into occupation of the **premises** without the **landlord's** written consent; consent is at the **landlord's** discretion.

- 4.8 Subject to the **Act**, if it applies, the obligations to the **landlord** of every **tenant** who has transferred this lease continue until this lease ends. They do not continue into any period of overholding after this lease ends, nor into any renewed term; at those times they are the responsibility only of the **tenant** in possession. This clause does not prevent the **landlord** from enforcing rights which arise before this lease ends.

5. GENERAL AGREEMENTS BETWEEN LANDLORD AND TENANT

- 5.1 When the **term** ends, the **tenant** must -

- 5.1.1 return the **premises** to the **landlord** clean and in the condition required by this lease, and
- 5.1.2 remove the **tenant's installations** and other **tenant's** property from the **premises** and make good any damage caused in installing or removing them.

If the **tenant** leaves any **tenant's installations** or other **tenant's** property on the **premises** after the end of the lease, unless the **landlord** and **tenant** agree otherwise -

- 5.1.3 all items of **tenant's installations** and **tenant's** property will be considered abandoned and will become the property of the **landlord**, but the **landlord** may remove any of the **tenant's installations** or other property of the **tenant** and recover the costs of removal and making good as a liquidated debt payable on demand; and
- 5.1.4 the parties intend that clause 5.1.3 operate in relation to **tenant's installations** and **tenant's** property in place of any legislation that might otherwise apply to goods remaining on the **premises**.

- 5.2 The **tenant** indemnifies the **landlord** against any claim resulting from any act or failure to act by the **tenant** or the **tenant's agents** while using the **premises**.

- 5.3 The **tenant** -

- 5.3.1 uses and occupies the **premises** at its own risk, and
- 5.3.2 releases the **landlord** from and indemnifies the **landlord** against all claims resulting from incidents occurring on the **premises** (except to the extent caused or contributed to by the **landlord**, or a person for whom the **landlord** is responsible) or resulting from damage to adjacent premises covered by clause 3.2.7.

- 5.4 In relation to **building outgoings** -

- 5.4.1 the **landlord** must pay the **building outgoings** when they fall due for payment but, if the **landlord** requires, the **tenant** must pay when due a **building outgoing** for which the **tenant** receives notice directly and reimburse the **landlord** within 7 days of a request all **building outgoings** for which notices are received by the **landlord**.
- 5.4.2 the **tenant** must pay or reimburse the **landlord** the proportion specified in item 10.
- 5.4.3 at least 1 month before the start of an **accounting period**, the **landlord** may, or if the **Act** applies must, give the **tenant** an estimate of **building outgoings** for the **accounting period**.
- 5.4.4 despite clause 5.4.1, if the **landlord** requires, the **tenant**, must pay its share of the estimated **building outgoings** by equal monthly instalments during the **accounting period** on the days on which **rent** is payable (after allowing for **building outgoings** paid directly or separately reimbursed by the **tenant**).
- 5.4.5 if the **Act** applies, the **landlord** must make a statement of **building outgoings** available during each **accounting period** as required by the **Act**.
- 5.4.6 within 3 months after the end of an **accounting period**, the **landlord** must give the **tenant** a statement of the actual **building outgoings** for the **accounting period** (if the **Act** applies and requires that the statement be accompanied by a report by a registered company auditor, the statement must be accompanied by a report complying with section 47(5); if the **Act** applies but does not require that the statement be accompanied by a report by a registered company auditor, the statement must be accompanied by the items specified in section 47(6)(b)).
- 5.4.7 the **tenant** must pay any deficiency or the **landlord** must repay any excess, within 1 month after a statement is provided under clause 5.4.6 or within 4 months after the end of the **accounting period**, whichever is earlier.
- 5.4.8 the parties must make an appropriate adjustment for any **building outgoing** incurred in respect of a period beginning before the start of the **term** or extending beyond the end of the **term**.

- 5.5 If the freehold of the **premises** (or the **building**) is transferred, the transferor **landlord** is released from all lease obligations falling due for performance on or after the date of the instrument of transfer.

5.6 Payment or tender by cheque is not effective until clearance of funds.

6. LANDLORD'S OBLIGATIONS

- 6.1 The **landlord** must give the **tenant** quiet possession of the **premises** without any interruption by the **landlord** or anyone connected with the **landlord** as long as the **tenant** does what it must under this lease.
- 6.2 The **landlord** must take out at the start of the **term** and keep current policies of insurance for the risks listed in item 11 against -
- 6.2.1 damage to and destruction of the **building**, for its replacement value,
 - 6.2.2 removal of debris,
 - 6.2.3 breakdown of **landlord's installations**, and
 - 6.2.4 breakage of glass, for its replacement value.
- 6.3 The **landlord** must give to the **tenant** the written consent to this lease of each mortgagee whose interest would otherwise have priority over this lease by endorsement on this lease in the terms set out following the 'execution and attestation' section.
- 6.4 The **landlord** must keep the structure (including the external faces and roof) of the **building** and the **landlord's installations** in a condition consistent with their condition at the **start of the lease**, but is not responsible for repairs which are the responsibility of the **tenant** under clauses 3.1, 3.2 and 3.3.2.

7. EVENTS OF DEFAULT AND LANDLORD'S RIGHTS

- 7.1 The **landlord** may terminate this lease, by re-entry or notice of termination, if -
- 7.1.1 the **rent** is unpaid after the day on which it falls due for payment,
 - 7.1.2 the **tenant** does not meet its obligations under this lease,
 - 7.1.3 the **tenant** is a corporation and -
 - (a) an order is made or a resolution is passed to wind it up except for reconstruction or amalgamation,
 - (b) goes into liquidation,
 - (c) is placed under official management,
 - (d) has a receiver, including a provisional receiver, or receiver and manager of any of its assets or an administrator appointed,
 - (e) without the **landlord's** written consent, there is a different person in effective control of the **tenant** as a result of changes in -
 - (i) membership of the company or its holding company,
 - (ii) beneficial ownership of the shares in the company or its holding company, or
 - (iii) beneficial ownership of the business or assets of the company,but this paragraph does not apply if the **tenant** is a public company listed on a recognised Australian public securities exchange, or a subsidiary of one.
"Effective control" means the ability to control the composition of the board of directors or having more than 50% of the shares giving the right to vote at general meetings,
 - 7.1.4 a warrant issued by a court to satisfy a judgement against the **tenant** or a **guarantor** is not satisfied within 30 days of being issued,
 - 7.1.5 a **guarantor** is a natural person and -
 - (a) becomes bankrupt,
 - (b) takes or tries to take advantage of Part X of the *Bankruptcy Act* 1966 (Cth),
 - (c) makes an assignment for the benefit of their creditors, or
 - (d) enters into a composition or arrangement with their creditors,
 - 7.1.6 a **guarantor** is a corporation and one of the events specified in (a) to (e) of clause 7.1.3 occurs in relation to it, or
 - 7.1.7 the **tenant**, without the **landlord's** written consent -
 - (a) discontinues its business on the **premises**, or
 - (b) leaves the **premises** unoccupied for 14 days.
- 7.2 Termination by the **landlord** ends this lease, but the **landlord** retains the right to sue the **tenant** for unpaid money or for damages (including damages for the loss of the benefits that the **landlord** would have received if the lease had continued for the full **term**) for breaches of its obligations under this lease.

- 7.3 For the purpose of section 146(1) of the *Property Law Act 1958* (Vic), 14 days is fixed as the period within which the **tenant** must remedy a breach capable of remedy and pay reasonable compensation for the breach.
- 7.4 Breach by the **tenant** of any of the following clauses of this lease is a breach of an essential term and constitutes repudiation: 2.1.1, 2.1.5, 2.1.6, 2.1.10, 2.1.11, 2.2.1, 2.2.2, 2.2.7, 2.2.8, 2.2.9, 2.2.11, 2.2.12, 2.3, 3.2.11, 4.1, 4.7, 5.4.2, 5.4.7, 13 and 17. Other **tenant** obligations under this lease may also be essential.
- 7.5 Before terminating this lease for repudiation (including repudiation consisting of the non-payment of rent), or for an event to which section 146(1) of the *Property Law Act 1958* (Vic) does not extend, the **landlord** must give the **tenant** written notice of the breach and a period of 14 days in which to remedy it (if it is capable of remedy) and to pay reasonable compensation for it. A notice given in respect of a breach amounting to repudiation is not an affirmation of the lease.
- 7.6 Even though the **landlord** does not exercise its rights under this lease on one occasion, it may do so on any later occasion.

8. DESTRUCTION OR DAMAGE

- 8.1 If the **premises** or the **building** are damaged so that the **premises** are unfit for use for the **permitted use** or inaccessible-
- 8.1.1 a fair proportion of the **rent** and **building outgoings** is to be suspended until the **premises** are again wholly fit for the **permitted use**, and accessible, and
- 8.1.2 the suspended proportion of the **rent** and **building outgoings** must be proportionate to the nature and extent of the unfitness for use or inaccessibility.
- 8.2 If the **premises** or the **building** are partly destroyed, but not substantially destroyed, the **landlord** must reinstate the **premises** or the **building** as soon as reasonably practicable.
- 8.3 If the **premises** or the **building** are wholly or substantially destroyed -
- 8.3.1 the **landlord** is not obliged to reinstate the **premises** or the **building**, and
- 8.3.2 if the reinstatement does not start within 3 months, or is not likely to be completed within 9 months, the **landlord** or the **tenant** may end this lease by giving the other written notice.
- 8.4 The **tenant** will not be entitled to suspension of **rent** or **building outgoings** under sub-clause 8.1.1 nor to end the lease under sub-clause 8.3.2 and the **landlord** will not be obliged to reinstate the **premises** or the **building** under clause 8.2 if payment of an insurance claim is properly refused in respect of the damage or destruction because of any act or omission by the **tenant** or the **tenant's agents**.
- 8.5 If the **Act** does not apply and there is a dispute under this clause, the **landlord** or the **tenant** may request the President of the Australian Property Institute, Victorian Division, to nominate a practising valuer member of that Institute to determine the dispute or the **landlord** and **tenant** may refer the dispute to mediation under clause 16 unless **item 21** states that the mediation procedure does not apply to this lease. The valuer acts as an expert and not as an arbitrator and the determination is binding.

9. CONSENTS AND WARRANTIES BY THE PARTIES

- 9.1 Subject to the **Act** (if it applies), the **landlord** must not unreasonably withhold its consent or approval to any act by the **tenant** or matter which needs consent or approval unless any other clause provides otherwise, but -
- 9.1.1 the **landlord** may impose reasonable conditions on any consent or approval, and
- 9.1.2 the **tenant** must reimburse the **landlord's** reasonable expenses resulting from an application for its consent or approval, including fees paid to consultants.
- 9.2 This lease, together with (if the **Act** applies) any disclosure statement, contains the whole agreement of the parties. Neither the **landlord** nor the **tenant** is entitled to rely on any warranty or statement in relation to -
- 9.2.1 the conditions on which this lease has been agreed,
- 9.2.2 the provisions of this lease, or
- 9.2.3 the **premises**
- which is not contained in those documents.

10. OVERHOLDING AND ABANDONMENT OF THE PREMISES

- 10.1 If the **tenant** remains in possession of the **premises** without objection by the **landlord** after the end of the **term** -
- 10.1.1 the **tenant**, without any need for written notice of any kind, is a monthly tenant on the conditions in this lease, modified so as to apply to a monthly tenancy,

- 10.1.2 the **landlord** or the **tenant** may end the tenancy by giving one month's written notice to the other which may expire on any day of the month,
- 10.1.3 the monthly rent starts at one-twelfth of the annual **rent** which the **tenant** was paying immediately before the **term** ended unless a different rent has been agreed, and
- 10.1.4 the **landlord** may increase the monthly rent by giving the **tenant** one month's written notice.
- 10.2 If the **tenant** vacates the **premises** during the **term**, whether or not it ceases to pay **rent** -
 - 10.2.1 the **landlord** may -
 - (a) accept the keys,
 - (b) enter the **premises** to inspect, maintain or repair them, or
 - (c) show the **premises** to prospective tenants or purchasers,
 without this being re-entry or an acceptance of repudiation or a waiver of the **landlord's** rights to recover **rent** or other money under this lease.
 - 10.2.2 this lease continues until a new tenant takes possession of the **premises**, unless the **landlord**-
 - (a) accepts a surrender of the lease, or
 - (b) notifies the **tenant** in writing that the **landlord** accepts the **tenant's** repudiation of the lease, or
 - (c) ends the lease in accordance with clause 7.1.

11. RENT REVIEWS TO MARKET

- 11.1 In this clause "review period" means the period following each **market review date** until the next **review date** or the end of this lease.
The review procedure on each **market review date** is -
 - 11.1.1 each review of **rent** may be initiated by the **landlord** or the **tenant** unless item 17 states otherwise but, if the **Act** applies, review is mandatory.
 - 11.1.2 the **landlord** or the **tenant** entitled to initiate a review does so by giving the other a written notice stating the current market rent which it proposes as the **rent** for the review period. If the **Act** does not apply and the recipient of the notice does not object in writing to the proposed rent within 14 days the proposed **rent** becomes the **rent** for the review period.
 - 11.1.3 If -
 - (a) the **Act** does not apply and the recipient of the notice serves an objection to the proposed rent within 14 days and the **landlord** and **tenant** do not agree on the **rent** within 14 days after the objection is served, or
 - (b) the **Act** applies and the **landlord** and **tenant** do not agree on what the **rent** is to be for the review period,
 the **landlord** and **tenant** must appoint a **valuer** to determine the current market **rent**.
If the **Act** does not apply and if the **landlord** and **tenant** do not agree on the name of the **valuer** within 28 days after the objection is served, either may apply to the President of the Australian Property Institute, Victorian Division to nominate the **valuer**. If the **Act** applies, the **valuer** is to be appointed by agreement of the **landlord** and **tenant**, or failing agreement, by the Small Business Commissioner.
 - 11.1.4 In determining the current market **rent** for the **premises** the **valuer** must -
 - (a) consider any written submissions made by the **landlord** and **tenant** within 21 days of their being informed of the **valuer's** appointment, and
 - (b) determine the current market rent as an expert
 and, whether or not the **Act** applies, must make the determination in accordance with the criteria set out in section 37(2) of the **Act**.
 - 11.1.5 The **valuer** must make the determination of the current market rent and inform the **landlord** and **tenant** in writing of the amount of the determination and the reasons for it as soon as possible after the end of the 21 days allowed for submissions by the parties.
 - 11.1.6 If -
 - (a) no determination has been made within 45 days (or such longer period as is agreed by the **landlord** and the **tenant** or, if the **Act** applies, as is determined in writing by the Small Business Commissioner) of the **landlord** and **tenant**
 - (i) appointing the **valuer**, or
 - (ii) being informed of the **valuer's** appointment, or
 - (b) the **valuer** resigns, dies, or becomes unable to complete the valuation,
 then the **landlord** and **tenant** may immediately appoint a replacement **valuer** in accordance with sub-clause 11.1.3.

- 11.2 The **valuer's** determination is binding.
- 11.3 The **landlord** and **tenant** must bear equally the **valuer's** fee for making the determination and if either pays more than half the fee, may recover the difference from the other.
- 11.4 Until the determination is made by the **valuer**, the **tenant** must continue to pay the same **rent** as before the **market review date** and within 7 days of being informed of the **valuer's** determination, the parties must make any necessary adjustments.
- 11.5 If the **Act** does not apply, a delay in starting a market review does not prevent the review from taking place and being effective from the **market review date** but if the market review is started more than 12 months after the **market review date**, the review takes effect only from the date on which it is started.

12. FURTHER TERM(S)

- 12.1 The **tenant** has an option to renew this lease for the further term or terms stated in **item 18** and the **landlord** must renew this lease for that further term or those further terms if -
 - 12.1.1 there is no unremedied breach of this lease by the **tenant** of which the **landlord** has given the **tenant** written notice at the time the **tenant** requests renewal as required by clause 12.1.13,
 - 12.1.2 the **tenant** has not persistently committed breaches of this lease of which the **landlord** has given written notice during the **term**, and
 - 12.1.3 the **tenant** has exercised the option for renewal in writing not more than 6 months nor less than 3 months before the end of the **term**. The earliest and latest dates for exercising the option are stated in **item 19**.
- 12.2 The lease for the further term -
 - 12.2.1 starts on the day after the **term** ends,
 - 12.2.2 has a starting **rent** determined in accordance with clause 11 as if the first day of the further term were specified as a **market review date** in **item 16(a)**, and
 - 12.2.3 must contain the same terms as this lease (but with no option for renewal after the last option for a further term stated in **item 18** has been exercised) including any provisions appearing in this document that may have been read down or severed to comply with any applicable law that has ceased to be applicable, as if they had not been read down or severed.
- 12.3 If the **tenant** is a corporation and was required to provide directors' guarantees for this lease, the **tenant** must provide guarantees of its obligations under the renewed lease by its directors, and by each person who has provided a guarantee for the expired **term**, in the terms of clause 15.

13. SECURITY DEPOSIT

- 13.1 The **tenant** must pay a security deposit to the **landlord** of the amount stated in **item 20** and must maintain the deposit at that amount.
- 13.2 Any security deposit not in the form of a guarantee must be invested in an interest bearing deposit and all interest accruing on it is treated as a supplementary payment of security deposit. When the **term** starts, the **tenant** must provide the **landlord** with the **tenant's** tax file number.
- 13.3 The **landlord** may use the deposit to make good the cost of remedying breaches of the **tenant's** obligations under this lease (or any of the events specified in clause 7.1) and the **tenant** must pay whatever further amount is required to bring the deposit back to the required level.
- 13.4 As soon as practicable after this lease has ended and the **tenant** has vacated the **premises** and performed all of its obligations under the lease, the **landlord** must refund the unused part of the deposit.
- 13.5 The **tenant** may, and if the **landlord** requires must, provide the security deposit by means of a guarantee by an ADI within the meaning of the *Banking Act 1959* (Cth).
- 13.6 If the freehold of the **premises** is transferred:
 - 13.6.1 the **tenant** must provide a replacement guarantee in exchange for the existing guarantee if requested by the **landlord** in writing to do so, but the **landlord** must pay the reasonable fees charged by the ADI for the issue of the replacement guarantee, and
 - 13.6.2 the **landlord** must transfer any security deposit held under this lease to the transferee.

14. NOTICES

- 14.1 A notice given under this lease may be given -
 - 14.1.1 by pre-paid post,
 - 14.1.2 by delivery

- 14.1.3 by email, or
 - 14.1.4 in any manner authorised by law or the Supreme Court for service of documents, including any manner authorised for service on or by a legal practitioner,
- to the party's last known address, registered office, or (if to the **tenant**) at the **premises**.
- 14.2 Posted notices will be taken to have been received on the second day after posting that is not a Saturday, Sunday or bank holiday in place of intended receipt, unless proved otherwise.
 - 14.3 Notices delivered or sent by email are taken to have been served or given at the time of receipt as specified in section 13A of the *Electronic Transactions (Victoria) Act 2000*.

15. OBLIGATIONS OF GUARANTOR(S) UNDER GUARANTEE AND INDEMNITY

- 15.1 The **guarantor** in consideration of the **landlord** having entered into this lease at the **guarantor's** request —
 - 15.1.1 guarantees that the **tenant** will perform all its obligations under this lease for the **term** and any further term or terms and during any period of overholding after the end of the **term**,
 - 15.1.2 must pay on demand any amount which the **landlord** is entitled to recover from the **tenant** under this lease whether in respect of the **term**, any further term or further terms or any period of overholding, and
 - 15.1.3 indemnifies the **landlord** against all loss resulting from the **landlord's** having entered into this lease whether from the **tenant's** failure to perform its obligations under it or from this lease being or becoming unenforceable against the **tenant** and whether in respect of the **term**, any further term or any period of overholding.
- 15.2 The liability of the **guarantor** will not be affected by —
 - 15.2.1 the **landlord** granting the **tenant** or a **guarantor** time or any other indulgence, or agreeing not to sue the **tenant** or another **guarantor**,
 - 15.2.2 failure by any **guarantor** to sign this document,
 - 15.2.3 transfer (except in accordance with the **Act**, if the **Act** applies) or variation of this lease, but if this lease is transferred the **guarantor's** obligations, other than those which have already arisen, end when the **term** ends and do not continue into a term renewed by a new tenant nor a period of overholding by a new tenant,
 - 15.2.4 the fact that this lease is subsequently registered at the Land Registry or not registered, or, for any reason, is incapable of registration, or
 - 15.2.5 transfer of the freehold of the **premises**.
- 15.3 The **guarantor** agrees that —
 - 15.3.1 the **landlord** may retain all money received including dividends from the **tenant's** bankrupt estate, and need allow the **guarantor** a reduction in its liability under this guarantee only to the extent of the amount received,
 - 15.3.2 the **guarantor** must not seek to recover money from the **tenant** to reimburse the **guarantor** for payments made to the **landlord** until the **landlord** has been paid in full,
 - 15.3.3 the **guarantor** must not prove in the bankruptcy or winding up of the **tenant** for any amount which the **landlord** has demanded from the **guarantor**, and
 - 15.3.4 the **guarantor** must pay the **landlord** all money which the **landlord** refunds to the **tenant's** liquidator or trustee in bankruptcy as preferential payments received from the **tenant**.
- 15.4 If any of the **tenant's** obligations are unenforceable against the **tenant**, then this clause is to operate as a separate indemnity and the **guarantor** indemnifies the **landlord** against all loss resulting from the **landlord's** inability to enforce performance of those obligations. The **guarantor** must pay the **landlord** the amount of the loss resulting from the unenforceability.
- 15.5 If there is more than one **guarantor**, this guarantee binds them separately, together and in any combination.
- 15.6 Each of the events referred to in clauses 7.1.5 and 7.1.6 is deemed to be a breach of an essential term of this lease.

16. DISPUTE RESOLUTION

- 16.1 Unless the **Act** applies, if the words "The mediation procedure applies to this lease" are included in item 21, the mediation procedure applies to this lease. In that event the **landlord** and the **tenant** must attempt to resolve any dispute by the mediation procedure, except disputes about —
 - 16.1.1 unpaid **rent** and interest charged on it,
 - 16.1.2 review of **rent**, and

- 16.1.3 a dispute to be resolved in another way prescribed by any other provision of this lease.
- 16.2 The mediation procedure is -
 - 16.2.1 the **landlord** or **tenant** may start mediation by serving a mediation notice on the other.
 - 16.2.2 the notice must state that a dispute has arisen and identify what the dispute is.
 - 16.2.3 the **landlord** and **tenant** must jointly request appointment of a mediator. If they fail to agree on the appointment within 7 days of service of the mediation notice, either may apply to the President of the Law Institute of Victoria or the nominee of the President to appoint a mediator.
 - 16.2.4 once the mediator has accepted the appointment the **landlord** and **tenant** and each **guarantor** must comply with the mediator's instructions.
 - 16.2.5 if the dispute is not resolved within 30 days of the appointment of the mediator, or any other period agreed by the **landlord** and **tenant** in writing, the mediation ceases.
- 16.3 The mediator may fix the charges for the mediation which must be paid equally by the **landlord** and **tenant**.
- 16.4 If the dispute is settled, the **landlord** and **tenant** and each **guarantor** must sign the terms of agreement and the signed terms are binding.
- 16.5 The mediation is confidential and -
 - 16.5.1 statements made by the mediator or the parties, and
 - 16.5.2 discussions between the participants to the mediation, before after or during the mediation, cannot be used in any legal proceedings.
- 16.6 It must be a term of the engagement of the mediator that the **landlord** and **tenant** and each **guarantor** release the mediator from any court proceedings relating to this lease or the mediation.
- 16.7 The mediator is not bound by the rules of natural justice and may discuss the dispute with a participant in the absence of any others.
- 16.8 If the **Act** applies, so that a dispute must be referred to the Victorian Civil and Administrative Tribunal, the **landlord** and **tenant** agree that each may be represented by a legal practitioner or legal practitioners of its choice.

17. GST

- 17.1 Expressions used in this clause 17 and in the **GST Act** have the same meanings as when used in the **GST Act** unless the context requires otherwise.
- 17.2 Amounts specified as payable under or in respect of this lease are expressed exclusive of **GST**.
- 17.3 The recipient of a taxable supply made under or in respect of this lease must pay to the supplier, at the time payment for the supply is due, the **GST** payable in respect of the supply. This obligation extends to supply consisting of entry into this lease.
- 17.4 An amount payable by the **tenant** in respect of a creditable acquisition by the **landlord** from a third party must not exceed the sum of the value of the **landlord's** acquisition and the additional amount payable by the **tenant** under clause 17.3 on account of the **landlord's** liability for **GST**.
- 17.5 A recipient of supply is not obliged, under clause 17.3, to pay the **GST** on a taxable supply to it under this lease, until given a valid tax invoice for it.

18. CONSUMER PRICE INDEX

- 18.1 On a **CPI review date**, the **rent** is adjusted by reference to the **Consumer Price Index** using the following formula -

$$AR = R \times \frac{CPIB}{CPIA}$$

Where:

"AR" means adjusted **rent**,

"R" means **rent** before adjustment,

"CPIB" means the **Consumer Price Index** number for the quarter immediately preceding the **CPI review date**, and

"CPIA" means the **Consumer Price Index** number for the quarter immediately preceding the most recent earlier **review date** or, where there is no earlier **review date**, the quarter immediately preceding the start of the **term**.

- 18.2 If CPIB is not published until after the **CPI review date**, the adjustment is made when it is published but the adjustment takes effect from the relevant **CPI review date**. In the meantime, the **tenant** must continue to pay the **rent** at the old rate and, when the adjustment is made, the **tenant** must immediately pay any deficiency or the **landlord** must immediately repay the excess.
- 18.3 If the base of the **Consumer Price Index** is changed between the two comparison dates an appropriate compensating adjustment must be made so that a common base is used.
- 18.4 Unless the **Act** applies and requires otherwise, if the **Consumer Price Index** is discontinued or suspended, then the calculation is to be made using whatever index is substituted for it. If no other index is substituted for it, the calculation is to be made using the index or calculation which the President of the Australian Property Institute, Victorian Division (acting as an expert and not as an arbitrator), determines is appropriate in the circumstances. This determination is binding.
- 18.5 Unless the **Act** applies, the adjustment is not made if it would result in a decrease in the **rent** payable.

19. IF PREMISES ONLY PART OF THE LETTABLE AREA OF THE BUILDING

- 19.1 If the **premises** are only a part of the **lettable area** of the **building**, the provisions of this clause apply.
 - 19.2 The **landlord** -
 - 19.2.1 may adopt whatever name it chooses for the **building** and change the name from time to time, and
 - 19.2.2 reserves all proprietary rights to the name of the **building** and any logo adopted for the **building**.
 - 19.3 The **landlord** reserves for itself the use of all external surfaces of the **building** and areas outside the **building**.
 - 19.4 The **building**, **common areas** and **landlord's installations** remain under the absolute control of the **landlord** which may manage them and regulate their use as it considers appropriate. In particular the **landlord** has the right -
 - 19.4.1 to close off the **common areas** as often as the **landlord** reasonably considers appropriate to prevent rights of way or user arising in favour of the public or third parties,
 - 19.4.2 to exclude persons whose presence the **landlord** considers undesirable,
 - 19.4.3 to grant easements over any parts of the **land** which do not materially and adversely affect the **tenant's** use,
 - 19.4.4 to install, repair and replace, as necessary, the infrastructure necessary or desirable for the provision of services to the various parts of the **building**, and
 - 19.4.5 to repair, renovate, alter or extend the **building** but, in doing so, the **landlord** must not cause more inconvenience to the **tenant** than is reasonable in the circumstances.
- If the **Act** applies, these rights may only be exercised in a manner consistent with the **Act**.
- 19.5 The **tenant** must not obstruct the **common areas** or use them for any purpose other than the purposes for which they were intended.
 - 19.6 The **tenant** must comply with the **building rules**. The **landlord** may change the **building rules** from time to time and the **tenant** will be bound by a change when it receives written notice of it. The **landlord** must not adopt a **building rule** or change the **building rules** in a way that is inconsistent with this lease. To the extent that a **building rule** is inconsistent with this lease, the lease prevails.

20. PERSONAL PROPERTY SECURITIES ACT

- 20.1 Expressions used in this clause that are defined in the **PPSA** have the meanings given to them in the **PPSA**.
 - 20.2 The **landlord** may, at any time, register a financing statement for any security interest arising out of or evidence by this lease over any or all of -
 - 20.2.1 the **landlord's installations**,
 - 20.2.2 any security deposit provided by the **tenant**, and
 - 20.2.3 **tenant's installations** and other **tenant's** property left on the **premises** after the end of the lease,
- that are personal property, and must identify the property affected by the financing statement in the free text field of the statement.
- *The tenant waives the right to receive notice under section 157(1) of the **PPSA**. [*Delete if inapplicable]
- 20.3 When this lease -

- 20.3.1 ends and the **tenant** has vacated the premises and performed all of its obligations under it, or
- 20.3.2 is transferred,
- the **landlord** must register a financing change statement with respect to any security interest for which the **landlord** has registered a financing statement other than those to which sub-clause 20.2.3 relates.
- 20.4 The **tenant must** sign any documents and do anything necessary to enable the **landlord** to register the statements referred to in the preceding sub-clause and to enforce its rights and perform its obligations under this clause and the **PPSA**. In particular, if the **tenant** is a natural person, the **tenant** must provide the **landlord** with the **tenant's** date of birth and a certified copy of a Victorian driver's licence (or other evidence acceptable to the **landlord**) to confirm the **tenant's** date of birth. The **landlord** must keep the **tenant's** date of birth and any evidence provided to confirm it secure and confidential.
- 20.5 The **tenant** must not register, or permit to be registered, a financing statement in favour of any person other than the **landlord**, for any security deposit provided by the **tenant** or any of the **landlord's installations**.
- 20.6 The **tenant** must pay the **landlord's** reasonable expenses and legal costs in respect of anything done or attempted by the **landlord** in the exercise of its rights or performance of its obligations under this clause or the **PPSA**
*except the landlord's costs of registering a financing statement under sub-clause 20.2 which are to be borne by the landlord
[*Delete if inapplicable]
- 20.7 In accordance with section 275(6)(a) of the **PPSA**, the parties agree that neither of them will disclose information of the kind mentioned in subsection 275(1).
- 20.8 Subject to any requirement to the contrary in the **PPSA**, notices under this clause or the **PPSA** may be served in accordance with clause 14 of this lease.

21. ADDITIONAL PROVISIONS

Any additional provisions set out in **item 22** -

- 21.1 bind the parties, and
- 21.2 if inconsistent with any other provisions of this lease, override them.

22. LANDLORD WARRANTY

The **landlord** warrants that clauses 1 to 21 appearing in this lease are identical to clauses 1 to 21 of the copyright Law Institute of Victoria Lease of Real Estate August 2014 Revision and that any modifications to them are set out as additional provisions in **item 22**.

SCHEDULE

Important Notice to the Person Completing This Schedule

This lease is in a standard form. You may need to make changes to record the agreement of the landlord, tenant, and any guarantor. You should carefully check the whole document and make appropriate deletions, alterations, and/or additions so it agrees with the instructions you have received. You should record any deletions, alterations, and/or additions to the standard lease conditions as additional provisions in item 22 and **not** in the lease conditions.

- Item 1**
[1.1] **Landlord:**
- Kew Hebrew Congregation Inc Reg No. A0040890W
of 53 Walpole Street, Kew VIC 3101
- Item 2**
[1.1] **Tenant:**
- Giant Steps Melbourne Limited ACN 605 552 283
of
- Item 3**
[1.1] **Guarantor:**
- Nil
- Item 4**
[1.1] (a) **Premises:**
- The premises bordered red on the plan at **Schedule A** to this lease
- (b) **Land:**
- Part of the land in Certificates of Title Vol 4761 Fol 156 and Vol 5509 Fol 647
- Item 5**
[1.1] **Landlord's installations:**
- The fixtures, fittings and furnishings of the **landlord** in the **premises** including those listed in the attached **Schedule B** to this lease
- Item 6**
[1.1] **Rent:**
- \$129,000 per annum plus GST.
- Item 7**
[1.1] **Tenant's installations:**
- Those listed in the attached **Schedule C** to this lease
- Item 8**
[1.1] **Term of the lease:**
- Subject to additional provision 22.11, the period of 5 years commencing on 1 January 2018 ("**Commencement Date**") and expiring on 31 December 2022.

Item 9
[2.1.1]

How rent is to be paid:

The **tenant** must pay the **rent** to the **landlord** in the manner and at such place as the **landlord** directs from time to time and must authorise payment of the **rent** by direct debit from its bank account if asked to do so by the **landlord**.

The **rent** must be paid by equal consecutive monthly instalments in advance by not later than the first day of each month (and the first and last payments if necessary will be proportionate ones). The first **rent** payment must be made on or before the first day of the **term**.

Item 10
[1.1, 2.1.2,
2.1.5 & 5.4]

Building outgoings which the tenant must pay or reimburse:

Subject to the Act, if applicable, the proportion of **building outgoings** payable by the **tenant** is the proportion determined by the **landlord** having regard to the proportion which the lettable value or area of the **premises** bears to the total lettable value or area of the property to which such item relates, or which derives benefit from that item, and taking into account any special factors.

Item 11
[1.1 & 6.2]

Risks which the insurance policies must cover:

- . Fire
- . Flood
- . Lightning
- . Storm and tempest
- . Explosion
- . Riots and civil commotion
- . Strikes
- . Malicious damage
- . Earthquake
- . Impact by vehicles
- . Impact by aircraft and articles dropped from them
- . Internal flood water

and such other risks as the **landlord** reasonably specifies from time to time

Item 12
[2.1 & 2.3.1]

Amount of public risk insurance cover:

\$20,000,000 or other amount reasonably specified from time to time by the **landlord**

Item 13
[1.1]

Period of loss of rent and outgoings insurance:

12 months

Item 14
[2.1.7]

Interest rate on overdue money:

The rate from time to time fixed by the *Penalty Interest Rates Act 1983* (Vic).

Item 15 [2.2.1]	<p>Permitted use:</p> <p>Special school and centre for specialised service provision for children and adults with autism and/or offices for the Tenant</p> <p>[1.14]</p> <p>Application of Act The Act does not apply</p> <p>Reason why Act does not apply: The permitted use is not predominantly retail in nature</p>
Item 16 [2.2.1, 11 & 18]	<p>Review date(s)</p> <p>Term</p> <p>(a) <i>Market review date(s):</i> Not applicable</p> <p>(b) <i>CPI review date(s):</i> Not applicable</p> <p>(c) <i>Fixed review date(s) and percentage or fixed amount increases:</i> Annual fixed percentage increase of 3% on each anniversary of the Commencement Date</p> <p>Further term(s)</p> <p>(a) <i>Market review date(s):</i> Not applicable</p> <p>(b) <i>CPI review date(s):</i> Not applicable</p> <p>(c) <i>Fixed review date(s) and percentage or fixed amount increases:</i> Fixed percentage increase of 3% on the Commencement Date of each Further Term and Annual fixed percentage increase of 3% on each anniversary of the Commencement Date</p>
Item 17 [2.2.1, 11 & 18]	<p>Who may initiate reviews</p> <p><i>Market review:</i> Not applicable</p> <p><i>CPI review:</i> Not applicable</p> <p><i>Fixed review:</i> Review is automatic</p>
Item 18 [12]	<p>Further term(s):</p> <p>3 Further Terms of 5 years, being the periods from:</p> <p>(a) 1 January 2023 to 31 December 2027 (First Further Term);</p> <p>(b) 1 January 2028 to 31 December 2032 (Second Further Term); and</p> <p>(c) 1 January 2033 to 31 December 2037 (Third Further Term).</p>

Item 19
[12]

Earliest and latest dates for exercising option for renewal:

In respect of the First Further Term:

Earliest date: 1 March 2022

Latest date: 1 July 2022

In respect of the Second Further Term:

Earliest date: 1 March 2027

Latest date: 1 July 2027

In respect of the Third Further Term:

Earliest date: 1 March 2032

Latest date: 1 July 2032

Item 20
[Clause 13]

Security deposit:

An amount equal to 3 years Rent from time to time plus GST on those amounts (subject to additional provision 22.7) by way of bank guarantee

Item 21
[Clause 16.1]

The mediation procedure does not apply to this lease

Item 22
[Clause 20]

Additional provisions:

See attached Item 22

ITEM 22 - ADDITIONAL PROVISIONS

22.1 Tenant's Fitout

The Tenant is responsible for its own fitout of the premises. As set out in Schedule C hereof. The Tenant shall be permitted to place discreet signage indicating the nature of the occupant and such signage shall not prevent the Landlord from fixing "for sale" or "to let" signs for the sale or occupation of the Premises or any other part of the Building. Notwithstanding all such signage must first be approved by the relevant authorities in accordance with clause 3.2.14. The Landlord acknowledges and agrees that the Tenant may be required by law and regulation to install certain signs and the Landlord will not object to such signs.

22.2 Tenant's Works

The Tenant will provide the Landlord with the name of contractors to be engaged to carry out the works. The Landlord is responsible for the structural maintenance and repair of the Building on completion of the Tenant's works unless such structure has been compromised by unauthorised work by the Tenant.

22.3 Carpark

The Tenant agrees to use the carpark behind the building for on-site parking for 15 staff during office hours at no additional cost. The Tenant agrees to vacate the car park one (1) hour prior to the Sabbath and Jewish holidays as per a list of dates and times which shall be provided annually in advance to the Tenant by the Landlord or the Kew Hebrew Congregation Inc.

22.4 Hours of operation

The Landlord and Tenant hereby agree that the Tenant shall occupy the demised Premises between the hours of 8.00a.m. and 6.00p.m. Monday to Friday inclusive except that the Tenant shall vacate the Premises and carparks one (1) hour before the commencement of the Sabbath or any holy day and for the duration of such Sabbath or holy day as per the list of dates and times as shall be provided by the Landlord to the Tenant. This list shall be provided on or before the 31st day of October in each year. The Landlord consents to the Tenant occasionally using the Premises for monthly board meetings at night and parent information nights, training and other special activities that are outside the normal hours of operation provided that the Landlord is given reasonable notice of the special activities and provided that the special activities do not coincide with a pre-existing arrangement for the use of the Landlord's premises in a way that would cause a shortage of car parking spaces.

22.5 Statutory Charges

Should the Tenant be entitled to an exemption from municipal and water authority rates and levies and land tax and such other statutory charges the Tenant shall provide details of same to the relevant authorities and shall be entitled to the benefit of such exemption provided said relevant authorities waive or reduce the said rates, levies and taxes. The Landlord further confirms that the Premises are separately metered for the provision of utility services from the utility providers.

22.6 Break Option

- (a) In the event that the Tenant exercises its option for a Further Term, the Landlord may terminate this Lease by giving the Tenant not less than 12 months' written notice of termination at any time which must expire no later than 24 December in that 12 month period.

- (b) Termination of this Lease pursuant to additional provision 22.6(a) does not affect any accrued rights or remedies of either party.

22.7 Bank Guarantee

The Landlord acknowledges and agrees that:

- (a) The Tenant will provide a bank guarantee for the purposes of clause 13 and it may have an expiry date which is not earlier than 6 months after the expiry date of the Further Term.
- (b) Provided that the Tenant is not in breach of this Lease, from the date that is one and a half years after the Commencement Date the Tenant can replace the bank guarantee with a bank guarantee for an amount equal to 2 years' Rent plus GST and the Landlord will return the bank guarantee it holds in exchange for the new bank guarantee.
- (c) Provided that the Tenant is not in breach of this Lease, from the date that is two and a half years after the Commencement Date the Tenant can replace the bank guarantee with a bank guarantee for an amount equal to 1 year's Rent plus GST and the Landlord will return the bank guarantee it holds in exchange for the new bank guarantee and the Landlord will hold that bank guarantee for the rest of the Tenant's occupation of the Premises.
- (d) If the option to renew is exercised, Item 20 will be amended to reflect the bank guarantee provided under additional provision 22.7(c).
- (e) Giant Steps Sydney Limited ACN 087 759 984 (a related body corporate of the Tenant as defined in the *Corporations Act 2001* (Cth)) has provided, on behalf of the Tenant, a bank guarantee for the amount of \$360,000 plus GST as at the Commencement Date, which satisfies the Tenant's obligations to provide the Security Deposit under clause 13.

22.8 Assignment to Related Body Corporate

Despite clause 4, the Landlord agrees that the Tenant may assign this Lease to a related body corporate (as that term is defined in the *Corporations Act 2001* (Cth)) of the Tenant, without the Landlord's consent. The Tenant will promptly notify the Landlord of an assignment under this clause 22.8.

22.9 Head Lease Condition Precedent

- (a) In this clause 22.9:
 - (i) "**Head Lease**" means the undated lease between Barry John Fink and George Castan and Jeffrey Mahemoff (as landlord) (together the "**Head Landlord**") and Kew Hebrew Congregation Inc (as tenant) a copy of which is attached as Schedule D; and
 - (ii) "**New Head Lease**" means a new lease between the Head Landlord (as landlord) and Kew Hebrew Congregation Inc (as tenant) for a term expiring no earlier than 31 December 2035,
- (b) This Lease is subject to and conditional upon the Landlord entering into the New Head Lease on or before 31 December 2017. If the Landlord does not procure a New Head Lease by 31 December 2017, this document is of no further force and effect.
- (c) Subject to additional provision 22.3 of the New Head Lease, this Lease will automatically terminate if the New Head Lease is terminated.
- (d) Termination of this Lease pursuant to clause 22.9(b) does not affect any accrued rights or remedies of any party.

- (e) The Tenant acknowledges that the Landlord intends that the New Head Lease contain some variations to the Head Lease which will not materially detrimentally affect the Tenant's interest or rights under this Lease.
- (f) The Landlord must use reasonable endeavours not to:
 - (i) do anything which would result in the early termination of the New Head Lease;
 - (ii) breach or vary the New Head Lease in a manner which would materially detrimentally affect the Tenant's interest or rights under this Lease.

22.10 Amendments to Lease Conditions

- (a) Clauses 2.1.8(a) and 2.1.11 are deleted.
- (b) The second sentence in clause 4.5 is deleted so long as Giant Steps Melbourne Limited ACN 605 552 283 or a related body corporate (as that term is defined in the *Corporations Act 2001* (Vic)) is the **tenant** in the possession of the **premises**.
- (c) Clause 7.1.7 is deleted and replaced with the following new clause 7.1.7:
*"7.1.7 the **tenant**, without the **landlord's** written consent -*
 - (a) discontinues its business on the **premises**, or*
 - (b) leaves the **premises** unoccupied for a period of more than 85 days in any year.*
- (d) A new clause 14.4 is inserted as follows:
"14.4 The parties agree that notices of default or termination may not be served by either party via facsimile or email."

22.11 Sub-letting

- (a) The Tenant may sub-let the Premises or part thereof with the consent of the Landlord in accordance with clause 4 of this Lease.
- (b) Any act of a subtenant or licensee which, if it had been done by the Tenant, would have been a breach of this Lease, will be deemed to be a breach of this Lease by the Tenant.

22.12 Works

- (a) In this additional provision the listed expressions in bold print have the meaning set out opposite them:

EXPRESSION	MEANING
Approval	any permit, approval, authorisation, consent or licence
Cost	any reasonable cost, charge, expense, outgoing, payment, fee, liability or penalty of any kind, including legal and professional fees
Landlord's Consultant	any advisor to the Landlord (such as an architect, engineer, valuer or other professional person) considered by the Landlord to have the necessary qualification or experience relevant to any particular task
Minor Works	Works which: <ul style="list-style-type: none"> 1 are non-structural;

- 2 do not require any Approval;
- 3 do not affect the Building's services or the external appearance of the Building.

Works

any works (including Minor Works) to, at, or in the Premises (including alterations, additions, modifications, improvements, earthworks, the installation of fixtures, fittings, plant or equipment and works associated with make good and reinstatement) whether carried out before or after the start of the Lease

- (b) Subject to clause 22.12(m) the Tenant must not undertake any Works without the Landlord's prior written approval. Approval must not be unreasonably withheld or delayed if the Works are necessary for the Permitted Use and do not adversely affect the Building's services or the external appearance of the Building.
- (c) The Tenant must submit drawings and specifications to the Landlord which show sufficient detail and specifications to allow the Landlord to readily identify from them the proposed Works and the intended materials and colour schemes. The drawings and specifications must be prepared by a suitably qualified consultant approved by the Landlord, acting reasonably.
- (d) The Landlord may refer the drawings and specifications to the Landlord's Consultant for its approval. In approving or rejecting the proposed Works the Landlord's Consultant will act reasonably and have regard to the impact which the proposed Works may have on the Building and the Building services.
- (e) The Landlord may impose reasonable conditions on any approval it gives to the proposed Works.
- (f) After obtaining the Landlord's approval and before starting its proposed Works, the Tenant must obtain all Approvals required by law.
- (g) The Tenant must obtain the Landlord's prior approval, which must not be unreasonably withheld, to every party which it intends to use to carry out the proposed Works. The Landlord's approval will not be unreasonably withheld in respect of any party that proves to the Landlord's reasonable satisfaction that it has the necessary skills, experience and standards of competence and behaviour and appropriate insurances are in place (either held by the contractor or the Tenant) noting the Landlord and the Tenant for their respective interests.
- (h) The appropriate insurances under clause 22.12(g) include a public liability policy for an amount of not less than \$20,000,000 and a contractor's all risk policy in respect of the proposed works for the full value of the proposed Works and a reasonable amount for consequential damage.
- (i) The Tenant must ensure that any Works approved by the Landlord in accordance with this clause 22.12 are carried out:
 - (i) at its own Cost;
 - (ii) by contractors approved by the Landlord in accordance with paragraph (g);
 - (iii) in a proper and workmanlike manner to the Landlord's reasonable satisfaction;

- (iv) under the supervision of the Landlord's Consultant if reasonably required by the Landlord, having regard to the nature of the Works;
 - (v) in accordance with the plans and specifications approved by the Landlord;
 - (vi) in accordance with all laws; and
 - (vii) in accordance with the Landlord's reasonable requirements and directions.
- (j) If the Tenant is in breach of any obligation in clauses 22.12(b) to 22.12(i) the Landlord is entitled to enforce an immediate stoppage of any Works, eject every person currently on site who intends to carry out Works or who in the Landlord's opinion may be unsafe and refuse entry to the Premises to the Tenant or any of the Tenant's Agents intending to carry out any Works until such time as the Tenant proves to the Landlord's reasonable satisfaction that the requirements of clauses 22.12(b) to 22.12(i) have been, or will be, met.
- (k) As soon as the works are complete the Tenant must provide the Landlord with:
- (i) as built plans and specifications of the Works;
 - (ii) a certificate by the Landlord's Consultant to the effect that the Works have been carried out in accordance with the approved drawings and specifications and all relevant laws or if the Landlord's Consultant is not available or willing to provide such a certificate a certificate from another reputable and experienced consultant; and
 - (iii) copies of all certificates, clearances or Approvals relating to the Works or occupancy of the Premises.
- (l) The Tenant must pay all Costs incurred by the Landlord or for which the Landlord becomes liable, of and incidental to any Works proposed by the Tenant, including all **costs** arising out of the examination and approval of plans, drawings and specifications, the inspection or supervision of any Works and any investigation or report in relation to any aspect of the Works (including those payable to the Landlord's Consultant).
- (m) The Landlord's prior approval is not required for Minor Works or make good and reinstatement works and clauses 22.12(c) to 22.12(i) do not apply in relation to Minor Works or make good and reinstatement works.
- (n) The Tenant must ensure that all Minor Works and make good and reinstatement works are carried out:
- (i) at its own Cost;
 - (ii) in a proper and workmanlike manner to the Landlord's reasonable satisfaction; and
 - (iii) in accordance with all laws.

EXECUTED AS A DEED ON

DATE: the 16 day of JUNE 2017

LANDLORD

SIGNED on behalf of **KEW HEBREW CONGREGATION INC** by its duly authorised representatives

s47F

Signature of representative

s47F

Name of representative (print)

s47F

Signature of representative

s47F

Name of representative (print)

TENANT

SIGNED on behalf of **GIANT STEPS MELBOURNE LIMITED** by its duly authorised representatives

s47F

Signature of representative

s47F

Name of representative (print)

s47F

Signature of representative

s47F

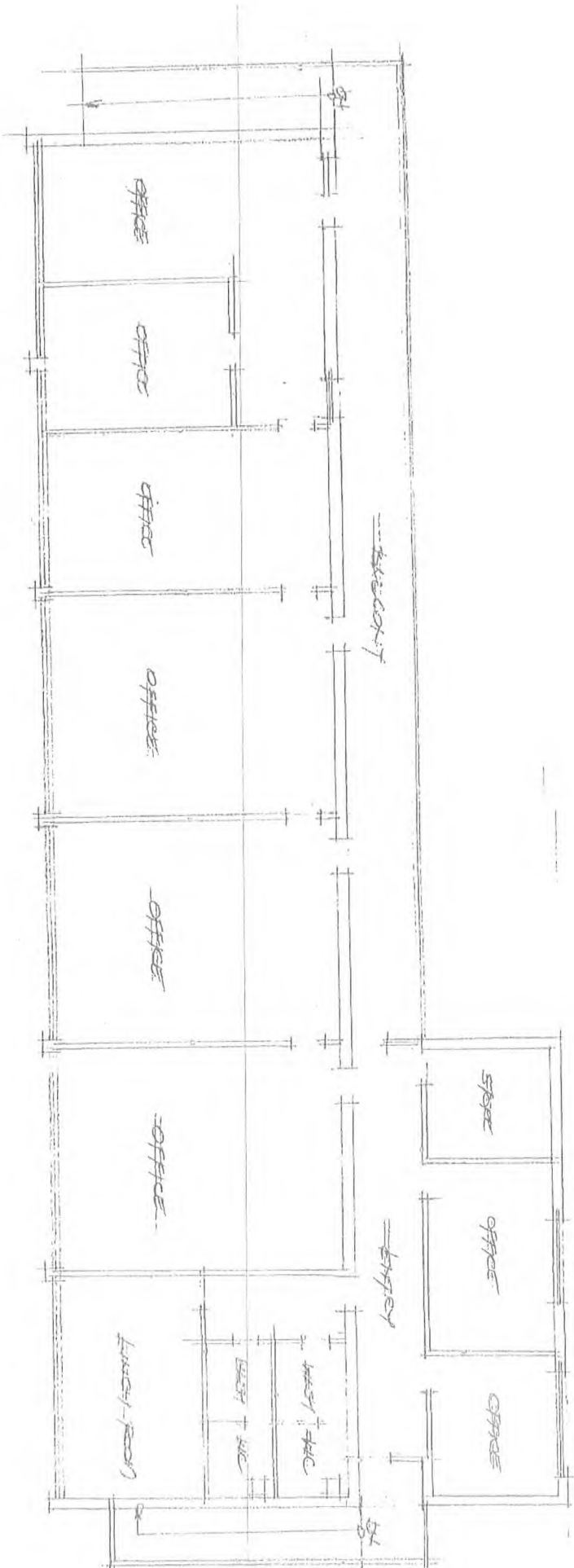
Name of representative (print)

MORTGAGEE CONSENT

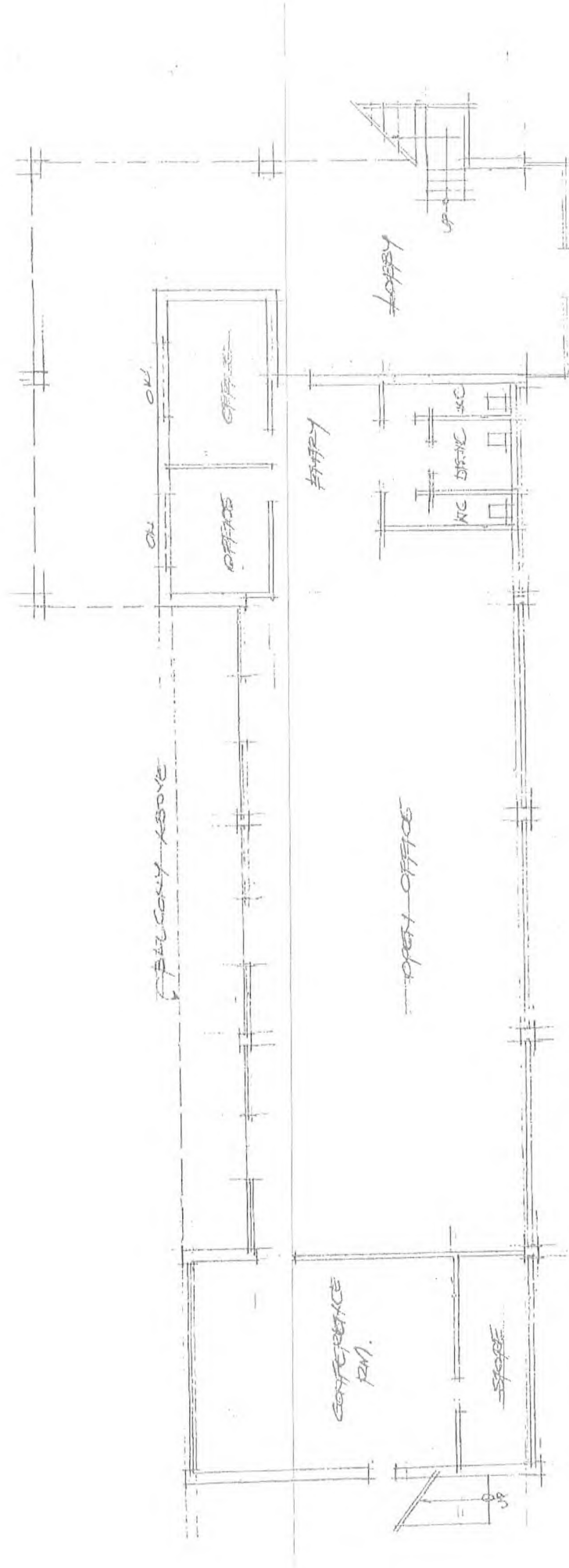
MORTGAGEE

Not applicable

SCHEDULE A - PLAN



FIRST FLOOR PLAN
SCALE 1/8" = 1'-0"



GROUND FLOOR PLAN
DATE 11/1/00

SPRING STREET

STREET BOUNDARY

0.6 x 4.9
(approx)

2

3

4

5

6

7

KHC

KHC

BOUNDARY

8

9

10

11

12

13

14

15

BOUNDARY

BOUNDARY

6100

EXPENSE 147007
5045 12100



SCHEDULE B

Landlord's Installations

"Landlord's Installations" are those items, fittings and fixtures that are installed by the Landlord or the Tenant before or after the commencement of the Lease and which, by their nature and use, are considered plant, equipment, fixtures or chattels that have become permanently and securely affixed to the land or to the building. To avoid doubt, but without limiting the above definition, items such as structural and building works, plumbing, electrical, doors, ceilings, carpets and other fixed floor coverings, light fittings, fixed heating and cooling systems will be considered Landlord's installations.

SCHEDULE C

Tenant's Installations

"Tenant's Installations" are those items, fittings and fixtures that are installed by the Tenant or Giant Steps Sydney Limited ACN 087 759 984 (a related body corporate of the Tenant within the meaning of the *Corporations Act 2001* (Cth)) before or after the commencement of the Lease and which, by their nature and use are not considered plant, equipment fixtures or chattels that have become permanently and securely affixed to the Land or to the Building. To avoid doubt, but without limiting the above definition, items such as furniture (affixed or not), office partitions, telephone systems and alarm systems will be considered Tenant's installations. At the expiry of the Lease, the Tenant's installations may become the Landlord's Installations at the Landlord's discretion.

SCHEDULE D - HEAD LEASE

GIANT STEPS MELBOURNE
CASHFLOW

	2019	2020	2021	2022	2023	2024
	\$	\$	\$	\$	\$	\$
Cash Flows from Operating Activities						
Donations and grants received	2,050,449	12,237,109	4,060,516	5,551,789	7,116,924	8,465,603
Interest received	-	-	-	-	-	-
Cash payments to suppliers and employees	(1,985,316)	(2,403,709)	(4,018,237)	(5,542,556)	(6,998,620)	(8,340,257)
Net cash inflow from operating activities	<u>65,133</u>	<u>9,833,400</u>	<u>42,279</u>	<u>9,233</u>	<u>118,304</u>	<u>125,346</u>
Cash Flows from Investing Activities						
Payments for financial assets	-	-	-	-	-	-
Property, Plant & Equipment	-	(20,000)	(9,720,000)	(40,000)	(40,000)	(40,000)
Total Non-Current Assets	<u>-</u>	<u>(20,000)</u>	<u>(9,720,000)</u>	<u>(40,000)</u>	<u>(40,000)</u>	<u>(40,000)</u>
Net increase/(decrease) in cash held	65,133	9,813,400	(9,677,721)	(30,767)	78,304	85,346
Cash at beginning of year	320,946	386,079	10,199,479	521,758	490,991	569,295
Cash at end of the financial year	<u>386,079</u>	<u>10,199,479</u>	<u>521,758</u>	<u>490,991</u>	<u>569,295</u>	<u>654,640</u>



Australian Government

Department of Infrastructure, Regional Development and Cities

Request for Information

Community Development Grants Programme

Before you begin

The Department is asking for information about your project proposal so that we may commence developing a Funding Agreement should the Australian Government decide to approve funding for the project. Missing or unclear information may delay the development of the Funding Agreement.

Please note that information requested in this document may be provided to relevant Commonwealth, State and/or local government agencies, organisations and individuals, including those you identify in this proposal. The purpose of this process is to substantiate your claims and/or statements, and to verify the capacity of your organisation to manage Australian Government funds and deliver the project. It will also seek comment on the viability of the proposal and, if appropriate, identify if the proposal is eligible for funding through an alternative funding stream.

Information relating to individuals will be protected under the Privacy Act 1988. Requests for access to such information, where rejected by proponents, will be dealt with under the provisions of the Freedom of Information Act 1982.

You will need to complete Request for Information and submit with required supporting documentation to support your application.

This information enables the Department to undertake a value with relevant money assessment and provide advice to the Minister prior to an Agreement being negotiated and funding being released. The Department will contact proponents if further information is required.

Should you have any questions on how to answer any part of the Request for Information please submit your query to cdg@infrastructure.gov.au.

How do I submit my Request for Information?

Complete and submit this form and the necessary support documents via email to: cdg@infrastructure.gov.au as soon as possible.

If your response is likely to include documents that cannot be sent electronically, please submit this form and all necessary documents in hard copy to:

Community Development Grants Programme
Regional Programs Branch
Department of Infrastructure, Regional Development and Cities
GPO Box 594
CANBERRA ACT 2601

REQUEST FOR INFORMATION

Organisation Details

1. Organisation details

Legal Name	Giant Steps Melbourne Ltd	ABN	46606552283
Trading Name	Giant Steps Melbourne	ACN	606552283
GST Status	Registered / Not Registered		

2. What is your Business Structure?

Local Government	
Incorporated Association	
Sole Trader	
Partnership	
Company	Public Company Limited By Guarantee
Trust – provide a copy of the trust deed	
Other, please specify	

3. Your bank account details. Provide details of the bank account where project funding will be deposited

Bank Name	s47F
BSB	
Account Name	
Account Number	

4. Your Organisation's Physical (registered) Address

Street Address Line 1	11 Malmsbury Street
Street Address Line 2	
Suburb/Town	Kew
State/Territory	VIC
Postcode	3101
Organisational Email	
Organisational Website	www.giantsteps.net.au

5. Your Organisation's Postal Address

Postal Address Line 1	PO Box 586
Postal Address Line 2	
Suburb/Town	Kew
State/Territory	VIC
Postcode	3101

6. Authorised Person Contact Details
(e.g. CEO or the person authorised to sign Deed of Agreements)

Title (eg. Mr/Mrs/Ms/Dr)	s47F
First Name	
Surname	
Position	Chairman
Telephone	s47F
Email Address	

7. Project Manager Contact Details
(e.g. the person who will lead the implementation of your project)

Title (eg. Mr/Mrs/Ms/Dr)	s47F
First Name	
Surname	
Position	Director
Telephone	s47F
Email Address	s47F
Additional Details (Relevant to the project, qualifications, experience, and professional memberships, if applicable)	

8. Key Personnel within the Organisation who will be involved in the project delivery, other than the authorised person or project manager

Title (eg. Mr/Mrs/Ms/Dr)	s4
First Name	s47F
Surname	s47F
Position	National Director of Finances and Administration
Telephone	s47F
Email Address	s47F
Additional Details (Relevant to the project, qualifications, experience, and professional memberships, if applicable)	

9. Within the last five (5) years, has your Organisation been subject to an event such as a Government investigation, liquidation, litigation or significant change of financial position

No	Yes
If Yes, please note which of the following events occurred and provide details below	
Government Investigation on your organisation or related entities	
Litigation or liquidation proceedings	
Significant (adverse) change of financial position not reflected in Financial statements provided	
Any other particulars likely to adversely affect your capacity to undertake this project	

Project Details

10. Project Title – Use the title from the confirmation of the election commitment. If proposing an alternative project title, provide reasons why.

Giant Steps Autism School Expansion Project

11. Project location. If a street number is not known, please provide the Lot number.

Street Address Line 1	11 Malmsbury Street
Street Address Line 2	
Suburb/Town	Kew
State/Territory	VIC
Postcode	3101
Longitude	
Latitude	
Federal Electorate	Kooyong

12. Detailed Project Description (Describe in less than 150 words what the project is doing, ie construction of sport precinct including two Rugby League fields, six netball courts and amenities block including change rooms, public facilities, meeting rooms and cafeteria; upgrade of swimming pool to include new grandstand and children's waterpark; or installation of lighting at sports field including purchase and installation of four poles and footings, 16 x 15000W MZ lights and 16 shields and upgrade of existing power supply on site.). **PROJECT BENEFITS ARE TO BE INCLUDED AT Q14 BELOW).**

Construction of secondary school building including teaching and therapy spaces, student bathrooms, kitchen facilities, staff facilities and playground spaces.
Construction of post-school program and community facilities building including teaching and therapy spaces, commercial kitchen, staff facilities and community hall.
Construction of parking spaces.

13. If the CDG funded project is part of a larger project, please provide details below (ie CDG is funding one stage of a multi-stage project).

N/A

14. Detail/list the economic and community benefits of the proposal (and the larger project if applicable), and how it contributes to programme outcomes.
(See Guidelines - Section 1.1 Programme Outcomes).

Economic benefits fall into several categories including employment, education, living independence and quality of life. It is reasonable to assume that improved educational performance can lead to greater opportunities in relation to successful integration into the community, less reliance of specialised support over time and greater employment opportunities (with or without ongoing support). The economic benefits of greater employment will be created initially from the employment opportunities created by the construction process itself and once the project is established further employment opportunities will be created by the on-going employment of teachers, therapists, teachers' aides and administration staff. Research has indicated that individuals with autism have a low chance of obtaining competitive employment. Increasing opportunities created by enhanced educational outcomes should have a positive impact on levels of employment. Improvements in social and communication skills have a direct impact on employment

outcomes for individuals with autism. Giant Steps has achieved registration and currently has students participating in VCAL courses and Giant Steps has commenced a small social enterprise in which a number of students are participating. Expanding the school will provide the opportunity for increased numbers of students to participate in VCAL courses and create prospects for employment opportunities for these students.

Improved capacity of individuals with autism to live independently can result in a reduction of services required to support accommodation, community access and respite care.

The economic and community benefits tend to overlap with regard to creating better outcomes for individuals with autism. While there is an economic benefit, we have addressed the question in the Community Benefits section below.

Community Benefits

Successful, individualised programs for children and young adults with autism means that often they are able to stay in the family home longer and the home environment is a more stable one allowing parents to maintain employment and siblings to not have their development and educational opportunities disrupted. The development of individual living skills and the capacity to participate in the community deliver long-term economic benefits with regard to potential costs of care over the lifetime of an individual with autism. The presence of a service such as Giant Steps in the community allows for a greater understanding of autism by the community and creates the opportunity for the training of professionals in the field.

15. How do you propose to measure the economic and/or social benefit outcomes which will be achieved as a result of the completed project.

The economic benefits will be measured in employment growth figures within Giant Steps Melbourne. While it is difficult to measure the economic benefit for the students it would include the ability to participate in supported employment or a Giant Steps Social Enterprise and to live as independently as possible. The implementation of a transdisciplinary program and inclusion of mental health specialists greatly enhance outcomes for our students.

Students having a purpose and a place to go where they are understood resulting in them being included in the community significantly improves the outcomes for both the students and their families. In our experience, an additional social benefit is family stability where we observe the benefits of successfully implemented programs being that families tend to stay together consistent with national averages as opposed to family breakdown in the disability sector which is considerably higher than the national average.

16. Has your organisation prepared a Business Case/Plan, or undertaken a Feasibility Study, Market Research or Community Consultation process within the last two years in relation to this project?

No	Yes
If Yes , please supply details below. If documents have been developed please supply as evidence with your proposal.	
<p>Giant Steps has been operating autism services as described in this project in Sydney for 24 years and commenced operations in 2016 in Melbourne with a small primary and secondary school. Giant Steps Sydney has expanded and now provides services to over 100 children and young adults with autism across early learning, primary, secondary and post-school programs. The demand we have experienced in Sydney over an extended period of time is mirrored in Melbourne and our existing parents are extremely supportive of both the expansion of our existing facilities and the addition of post-school programs. Giant Steps has an extensive waiting list and is very aware of the unmet need in Melbourne.</p>	

17. How many full-time equivalent employee construction jobs and how many full-time equivalent employee ongoing jobs will be created by this project?
Please note a full-time equivalent employee (FTE) is based on an average of 1,800 hours over a 48 week period.

s47G

18. Please provide the following project dates:

Estimated Project Start Date:	11 April 2019
Estimated Project Finish Date:	30 June 2021
Estimated Construction Start Date:	1 February 2020
Estimated Construction Finish Date:	31 May 2021

19. Indicate the current stage of development of your proposal. Provide any supporting documents if available (i.e. concept or preliminary designs, final designs, independent cost estimates, ready to commence tender/procurement process or preferred contractor selected and contracted for the project.)

Document	Stage of development
Initial Submission dated 3 December 2018 attached including preliminary designs	Funding Application stage
Project support letter from site lessor	Preliminary scoping of project
Initial concept drawings	Planning discussions with architects now that offer of funding has been received

20. Identify and provide details of who will own the asset on completion. Where land and buildings are owned by a Third Party, have leasing arrangements been confirmed and secured? (Written evidence must be provided).

Organisation	s47F and s47F and s47F as trustees of the Norman Smorgon House Trust
ABN / ACN	
Street Address Line 1	
Street Address Line 2	
Suburb/Town	
State/Territory	
Postcode	
Leasing arrangements	Giant Steps Melbourne Limited has a sub-lease in place for its current premises with the Kew Hebrew Congregation. The Kew Hebrew Congregation has a head-lease in place with the Norman Smorgon House Trust who is the ultimate owner of the land. The sub-lease backs onto the head-lease appropriately and the ultimate owner has step in rights should anything happen to the Kew Hebrew Congregation so that our

	<p>lease continues. We have received support from the trustees of the Norman Smorgon House Trust that the same structure would be extended to cover new land allocated for this project.</p> <p>This structure was used successfully for our previous grant with the VISBGA.</p> <p>The sub-lease expires on 31 December 2037. The head-lease expires on 1 January 2038.</p>
--	--

21. Provide detail of who will manage and maintain the project after completion and who will provide the funding.

The Board of Directors and management of Giant Steps Melbourne, along with the Senior Executive of Giant Steps Australia, will manage and maintain the project. Funding will be provided by recurrent State and Federal education funding as well as funds received by participants through the NDIS. Funding will also be supplemented by fundraising activities. If required, Giant Steps Melbourne could be additionally supported by Giant Steps Australia and the Giant Steps Sydney Endowment Fund.

22. Provide information on at least three projects your organisation has managed in the past five years which have received funds from either the Commonwealth, state government or local government authority (local government authority funded projects do not apply for applicants who are a local government authority).

Giant Steps Melbourne opened in January 2016 and therefore has only received one significant grant to refurbish and expand the existing facilities. We have received some smaller grants to contribute to the cost of smaller capital projects. The executive team at Giant Steps Australia has managed several large grants since its inception in 1995.

Jurisdiction and managing Department Name	Project Name	Funding Amount
Federal Government Funding administered by Victorian Independent Schools BGA Ltd	Project Reference CGP 2017/30327/1 Refurbishment of school facilities for age appropriate infrastructure for students with autism allowing expansion of Primary and Secondary school.	\$1,278,000.00

Financial Details

23. What is the total project cost? (Use GST exclusive amounts) **\$ 9.7 million**
24. What is the amount of funding committed by the Australian Government? (Use GST exclusive amounts) **\$ 9.7 million**
25. Partner funding. Complete the table with details of all confirmed funding to this project, and the status of the funding.

Partner name	ABN	Amount (GST Excl)	Cash / In Kind	Received, Confirmed, To be confirmed
N/A				

26. Provide details of the arrangements in place to provide for any cost overruns or funding shortfalls on your proposed project.

Giant Steps has a well-established fundraising model and the capacity to raise additional capital funds to cover any cost overruns or funding shortfalls. In addition, Giant Steps Melbourne can rely on Giant Steps Australia and the Giant Steps Sydney Endowment Fund for financial support on the project if required.

We have provided the annual accounts of the Giant Steps Sydney Endowment Fund as well as Giant Steps Australia (operating as Giant Steps Sydney).

27. Have you completed a tender/procurement process and appointed a preferred contractor or do you have a cost estimate which has been independently developed/assessed?

Please provide details below:

We are in the process of appointing an architect who will assist in the design and tender process.

We have completed our estimate based on sizing from our 20+ years of experience running services at this scale in Sydney. The square meter rates were estimated by referencing two builders and two architects who all have extensive experience building schools. Some of these firms also have experience with special needs facilities. The playground costings were estimated with the help of a landscape builder who has built our existing playgrounds and knows the site well. He has also build playgrounds and landscapes for many large schools across Melbourne.

28. Are there any parts of the project that have already commenced?

No	Yes
If Yes, please provide details below: Concept designs and engagement of architect to create detailed schematics and appropriate tender documents.	

29. Budget Table (this is a summary of either the contracted Budget or quantity surveyor cost estimate)

Cost Item	Description of Cost Item	Total Estimated Cost (\$ (GST exclusive)
Not yet at the stage to complete this section – will provide details once established.		

List of Cost Items

Planning / Design

Construction/Fit-out

Research and Development

Plant/Equipment Hire

Plant/Equipment Purchase

Government Approvals

Operating Costs (e.g. rent, computers, etc)

Wages, salary and superannuation

Consultants/contractors

Project Management

Materials

Training

Marketing/Promotion

Legal/accounting

Other Costs


NOTE1: *Evidence of these costs are to be provided as a required supporting document (e.g. cost estimate, quotes, market comparisons, valuations, contracted cost, etc)*

NOTE2: *Australian Government Funding will not be provided for ongoing operation and maintenance costs or for salaries for existing staff members of the funding proponent organisation.*

REQUIRED SUPPORTING INFORMATION

- Audited financial statements for the last two (2) years (only required for projects with a total project cost over \$80,000); - attached
- Cash flow forecasts for the next five (5) years (only required for projects with a total project cost in excess of \$1.5 million for state or local government authorities or \$1 million for other organisations); - attached
- Business Plan and/or Feasibility Study (if applicable); - attached Strategic Plan
- Project Management Plan (if applicable);
- Market research/community consultation (if applicable)
- Asset Operations Management Plan (if applicable);
- Confirmation of partnership funding including evidence of bank borrowings (if applicable)
- Evidence of third party leasing arrangements (if applicable) – attached Lease and Letter of Support for site expansion
- Designs – in Progress
- Cost estimate or contracted cost – in Progress

Legal Authorisation

I		<full name of Authorised Officer>
as	National Director of Finances and Administration	<position/title>
of	Giant Steps Melbourne Ltd	<organisation name>
	PO Box 586, Kew, VIC 3101	<postal address> >

confirm that:

- I am a person authorised to make this declaration on behalf of my organisation and all relevant persons have made a full disclosure of information.
- The information provided in this form and all appended documents is complete and correct. I understand that information provided in this *Request for Information* will form the basis of the funding agreement and that giving false or misleading information is a serious offence.
- The Department of Infrastructure, Regional Development and Cities (the Department) is authorised to undertake the necessary steps to assess the proposal from my organisation by checking the information provided in this proposal, or by obtaining additional information from:
 - Departmental databases and records, including information related to previous funding provided to my organisation;
 - Other Australian Government agencies such as the Australian Taxation Office and the Australian Securities and Investments Commission;
 - State, Territory or Local Government agencies;
 - Law enforcement agencies;
 - Credit reference agencies;
 - Courts or Tribunals; and
 - Any other appropriate organisation, information source or person as reasonably required to perform background checks.
- I agree that the Department may arrange for an Independent Viability Assessment (IVA) of my project by an external adviser or consultant to the Department. Where applicable, the Department may request a yearly breakdown of costs for on-going operational and maintenance of the complete project for a minimum of five (5) years.
- To the best of my knowledge, I have disclosed (Part A Declaration of Conflict of Interest) all actual, apparent or potential conflicts of interest that would prevent my organisation from proceeding with the proposal outlined in this *Request for Information* or from entering into a Funding Agreement with the Australian Government to deliver a project which relates to this *Request for Information*.

Signed


s47F

Date: 29/04/2019

Declaration of Conflict of Interest

Please complete either Part I or Part II of the Declaration of Conflict of Interest

Part I – No Known Conflict

I confirm that at the time of signing, to the best of my knowledge I am unaware of any actual, apparent or potential conflicts of interest that would prevent my organisation from proceeding with the proposal outlined in this *Request for Information* or from entering into a Funding Agreement with the Australian Government to deliver a project which relates to this *Request for Information*..

I undertake that if at any time I become aware that I, or any other employees or persons associated with the Giant Steps Melbourne Ltd have an actual, apparent or potential conflict of interest, then I will:

- a) immediately notify the Department of Infrastructure, Regional Development and Cities in writing of that Conflict and of the steps the <name of proponent organisation> propose to take to resolve or otherwise deal with the Conflict;
- b) make full disclosure to the Department of Infrastructure, Regional Development and Cities of all relevant information relating to the Conflict; and
- c) take such steps as the Department of Infrastructure, Regional Development and Cities may, if they choose to, reasonably require to resolve or otherwise deal with that Conflict.

I understand that if I fail to notify the Department of any actual, apparent or potential conflicts of interest or am unable or unwilling to resolve or deal with the Conflict as required by the terms noted above, the Department of Infrastructure, Regional Development and Cities may seek to terminate any Funding Agreement established in relation to a project which relates to this *Request for Information*.

s47F

(signature)

s47F

(printed name)

29 April 2019

(date)

s47F

(signature of witness)

s47F

(printed name of witness)

29 April 2019

(date)

Part II - Disclosure of Interests

I disclose the following interests:

.....
.....

.....
.....

.....

I undertake that if at any time I have an actual, apparent or potential conflict of interest, then I will:

- a) immediately notify the Department of Infrastructure, Regional Development and Cities in writing of that Conflict and of the steps the <name of proponent organisation> propose to take to resolve or otherwise deal with the Conflict;
- b) make full disclosure to the Department Infrastructure and Regional Development of all relevant information relating to the Conflict; and
- c) take such steps as the Department of Infrastructure, Regional Development and Cities may, if they choose to, reasonably require to resolve or otherwise deal with that Conflict.

I understand that if I fail to notify the Department of Infrastructure, Regional Development and Cities of any actual, apparent or potential conflicts of interest or am unable or unwilling to resolve or deal with the Conflict as required by the terms noted above, the Department of Infrastructure, Regional Development and Cities may seek to terminate any Funding Agreement established in relation to a project which relates to this *Request for Information*.

.....
(signature)

.....
(printed name)

.....
(date)

.....
(signature of witness)

.....
(printed name of witness)

Any information disclosed in this form will only be used by the Australian Government for the purposes of assessing CDG proposals and will be maintained in accordance with the Privacy Act 1988.

STATEMENT OF COMPLIANCE

I, s47F *National Director of Finances and Administration, Giant Steps Melbourne Ltd*, make the following statement for the benefit of the Department of Infrastructure, Regional Development and Cities:

Having made diligent inquiries, I have reasonable grounds to believe the organisation itself, and staff working with children on behalf of my organisation in relation to the Department of Infrastructure, Regional Development and Cities grant activity:

- comply with relevant legislation relating to requirements for working with children in the jurisdiction in which they work; and
- have complied with relevant legislation in their jurisdictions relating to mandatory reporting or suspected child abuse and neglect as required or otherwise defined by state or territory legislation.

I undertake to ensure that all staff will continue to comply for the duration of any grant agreement *Giant Steps Melbourne* hold with the Department of Infrastructure, Regional Development and Cities.

Signed:

s47F

Date: 29 April 2019

FVA CALCULATOR INFO

CDG 1085

s47G

TERMINOLOGY	Liquid assets		Liabilities	Liabilities	Stock on hand.	Liquid assets.	Total liabilities	Net equity	This will feed into the Net Operating Result below.	Total cash/income received	Total cash payments.
	Cash and receivables (Sum of cash on hand plus soon-to-arrive money [generally from accounts owing])		Debts (Obligations of the entity expected to be met in the next 12 months)	Debts (Obligations of the entity that <u>do</u> not require payment within the next 12 months)	(Goods or property held for sale)	(All assets, current and non-current)	Debts (Sum of all monies owed to other entities as a result of past transactions or other past events)	(The residual interest in the assets of the entity after deduction of its liabilities)	Profit Loss Statement Net profit/loss for the year (Final operating result - total revenue less total expenses, total taxes and total dividends)	(Monies deposited into bank)	

s47G

CALCULATES FOR YOU - ONLY CHANGE YEARS

s47G

**Giant Steps Australia Limited
(formerly known as Giant Steps
Sydney Limited)**

ABN 51 087 759 984

**Annual report
for the year ended 31 December 2017**

Giant Steps Australia Limited (formerly known as Giant Steps Sydney Limited)

ABN 51 087 759 984

Annual report - 31 December 2017

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Giant Steps Australia Limited (formerly known as Giant Steps Sydney Limited)
Directors' report
31 December 2017

The directors present their report on Giant Steps Australia Limited (formerly known as Giant Steps Sydney Limited) (the "Company") for the year ended 31 December 2017 and the auditor's report thereon.

Directors

The following persons were directors of the Company during the whole of the financial year and up to the date of this report, unless otherwise stated:

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Information on directors

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Giant Steps Australia Limited (formerly known as Giant Steps Sydney Limited)
Directors' report
31 December 2017
(continued)

Information on directors (continued)

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Objectives, Strategy and Performance Measurement

The Company seeks to develop intensive therapeutic and educational programs under a transdisciplinary model of service provision to enable children and young people with autism to reach their full potential. The Company also seeks to provide support to families, to improve the understanding of autism in the wider community and to develop best practice amongst carers and professionals.

Through research and development pedagogical models have been developed specific to the needs of children and young people with autism. These models are recognized as the leading edge in autism intervention.

Funding models that include financial support from government, corporations, fundraising events and individual donations provide a strong funding base for the Company operations. The Company continues to ensure it liaises with government on a regular basis to have input into any funding changes and continues to build a strong corporate and parent network to assist with annual fundraising targets.

Giant Steps staff are employed under a competency based model and participate in an extensive development program as part of their employment.

Performance is measured on numerous levels including Board of Studies registration and accreditation; accountability for all government funding received; parent and staff satisfaction surveys; financial audits; accountability reporting for corporate sponsorship and donations received and detailed reporting around performance of students across the organisation.

The Board of Directors as well as the Executive Staff of the Company maintain close scrutiny of all aspects of the financial management of the organisation.

Principal activities

The principal activities of the Company include the operation of a school, a community college and a range of smaller services for children and young adults with autism spectrum disorder and their families. The school is registered and accredited by the NSW Board of Studies and includes early intervention, kindergarten to year 6 and a secondary program.

GS Community College caters for young people with a diagnosis of autism within an adult learning framework. Additional services include the provision of out of school hours care, vacation care and outreach programs.

Dividends

As the Company is limited by guarantee and has no share capital, no dividends are payable.

Review of operations

The deficit of the Company for the year ended 31 December 2017 was \$52,161 (2016: surplus \$631,503).

Significant changes in the state of affairs

The Company changed its name from Giant Steps Sydney Limited to Giant Steps Australia Limited on 31 July 2017.

The introduction of the National Disability Insurance Scheme (NDIS), replaces funding previously provided by the Aging, Disability and Homecare NSW (ADHC), a division of the Department of Family and Community Services NSW. NDIS participants receive support from the NDIS based on their individual needs and assessment.

Except for the significant changes mentioned above, there have been no other significant changes in the state of affairs of the Company during the year.

Event since the end of the financial year

No matter or circumstance has arisen since 31 December 2017 that has significantly affected the Company's operations, results or state of affairs, or may do so in future years.

Likely developments and expected results of operations

Further information on likely developments in the operations of the Company and the expected results of operations have not been included in this annual report because the directors believe it would be likely to result in unreasonable prejudice to the Company.

Environmental regulation

The Company is not affected by any significant environmental regulation in respect of its operations.

Meetings of directors

The numbers of meetings of the Company's board of directors and of each board committee held during the year ended 31 December 2017, and the numbers of meetings attended by each director were:

	Full meetings of directors	
	A	B
s47F	7	7
	6	7
	6	7
	4	7
	3	7
	7	7
	5	7
	5	7
	3	7
	3	7

A = Number of meetings attended

B = Number of meetings held during the time the director held office or was a member of the committee during the year

Members Liability

The Company is registered under the *Australian Charities and Not-for-profits Commission Act 2012* as a company limited by guarantee. In the event of the Company being wound up each member is liable to contribute to the debts of the Company incurred whilst he/she was a member or within one year from his/her ceasing to be a member, or for the purposes of adjusting the rights of the contributories amongst themselves, such amount as may be required not exceeding \$200.

At 31 December 2017, the number of members of the Company was 193 (2016: 187) and the amount capable of being called up for the purposes of a winding up was \$38,600 (2016: \$37,400).

Insurance of officers and indemnities

(a) Insurance of officers

The liabilities insured are legal costs that may be incurred in defending civil or criminal proceedings that may be brought against the officers in their capacity as officers of entities in the Company, and any other payments arising from liabilities incurred by the officers in connection with such proceedings. This does not include such liabilities that arise from conduct involving a wilful breach of duty by the officers or the improper use by the officers of their position or of information to gain advantage for themselves or someone else or to cause detriment to the Company. It is not possible to apportion the premium between amounts relating to the insurance against legal costs and those relating to other liabilities.

Details of the nature of the liabilities covered, and the amount of premium paid in respect of the directors' and officers' insurance policies are not disclosed, as such disclosure is prohibited under the terms of the contract.

(b) Indemnity of auditors

The Company has agreed to indemnify their auditors, PricewaterhouseCoopers ("PwC"), to the extent permitted by law, against any claim by a third party arising from the Company's breach of its agreement with PwC. The indemnity stipulates that the Company will meet the full amount of any such liabilities including a reasonable amount of legal costs.

Auditor's independence declaration

A copy of the auditor's independence declaration as required under section 60.15 of the *Australian Charities and Not-for-Profit Commission Regulations 2013* is set out on page 6.

This report is made in accordance with a resolution of directors.

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Sydney
29 June 2018



Auditor's Independence Declaration

As lead auditor for the audit of Giant Steps Australia Limited for the year ended 31 December 2017, I declare that to the best of my knowledge and belief, there have been no contraventions of any applicable code of professional conduct in relation to the audit.

s47F

Paddy Carney
Partner
PricewaterhouseCoopers

Sydney
29 June 2018

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Giant Steps Australia Limited (formerly known as Giant Steps Sydney Limited)

ABN 51 087 759 984

Annual report - 31 December 2017

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These financial statements are the financial statements of Giant Steps Australia Limited (formerly known as Giant Steps Sydney Limited) as an individual entity. The financial statements are presented in the Australian dollar (\$).

Giant Steps Australia Limited (formerly known as Giant Steps Sydney Limited) is a company limited by guarantee, incorporated and domiciled in Australia.

A description of the nature of the entity's operations and its principal activities is included in the directors' report on page 3, which is not part of these financial statements.

The financial statements were authorised for issue by the directors on 29 June 2018. The directors have the power to amend and reissue the financial statements.

Giant Steps Australia Limited (formerly known as Giant Steps Sydney Limited)
Statement of comprehensive income
For the year ended 31 December 2017

	Notes	2017 \$	2016 \$
Revenue from continuing operations	4	8,126,221	8,630,617
Other gain/(loss) – net	5	1,197,956	592,916
Direct costs of fundraising appeals		(449,062)	(448,977)
Employee benefits expense		(7,798,343)	(6,908,887)
Depreciation and amortisation expense	6	(245,128)	(223,304)
Rental of property and occupancy costs		(262,315)	(219,909)
Repairs and maintenance	6	(48,431)	(301,874)
Other expenses		(573,059)	(489,079)
(Loss)/surplus for the year		(52,161)	631,503
Other comprehensive income			
Other comprehensive income for the year, net of tax			
Total comprehensive (loss) income for the year		(52,161)	631,503

The above statement of comprehensive income should be read in conjunction with the accompanying notes

Giant Steps Australia Limited (formerly known as Giant Steps Sydney Limited)
Statement of financial position
As at 31 December 2017

	Notes	2017 \$	2016 \$
ASSETS			
Current assets			
Cash and cash equivalents		2,296,031	2,954,682
Trade and other receivables	7	707,936	457,901
Financial assets at fair value through profit or loss	8	845,416	789,754
Total current assets		3,849,383	4,202,337
Non-current assets			
Property, plant and equipment	9	1,348,147	1,351,952
Total non-current assets		1,348,147	1,351,952
Total assets		5,197,530	5,554,289
LIABILITIES			
Current liabilities			
Trade and other payables	10	704,652	994,211
Loans payable to related parties	17(d)	-	98,746
Employee benefit obligations	11	934,577	849,461
Total current liabilities		1,639,229	1,942,418
Non-current liabilities			
Employee benefit obligations	11	49,373	50,782
Total non-current liabilities		49,373	50,782
Total liabilities		1,688,602	1,993,200
Net assets		3,508,928	3,561,089
EQUITY			
Retained surplus	12	3,508,928	3,561,089
Total equity		3,508,928	3,561,089

The above statement of financial position should be read in conjunction with the accompanying notes.

Giant Steps Australia Limited (formerly known as Giant Steps Sydney Limited)
Statement of changes in equity
For the year ended 31 December 2017

	Retained surplus \$
Balance at 1 January 2016	<u>2,929,586</u>
Surplus for the year	<u>631,503</u>
Total comprehensive income for the year	<u>631,503</u>
Balance at 31 December 2016	<u>3,561,089</u>
Balance at 1 January 2017	<u>3,561,089</u>
Deficit for the year	<u>(52,161)</u>
Total comprehensive income for the year	<u>(52,161)</u>
Balance at 31 December 2017	<u>3,508,928</u>

The above statement of changes in equity should be read in conjunction with the accompanying notes.

Giant Steps Australia Limited (formerly known as Giant Steps Sydney Limited)
Statement of cash flows
For the year ended 31 December 2017

Notes	2017 \$	2016 \$
Cash flows from operating activities		
Donations and grants received	7,830,747	8,936,397
Payments to suppliers and employees	<u>(8,297,867)</u>	<u>(7,996,495)</u>
Interest received	(486,860)	939,902
Net cash (outflow) inflow from operating activities	<u>98,020</u>	<u>43,102</u>
Cash flows from investing activities		
Payments for property, plant and equipment	(242,764)	(164,474)
Payments for purchase of financial assets held at fair value through profit or loss	(15,000)	-
Proceeds from sale of property, plant and equipment	-	8,182
Proceeds from sale of financial assets held at fair value through profit or loss	95,369	-
Net cash (outflow) from investing activities	<u>(162,405)</u>	<u>(156,292)</u>
Cash flows from financing activities		
(Payments to) proceeds from related party loans	(68,746)	68,746
Net cash (outflow) inflow from financing activities	<u>(68,746)</u>	<u>68,746</u>
Net (decrease) increase in cash and cash equivalents	(658,651)	895,458
Cash and cash equivalents at the beginning of the financial year	2,954,682	2,059,224
Cash and cash equivalents at end of the financial year	<u>2,296,031</u>	<u>2,954,682</u>

The above statement of cash flows should be read in conjunction with the accompanying notes.

Contents of the notes to the financial statements

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1 Summary of significant accounting policies

The principal accounting policies adopted in the preparation of these financial statements are set out below. These policies have been consistently applied to all the years presented, unless otherwise stated. Comparative information is reclassified where appropriate to enhance comparability.

(a) Basis of preparation

These general purpose financial statements have been prepared in accordance with Australian Accounting Standards, and the Australian Charities and Not-for-profits Commission Act 2012, the Charitable Fundraising Act 1991 (NSW), the Charitable Fundraising Regulations 2008 (NSW) and other authoritative pronouncements of the Australian Accounting Standards Board. The Company is a not-for-profit entity for the purpose of preparing the financial statements.

(i) Compliance with Australian Accounting Standards - Reduced Disclosure Requirements

The financial statements of Giant Steps Australia Limited (formerly known as Giant Steps Sydney Limited) comply with Australian Accounting Standards - Reduced Disclosure Requirements as issued by the Australian Accounting Standards Board (AASB).

(ii) Historical cost convention

These financial statements have been prepared under the historical cost basis, except for the following:

- financial assets and liabilities held at fair value through profit or loss - measured at fair value

(iii) New and amended standards adopted by the Company

Management are in the process of assessing the impact of the new standards and amendments to standards that are mandatory for the first time for the financial year beginning 1 January 2018.

(b) Foreign currency translation

(i) Functional and presentation currency

Items included in the financial statements are measured using the currency of the primary economic environment in which the entity operates ('the functional currency'). The financial statements are presented in Australian dollars (\$), which is Giant Steps Australia Limited (formerly known as Giant Steps Sydney Limited)'s functional and presentation currency.

(ii) Transactions and balances

Foreign currency transactions are translated into the functional currency using the exchange rates at the dates of the transactions. Foreign exchange gains and losses resulting from the settlement of such transactions and from the translation of monetary assets and liabilities denominated in foreign currencies at year end exchange rates are generally recognised in profit or loss. They are deferred in equity if they relate to qualifying cash flow hedges and qualifying net investment hedges or are attributable to part of the net investment in a foreign operation.

Non-monetary items that are measured at fair value in a foreign currency are translated using the exchange rates at the date when the fair value was determined. Translation differences on assets and liabilities carried at fair value are reported as part of the fair value gain or loss. For example, translation differences on non-monetary assets and liabilities such as equities held at fair value through profit or loss are recognised in profit or loss as part of the fair value gain or loss and translation differences on non-monetary assets such as equities classified as available-for-sale financial assets are recognised in other comprehensive income.

(c) Revenue recognition

Revenue is measured at the fair value of the consideration received or receivable. The Company recognises revenue when the amount of revenue can be reliably measured, it is probable that future economic benefits will flow to the entity and specific criteria have been met for each type of revenue as described below. Revenue received in respect of future periods is reflected in the statement of financial position as a liability.

Revenue is recognised for the major classes of activities using the methods outlined below.

1 Summary of significant accounting policies (continued)

(c) Revenue recognition (continued)

(i) *Gross revenue from fundraising appeals*

Proceeds from the fundraising appeals, which are controlled by the Company, are brought to account on an accrual basis.

(ii) *Donations and fundraising revenue*

Donations are recognised when received or receivable when there is a reasonable assurance that the donation will be received. Donations of assets are recorded as revenue at their fair values.

(iii) *Government grants and subsidies*

Grants from the government are recognised at their fair value where there is a reasonable assurance that the grant will be received and the Company will comply with all attached conditions. Government grants relating to costs are deferred and recognised as income over the period necessary to match them with the costs that they are intended to compensate.

The NDIS uses a person centered approach to funding and each participant's plan is individualised on a case by case basis. The participant's individual NDIS plans may be utilised for therapy, behaviour support, social participation, independence and living arrangements. Revenue is recognised as the funding is received from the NDIS which takes place after the services are provided. The funding is recognised as revenue in the period in which the related costs towards which they are intended to compensate are recognised as expenses. The costs and funding are typically incurred and received in the same accounting period.

(iv) *Interest income*

Interest income is recognised as it accrues, taking into account the effective yield on the financial asset.

(d) Government grants

Grants from the government are recognised at their fair value where there is a reasonable assurance that the grant will be received and the Company will comply with all attached conditions. Note 4 provides further information on how the Company accounts for government grants.

(e) Income tax

The Company is exempt from income tax under Section 50-5 of the *Income Tax Assessment Act 1997* and accordingly no provision has been made for income tax.

(f) Leases

Leases in which a significant portion of the risks and rewards of ownership are not transferred to the Company as lessee are classified as operating leases (note 16). Payments made under operating leases (net of any incentives received from the lessor) are charged to profit or loss on a straight-line basis over the period of the lease.

(g) Impairment of assets

Assets are tested for impairment whenever events or changes in circumstances indicate that the carrying amount may not be recoverable. An impairment loss is recognised for the amount by which the asset's carrying amount exceeds its recoverable amount. The recoverable amount is the higher of an asset's fair value less costs of disposal and value in use. Non-financial assets that suffered an impairment are reviewed for possible reversal of the impairment at the end of each reporting year.

(h) Cash and cash equivalents

For the purpose of presentation in the statement of cash flows, cash and cash equivalents includes cash on hand, deposits held at call with financial institutions, other short-term, highly liquid investments with original maturities of three months or less that are readily convertible to known amounts of cash and which are subject to an insignificant risk of changes in value.

1 Summary of significant accounting policies (continued)

(l) Trade receivables

Trade receivables are recognised initially at fair value and subsequently measured at amortised cost using the effective interest method, less provision for impairment. See note 7 for further information about the Company's accounting for trade receivables and 2(b) for a description of the Company's impairment policies.

Collectability of trade receivables is reviewed on an ongoing basis. Debts which are known to be uncollectible are written off by reducing the carrying amount directly. An allowance account (provision for impairment of trade receivables) is used when there is objective evidence that the Company will not be able to collect all amounts due according to the original terms of the receivables. Significant financial difficulties of the debtor, probability that the debtor will enter bankruptcy or financial reorganisation, and default or delinquency in payments (more than 30 days overdue) are considered indicators that the trade receivable is impaired. The amount of the impairment allowance is the difference between the asset's carrying amount and the present value of estimated future cash flows, discounted at the original effective interest rate. Cash flows relating to short-term receivables are not discounted if the effect of discounting is immaterial.

The amount of the impairment loss is recognised in profit or loss within other expenses. When a trade receivable for which an impairment allowance had been recognised becomes uncollectible in a subsequent period, it is written off against the allowance account. Subsequent recoveries of amounts previously written off are credited against other expenses in profit or loss.

(j) Financial assets held at fair value through profit or loss

The Company classifies its investment in equity securities as financial assets held at fair value through profit or loss. At initial recognition, the Company measures a financial asset at its fair value. Transaction costs of financial assets carried at fair value through profit or loss are expensed in the statement of comprehensive income.

Subsequent to initial recognition, the financial assets held at fair value through profit or loss are measured at fair value. Gains and losses arising from changes in the fair value are recognised in the statement of comprehensive income within other gains/(losses). The fair value of the equity securities traded in active markets is based on their quoted market prices at the end of the reporting period without any deduction for estimated future selling costs.

(k) Property, plant and equipment

Property, plant and equipment is stated at historical cost less depreciation. Historical cost includes expenditure that is directly attributable to the acquisition of the items. Assets received by way of donation are recognised at their fair value at the date of acquisition in the financial report.

Subsequent costs are included in the asset's carrying amount or recognised as a separate asset, as appropriate, only when it is probable that future economic benefits associated with the item will flow to the Company and the cost of the item can be measured reliably. The carrying amount of any component accounted for as a separate asset is derecognised when replaced. All other repairs and maintenance are charged to profit or loss during the reporting year in which they are incurred.

Depreciation is calculated using the straight-line method to allocate their cost or revalued amounts, net of their residual values, over their estimated useful lives or, in the case of leasehold improvements and certain leased plant and equipment, the shorter lease term as follows:

• Plant and equipment	3 - 10 years
• Furniture and fittings	6 - 14 years
• Motor vehicles	5 - 7 years
• Leasehold improvements	9 years

The assets' residual values and useful lives are reviewed, and adjusted if appropriate, at the end of each reporting year.

1 Summary of significant accounting policies (continued)

(k) Property, plant and equipment (continued)

An asset's carrying amount is written down immediately to its recoverable amount if the asset's carrying amount is greater than its estimated recoverable amount (note 1(g)).

Gains and losses on disposals are determined by comparing proceeds with carrying amount. These are included in profit or loss. When revalued assets are sold, it is Company policy to transfer any amounts included in other reserves in respect of those assets to retained earnings.

(l) Trade and other payables

These amounts represent liabilities for goods and services provided to the Company prior to the end of financial year which are unpaid. The amounts are unsecured and are usually paid within 30 days of recognition. Trade and other payables are presented as current liabilities unless payment is not due within 12 months from the reporting date. They are recognised initially at their fair value and subsequently measured at amortised cost using the effective interest method.

(m) Employee benefits

(i) Short-term obligations

Liabilities for wages and salaries, including non-monetary benefits and accumulating sick leave that are expected to be settled wholly within 12 months after the end of the period in which the employees render the related service are recognised in respect of employees' services up to the end of the reporting period and are measured at the amounts expected to be paid when the liabilities are settled. The liabilities are presented as current employee benefit obligations in the statement of financial position.

(ii) Other long-term employee benefit obligations

The liabilities for long service leave and annual leave are not expected to be settled wholly within 12 months after the end of the year in which the employees render the related service. They are therefore measured as the present value of expected future payments to be made in respect of services provided by employees up to the end of the reporting year using the projected unit credit method. Consideration is given to expected future wage and salary levels, experience of employee departures and periods of service. Expected future payments are discounted using market yields at the end of the reporting year of high-quality corporate bonds with terms and currencies that match, as closely as possible, the estimated future cash outflows. Remeasurements as a result of experience adjustments and changes in actuarial assumptions are recognised in profit or loss.

The obligations are presented as current liabilities in the statement of financial position if the entity does not have an unconditional right to defer settlement for at least twelve months after the reporting date, regardless of when the actual settlement is expected to occur.

(n) Goods and Services Tax (GST)

Revenues, expenses and assets are recognised net of the amount of associated GST, unless the GST incurred is not recoverable from the taxation authority. In this case it is recognised as part of the cost of acquisition of the asset or as part of the expense.

Receivables and payables are stated inclusive of the amount of GST receivable or payable. The net amount of GST recoverable from, or payable to, the taxation authority is included with other receivables or payables in the statement of financial position.

Cash flows are presented on a gross basis. The GST components of cash flows arising from investing or financing activities which are recoverable from, or payable to the taxation authority, are presented as operating cash flows.

(o) Reclassifications

Certain accounts in prior years are reclassified to be consistent with current year classifications.

2 Financial risk management

(a) Market risk

(i) Cash flow and fair value interest rate risk

The Company's exposure to interest rate risk arises predominantly from assets bearing variable interest rates, which includes cash balances held in banks. As interest income does not make up the main source of revenue, the management expects no significant interest rate risk on these balances.

Loans receivable from related parties, trade and other receivables, loans payable to related parties and trade and other payables are not impacted by movements in interest rates.

Management believes that the Company's overall exposure to interest rate movements is not material.

(b) Credit risk

Individual receivables which are known to be uncollectible are written off by reducing the carrying amount directly. The other receivables are assessed collectively to determine whether there is objective evidence that an impairment has been incurred but not yet been identified. For these receivables the estimated impairment losses are recognised in a separate provision for impairment. The Company considers that there is evidence of impairment if any of the following indicators are present:

- significant financial difficulties of the debtor
- probability that the debtor will enter bankruptcy or financial reorganisation, and
- default or delinquency in payments (more than 30 days overdue).

Receivables for which an impairment provision was recognised are written off against the provision when there is no expectation of recovering additional cash.

Impairment losses are recognised in profit or loss within other expenses. Subsequent recoveries of amounts previously written off are credited against other expenses.

3 Critical estimates, judgements and errors

The preparation of financial statements requires the use of accounting estimates which, by definition, will seldom equal the actual results. Management also needs to exercise judgement in applying the Company's accounting policies.

(a) Significant estimates and judgements

Estimates and judgements are continually evaluated. They are based on historical experience and other factors, including expectations of future events that may have a financial impact on the entity and that are believed to be reasonable under the circumstances.

(b) Critical accounting estimates and assumptions

The Company makes estimates and assumptions concerning the future. The resulting accounting estimates will, by definition, seldom equal the related actual results. There are no areas involving a higher degree of judgment or complexity, or areas where assumptions and estimates are significant to the financial statements.

Giant Steps Australia Limited (formerly known as Giant Steps Sydney Limited)
Notes to the financial statements
31 December 2017
(continued)

4 Revenue

	2017 \$	2016 \$
From continuing operations		
Gross revenue from fundraising appeals	1,767,913	1,796,908
Donations received	2,325,648	2,257,566
Government grants and subsidies	3,882,538	4,345,259
Interest income	39,360	43,102
Sundry revenues	110,762	187,782
Total revenue from continuing operations	8,126,221	8,630,617

During the year the Company received grants in the amount of \$3,882,538 (2016: \$4,345,259) from the NSW Department of Education and Communities, the NSW Department of Family and Community Services (Ageing, Disability and Home Care), the Federal Department of Social Services, the Federal Department of Education and the Australian Sports Commission.

5 Other gains/(losses)

	2017 \$	2016 \$
Net (loss)/gain on disposal of property, plant and equipment	(1,441)	8,029
Fair value gains on financial assets at fair value through profit or loss	115,419	20,200
Reimbursement of expenses from Stepping Stones Education Services Limited	1,083,978	564,687
	1,197,956	592,916

6 Expenses

	2017 \$	2016 \$
Defined contribution superannuation	634,283	560,679
<i>Depreciation</i>		
Plant and equipment	31,572	32,923
Furniture and fittings	23,560	24,586
Motor vehicles	17,957	21,646
Leasehold improvements	172,039	144,149
	245,128	223,304

Giant Steps Australia Limited (formerly known as Giant Steps Sydney Limited)
Notes to the financial statements
31 December 2017
(continued)

7 Trade and other receivables

	2017		2016		
	Current	Non-	Current	Non-	Total
	\$	current	\$	current	\$
	\$	\$	\$	\$	\$
Trade receivables	28,991	-	28,991	121,425	-
Receivables from related parties	556,673	-	556,673	255,686	-
Loans receivable from related parties	-	-	-	30,000	-
Prepayments	122,272	-	122,272	50,790	-
	<u>707,936</u>	<u>-</u>	<u>707,936</u>	<u>457,901</u>	<u>-</u>

8 Financial assets at fair value through profit or loss

Financial assets at fair value through profit or loss are all designated at fair value through profit or loss and include the following:

	2017	2016
	\$	\$
Current assets		
Equity securities	<u>845,416</u>	<u>789,754</u>

Amounts recognised in profit or loss

Changes in fair values of financial assets at fair value through profit or loss are recorded in other gains/(loss) in statement of comprehensive income, refer to note 5.

Giant Steps Australia Limited (formerly known as Giant Steps Sydney Limited)
Notes to the financial statements
31 December 2017
(continued)

9 Property, plant and equipment

	Plant and equipment \$	Furniture and fittings \$	Motor vehicles \$	Leasehold improvements \$	Assets under construction \$	Total \$
At 1 January 2017						
Cost	373,122	299,199	194,388	2,382,479	54,706	3,303,894
Accumulated depreciation	(279,941)	(217,625)	(113,477)	(1,340,899)	-	(1,951,942)
Net book amount	93,181	81,574	80,911	1,041,580	54,706	1,351,952
Year ended 31 December 2017						
Opening net book amount	93,181	81,574	80,911	1,041,580	54,706	1,351,952
Additions	31,502	2,515	12,170	2,700	193,877	242,764
Disposals	(1,441)	-	-	-	-	(1,441)
Transfers	-	-	-	246,856	(246,856)	-
Depreciation charge	(31,572)	(23,560)	(17,957)	(172,039)	-	(245,128)
Closing net book amount	91,670	60,529	75,124	1,119,097	1,727	1,348,147
At 31 December 2017						
Cost	402,046	301,715	206,558	2,632,036	1,727	3,544,082
Accumulated depreciation	(310,376)	(241,186)	(131,434)	(1,512,939)	-	(2,195,935)
Net book amount	91,670	60,529	75,124	1,119,097	1,727	1,348,147

10 Trade and other payables

	Current \$	2017 Non- current \$	Total \$	Current \$	2016 Non- current \$	Total \$
Trade payables	203,208	-	203,208	320,331	-	320,331
Payables to related parties	3,214	-	3,214	104,318	-	104,318
Receipts in advance	35,000	-	35,000	220,000	-	220,000
Accrued expenses	252,138	-	252,138	239,606	-	239,606
GST and other statutory liabilities	211,092	-	211,092	109,956	-	109,956
	704,652	-	704,652	994,211	-	994,211

Giant Steps Australia Limited (formerly known as Giant Steps Sydney Limited)
Notes to the financial statements
31 December 2017
(continued)

11 Employee benefit obligations

	Current	2017 Non-current	Total	Current	2016 Non-current	Total
	\$	\$	\$	\$	\$	\$
Leave obligations (a)	934,577	49,373	983,950	849,461	50,782	900,243

(a) Leave obligations

The leave obligations cover the Company's liability for long service leave and annual leave.

12 Retained surplus

Movements in retained surplus were as follows:

	2017 \$	2016 \$
Balance 1 January	3,561,089	2,929,586
Net (deficit)/surplus for the year	(52,161)	631,503
Balance 31 December	3,508,928	3,561,089

13 Remuneration of auditors

During the year the auditors did not receive any remuneration or benefits in relation to the audit of the Company (2016: \$nil). PwC received \$17,400 (2016: \$nil) for assistance with bookkeeping and the preparation of financial statements.

14 Remuneration of directors

No remuneration was received or receivable by the directors of the Company (2016: \$nil).

15 Contingent liabilities and contingent assets

The Company had no contingent liabilities or assets at 31 December 2017 (2016: \$Nil).

16 Commitments

(a) Lease commitments: company as lessee

(i) Non-cancellable operating leases

The lease for the rental of premises occupied by the Company expires in December 2019.

	2017 \$	2016 \$
Commitments for minimum lease payments in relation to non-cancellable operating leases are payable as follows:		
Within one year	39,219	38,077
Later than one year but not later than five years	40,396	79,615
	<u>79,615</u>	<u>117,692</u>

(ii) Rental expense relating to operating leases

Minimum lease payments	76,477	51,403
------------------------	--------	--------

17 Related party transactions

(a) Key management personnel compensation

	2017 \$	2016 \$
Short-term employee benefits	409,484	398,568
Post-employment benefits	38,901	37,864
	<u>448,385</u>	<u>436,432</u>

(b) Transactions with other related parties

The following transactions occurred with related parties

	31 December 2017 \$	31 December 2016 \$
Reimbursement of expenses from Stepping Stones Early Learning Limited	1,083,978	564,687

The Endowment Fund acts as a provider of liquidity when required to meet the cash flow needs of the Company.

Amount received from the Endowment Fund are classified as loans except where, at year end, there are amounts outstanding which are deemed to be contributions from the Endowment Fund and are recognised in the statement of comprehensive income. There were no such contributions or loans in 2017 or 2016.

(c) Outstanding balances arising for transactions with related parties

The following balances are outstanding at the end of the reporting year in relation to transactions with related parties:

Giant Steps Australia Limited (formerly known as Giant Steps Sydney Limited)
Notes to the financial statements
31 December 2017
(continued)

17 Related party transactions (continued)

(c) Outstanding balances arising for transactions with related parties (continued)

	2017 \$	2016 \$
<i>Current receivables</i>		
Receivable from Stepping Stones Early Learning Limited	551,618	255,686
Receivable from Giant Steps Melbourne Limited	5,055	-
	<u>556,673</u>	<u>255,686</u>
<i>Current payables</i>		
Payable to Stepping Stones Early Learning Limited	-	20,132
Payable to Giant Steps Melbourne Limited	3,214	84,186
	<u>3,214</u>	<u>104,318</u>

(d) Loans to/from related parties

	2017 \$	2016 \$
<i>Advance to Giant Steps Melbourne Limited</i>		
Beginning of the year	30,000	-
Loans advanced	-	30,000
Loans repayments made	(30,000)	-
End of year	<u>-</u>	<u>30,000</u>
<i>Loans from Supporting Independent Living Cooperative Limited</i>		
Beginning of the year	98,746	-
Loans advanced	-	98,746
Loans repayments made	(98,746)	-
End of year	<u>-</u>	<u>98,746</u>

(e) Terms and conditions

There were no interest earned during the year (2016: \$nil) on the loan receivable from Giant Steps Melbourne Limited.

18 Information and declarations to be furnished under the Charitable Fundraising Act 1991

In accordance with the *Charitable Fundraising Act, 1991* the following information on Fundraising appeals is provided.

As in previous years, the Company has complied with the Charitable Fundraising Act with respect to expenses recognised as costs of fundraising activities. Those costs that are directly attributable to fundraising activities, and can be reliably identified as such, have been included as a cost of fundraising activities in this note. This provides a comparatively more accurate measure of the Company's fundraising performance from year to year.

(a) List of fundraising appeals conducted during the financial year

Charity Ball, Charity Bike Ride, Blackmores Sydney Running Festival, Chinese New Year Dinner, City2Surf, Coles Classic Swim, Golf Day, Greek Night, High Tea, Marathons, Middle Eastern Night, Movie Nights, Regatta, Stair Climb, Swim4Autism, and Trivia Night.

(b) Statement of income and expenditure of fundraising appeals conducted during the year

	2017 \$	2016 \$
Gross proceeds from fundraising appeals		
Charity Ball	758,994	680,933
Special events	1,008,919	1,115,975
	<u>1,767,913</u>	<u>1,796,908</u>
 Direct costs of fundraising appeals		
Charity Ball	260,007	258,415
Special events	189,055	190,562
	<u>449,062</u>	<u>448,977</u>
 Fundraising appeals	<u>(1,318,852)</u>	<u>(1,347,931)</u>

(c) Information on any material occurrence

The Company is not aware of any material matter or occurrences including those of an adverse nature affecting the conduct of the financial results of fundraising activities during the year.

(d) Statement showing how funds received were applied to charitable purposes

During the year the Company received \$1,318,852 (2016: \$1,347,931) from fundraising appeals (net proceeds) which were spent or will be spent on direct services.

18 Information and declarations to be furnished under the Charitable Fundraising Act 1991 (continued)

(e) Comparison by monetary figures and percentages

	2017 \$	2017 %	2016 \$	2016 %
Total cost of fundraising	449,062	25	448,977	25
Gross income from fundraising	1,767,913		1,796,908	
Net surplus from fundraising	1,318,852	75	1,347,931	75
Gross income from fundraising	1,767,913		1,796,908	
Total costs of services	8,450,432	97	7,781,596	97
total expenditure	8,695,560		8,004,900	
Total costs of services	8,450,432	96	7,781,596	89
Total income received	8,761,137		8,746,327	

The above disclosures for the current year are included to comply with the *Charitable Fundraising Act 1991* and regulations.

19 Events occurring after the reporting period

No matters or circumstances have occurred subsequent to year end that has significantly affected, or may significantly affect, the operations of the Company, the results of those operations or the state of affairs of the Company or economic entity in subsequent financial years.

Giant Steps Australia Limited (formerly known as Giant Steps Sydney Limited)
Directors' declaration
31 December 2017

In the directors' opinion:

- (a) the financial statements and notes set out on pages 7 to 25 are in accordance with the *Australian Charities and Not-for-profits Commission Act 2012 (ACNC)*, including:
 - (i) complying with Accounting Standards - Reduced Disclosure Requirements, the *Australian Charities and Not-for-profits Commission Act 2012* and other mandatory professional reporting requirements, and
 - (ii) giving a true and fair view of the entity's financial position as at 31 December 2017 and of its performance for the financial year ended on that date, and
- (b) there are reasonable grounds to believe that the Company will be able to pay its debts as and when they become due and payable.

This declaration is made in accordance with a resolution of directors.

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Sydney
29 June 2018



Independent auditor's report

To the members of Giant Steps Australia Limited

Our qualified opinion

In our opinion, except for the possible effects of the matter[s] described in the *Basis for qualified opinion* section of our report, the accompanying financial report of Giant Steps Australia Limited (the Company) is in accordance with Division 60 of the *Australian Charities and Not-for-profits Commission (ACNC) Act 2012*, including:

- (a) giving a true and fair view of the Company's financial position as at 31 December 2017 and of its financial performance for the year then ended
- (b) complying with Australian Accounting Standards - Reduced Disclosure Requirements and Division 60 of the *Australian Charities and Not-for-profits Commission Regulation 2013*.

What we have audited

The financial report comprises:

- the statement of financial position as at 31 December 2017
- the statement of comprehensive income for the year then ended
- the statement of changes in equity for the year then ended
- the statement of cash flows for the year then ended
- the notes to the financial statements, which include a summary of significant accounting policies
- the directors' declaration.

Basis for qualified opinion

Cash from donations and other fundraising activities are a significant source of revenue for the Company. The directors have determined that it is impracticable to establish control over the collection of revenue from these sources prior to entry into its financial records. Accordingly, as the evidence available to us regarding revenue from cash donations and other fundraising activities was limited, our audit procedures with respect to revenue from these sources had to be restricted to the amounts recorded in the Company's financial records. As a result, we are unable to express an opinion as to whether revenue from cash donations and other fundraising activities is complete.

We conducted our audit in accordance with Australian Auditing Standards. Our responsibilities under those standards are further described in the *Auditor's responsibilities for the audit of the financial report* section of our report.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our qualified opinion.

Independence

We are independent of the Company in accordance with the ethical requirements of the Accounting Professional and Ethical Standards Board's APES 110 *Code of Ethics for Professional Accountants* (the

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Code) that are relevant to our audit of the financial report in Australia. We have also fulfilled our other ethical responsibilities in accordance with the Code.

Other information

The directors are responsible for the other information. The other information comprises the information included in the Company's Financial report for the year ended: 31 December 2017 for the year ended 31 December 2017, including the Directors' Report, but does not include the financial report and our auditor's report thereon.

Our opinion on the financial report does not cover the other information and accordingly we do not express any form of assurance conclusion thereon.

In connection with our audit of the financial report, our responsibility is to read the other information identified above and, in doing so, consider whether the other information is materially inconsistent with the financial report or our knowledge obtained in the audit, or otherwise appears to be materially misstated.

If, based on the work we have performed on the other information obtained prior to the date of this auditor's report, we conclude that there is a material misstatement of this other information, we are required to report that fact. We have nothing to report in this regard.

Responsibilities of the directors for the financial report

The directors of the Company are responsible for the preparation of the financial report that gives a true and fair view in accordance with Australian Accounting Standards - Reduced Disclosure Requirements and *Australian Charities and Not-for-profits Commission (ACNC) Act 2012* and for such internal control as the directors determine is necessary to enable the preparation of the financial report that gives a true and fair view and is free from material misstatement, whether due to fraud or error.

In preparing the financial report, the directors are responsible for assessing the ability of the Company to continue as a going concern, disclosing, as applicable, matters related to going concern and using the going concern basis of accounting unless the directors either intend to liquidate the Company or to cease operations, or have no realistic alternative but to do so.

Auditor's responsibilities for the audit of the financial report

Our objectives are to obtain reasonable assurance about whether the financial report as a whole is free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion. Reasonable assurance is a high level of assurance, but is not a guarantee that an audit conducted in accordance with the Australian Auditing Standards will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of the financial report.

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A further description of our responsibilities for the audit of the financial report is located at the Auditing and Assurance Standards Board website at:
http://www.auasb.gov.au/auditors_responsibilities/ar4.pdf. This description forms part of our auditor's report.

PricewaterhouseCoopers

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Paddy Carney
Partner

Sydney
29 June 2018

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Giant Steps Melbourne Limited

ABN 46 606 552 283

Annual report for the year ended 31 December 2017

Giant Steps Melbourne Limited
ABN 46 606 552 283
Annual report - 31 December 2017

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Giant Steps Melbourne Limited
Directors' report
31 December 2017

The directors present their report on Giant Steps Melbourne Limited (the "Company") for the year ended 31 December 2017 and the auditor's report thereon.

Directors

The following persons held office as directors of Giant Steps Melbourne Limited during the financial year:

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Information on directors

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A large rectangular area of the document is redacted with a solid grey fill, obscuring the information provided about the directors.

Information on directors (continued)

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Objectives, Strategy and Performance Measurement

The Company seeks to develop intensive therapeutic and educational programs under a transdisciplinary model of service provision to enable children and young people with autism to reach their full potential. The Company also seeks to provide support to families, to improve the understanding of autism in the wider community and to develop best practice amongst carers and professionals.

Through research and development pedagogical models have been developed specific to the needs of children and young people with autism. These models are recognized as the leading edge in autism intervention.

Funding models that include financial support from government, corporations, fundraising events and individual donations provide a strong funding base for the Company operations. The Company continues to ensure it liaises with government on a regular basis to have input into any funding changes and continues to build a strong corporate and parent network to assist with annual fundraising targets.

Giant Steps staff are employed under a competency based model and participate in an extensive development program as part of their employment.

Performance is measured on numerous levels including Board of Studies registration and accreditation; accountability for all government funding received; parent and staff satisfaction surveys; financial audits; accountability reporting for corporate sponsorship and donations received and detailed reporting around performance of students across the organisation.

The Board of Directors as well as the Executive Staff of the Company maintain close scrutiny of all aspects of the financial management of the organisation.

Principal activities

The principal activities of the Company include the operation of a school for children and young adults with autism spectrum disorder. The school is registered and accredited by the VIC Board of Studies.

Dividends

As the Company is limited by guarantee and has no share capital, no dividends are payable.

Review of operations

The surplus of the Company for the year ended 31 December 2017 was \$987,149 (2016: \$66,568).

Significant changes in the state of affairs

There have been no significant changes in the state of affairs of the Company during the year.

Event since the end of the financial year

No matter or circumstance has arisen since 31 December 2017 that has significantly affected the Company's operations, results or state of affairs, or may do so in future years.

Likely developments and expected results of operations

Further information on likely developments in the operations of the Company and the expected results of operations have not been included in this annual report because the directors believe it would be likely to result in unreasonable prejudice to the Company.

Environmental regulation

The Company is not affected by any significant environmental regulation in respect of its operations.

Meetings of directors

The numbers of meetings of the Company's board of directors and of each board committee held during the year ended 31 December 2017, and the numbers of meetings attended by each director were:

	Full meetings of directors	
	A	B
s47F	6	7
	5	7
	5	7
	4	7
	7	7
	4	7
	6	7
	4	7
	6	7
	4	7

A = Number of meetings attended

B = Number of meetings held during the time the director held office or was a member of the committee during the year

Members Liability

The Company is registered under the *Australian Charities and Not-for-profits Commission Act 2012* as a company limited by guarantee. In the event of the Company being wound up each member is liable to contribute to the debts of the Company incurred whilst he/she was a member or within one year from his/her ceasing to be a member, or for the purposes of adjusting the rights of the contributories amongst themselves, such amount as may be required not exceeding \$200.

At 31 December 2017, the number of members of the Company was 1 (2016: 11) and the amount capable of being called up for the purposes of a winding up was \$200 (2016: \$2,200).

Insurance of officers and indemnities

(a) Insurance of officers

The liabilities insured are legal costs that may be incurred in defending civil or criminal proceedings that may be brought against the officers in their capacity as officers of entities in the Company, and any other payments arising from liabilities incurred by the officers in connection with such proceedings. This does not include such liabilities that arise from conduct involving a wilful breach of duty by the officers or the improper use by the officers of their position or of information to gain advantage for themselves or someone else or to cause detriment to the Company. It is not possible to apportion the premium between amounts relating to the insurance against legal costs and those relating to other liabilities.

Details of the nature of the liabilities covered, and the amount of premium paid in respect of the directors' and officers' insurance policies are not disclosed, as such disclosure is prohibited under the terms of the contract.

(b) Indemnity of auditors

The Company has agreed to indemnify their auditors, PricewaterhouseCoopers ("PwC"), to the extent permitted by law, against any claim by a third party arising from the Company's breach of its agreement with PwC. The indemnity stipulates that the Company will meet the full amount of any such liabilities including a reasonable amount of legal costs.

Auditor's independence declaration

A copy of the auditor's independence declaration as required under section 60.15 of the *Australian Charities and Not-for-Profit Commission Regulations 2013* is set out on page 6.

This report is made in accordance with a resolution of directors.

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Melbourne
29 June 2018



Auditor's Independence Declaration

As lead auditor for the audit of Giant Steps Melbourne Limited for the year ended 31 December 2017, I declare that to the best of my knowledge and belief, there have been no contraventions of any applicable code of professional conduct in relation to the audit.

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PricewaterhouseCoopers

Sydney
29 June 2018

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Giant Steps Melbourne Limited
ABN 46 606 552 283
Annual report - 31 December 2017

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These financial statements are the financial statements of Giant Steps Melbourne Limited as an individual entity. The financial statements are presented in the Australian dollar (\$).

Giant Steps Melbourne Limited is a company limited by guarantee, incorporated and domiciled in Australia

A description of the nature of the entity's operations and its principal activities is included in the directors' report on page 3, which is not part of these financial statements.

The financial statements were authorised for issue by the directors on 29 June 2018. The directors have the power to amend and reissue the financial statements.

Giant Steps Melbourne Limited
Statement of comprehensive income
For the year ended 31 December 2017

	Notes	2017 \$	2016 \$
Revenue from continuing operations	4	2,264,232	1,026,584
Other gain - net	5	8,300	-
Direct costs of fundraising appeals		(144,944)	(6,745)
Employee benefits expense		(860,737)	(697,618)
Depreciation and amortisation expense	6	(22,728)	(12,106)
Rental of property and occupancy costs		(147,861)	(140,164)
Repairs and maintenance	6	(6,090)	(9,637)
Other expenses		(103,023)	(93,746)
Surplus for the year		987,149	66,568
Other comprehensive income			
Other comprehensive income for the year, net of tax			
Total comprehensive income for the year		987,149	66,568

The above statement of comprehensive income should be read in conjunction with the accompanying notes.

Giant Steps Melbourne Limited
Statement of financial position
As at 31 December 2017

	Notes	2017 \$	2016 \$
ASSETS			
Current assets			
Cash and cash equivalents		566,596	3,437
Trade and other receivables	7	28,704	96,431
Total current assets		595,300	99,868
Non-current assets			
Property, plant and equipment	8	1,162,741	107,668
Total non-current assets		1,162,741	107,668
Total assets		1,758,041	207,536
LIABILITIES			
Current liabilities			
Trade and other payables	9	633,704	46,742
Loans payable to related parties	16(d)	-	30,000
Employee benefit obligations	10	62,549	57,543
Total current liabilities		696,253	134,285
Non-current liabilities			
Employee benefit obligations	10	8,071	6,683
Total non-current liabilities		8,071	6,683
Total liabilities		704,324	140,968
Net assets		1,053,717	66,568
EQUITY			
Retained surplus	11	1,053,717	66,568
Total equity		1,053,717	66,568

The above statement of financial position should be read in conjunction with the accompanying notes.

Giant Steps Melbourne Limited
Statement of changes in equity
For the year ended 31 December 2017

	Retained surplus \$
Balance at 1 January 2016	<u> </u>
Surplus for the year	<u>66,568</u>
Total comprehensive income for the year	<u>66,568</u>
Balance at 31 December 2016	<u>66,568</u>
 Balance at 1 January 2017	 <u>66,568</u>
Surplus for the year	<u>987,149</u>
Total comprehensive income for the year	<u>987,149</u>
Balance at 31 December 2017	<u>1,053,717</u>

The above statement of changes in equity should be read in conjunction with the accompanying notes.

Giant Steps Melbourne Limited
Statement of cash flows
For the year ended 31 December 2017

	2017	2016
Notes	\$	\$
Cash flows from operating activities		
Donations and grants received	2,380,529	940,598
Payments to suppliers and employees	(709,569)	(847,387)
Net cash inflow from operating activities	<u>1,670,960</u>	<u>93,211</u>
Cash flows from investing activities		
Payments for property, plant and equipment	(1,077,801)	(119,774)
Net cash (outflow) from investing activities	<u>(1,077,801)</u>	<u>(119,774)</u>
Cash flows from financing activities		
(Payments to)/proceeds from related party loans	(30,000)	30,000
Net cash (outflow) inflow from financing activities	<u>(30,000)</u>	<u>30,000</u>
Net increase in cash and cash equivalents	563,159	3,437
Cash and cash equivalents at the beginning of the financial year	3,437	-
Cash and cash equivalents at end of the financial year	<u>566,596</u>	<u>3,437</u>

The above statement of cash flows should be read in conjunction with the accompanying notes.

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1 Summary of significant accounting policies

The principal accounting policies adopted in the preparation of these financial statements are set out below. These policies have been consistently applied to all the years presented, unless otherwise stated. Comparative information is reclassified where appropriate to enhance comparability.

(a) Basis of preparation

These general purpose financial statements have been prepared in accordance with Australian Accounting Standards, and the *Australian Charities and Not-for-profits Commission Act 2012*, the *Fundraising Act 1998 (VIC)*, the *Fundraising Regulations 2009 (VIC)* and other authoritative pronouncements of the Australian Accounting Standards Board. The Company is a not-for-profit entity for the purpose of preparing the financial statements.

(i) Compliance with Australian Accounting Standards - Reduced Disclosure Requirements

The financial statements of Giant Steps Melbourne Limited comply with Australian Accounting Standards - Reduced Disclosure Requirements as issued by the Australian Accounting Standards Board (AASB).

(ii) Historical cost convention

These financial statements have been prepared under the historical cost basis.

(iii) New and amended standards adopted by the Company

Management are in the process of assessing the impact of the new standards and amendments to standards that are mandatory for the first time for the financial year beginning 1 January 2018.

(b) Foreign currency translation

(i) Functional and presentation currency

Items included in the financial statements are measured using the currency of the primary economic environment in which the entity operates ('the functional currency'). The financial statements are presented in Australian dollars (\$), which is Giant Steps Melbourne Limited's functional and presentation currency.

(ii) Transactions and balances

Foreign currency transactions are translated into the functional currency using the exchange rates at the dates of the transactions. Foreign exchange gains and losses resulting from the settlement of such transactions and from the translation of monetary assets and liabilities denominated in foreign currencies at year end exchange rates are generally recognised in profit or loss. They are deferred in equity if they relate to qualifying cash flow hedges and qualifying net investment hedges or are attributable to part of the net investment in a foreign operation.

Non-monetary items that are measured at fair value in a foreign currency are translated using the exchange rates at the date when the fair value was determined. Translation differences on assets and liabilities carried at fair value are reported as part of the fair value gain or loss. For example, translation differences on non-monetary assets and liabilities such as equities held at fair value through profit or loss are recognised in profit or loss as part of the fair value gain or loss and translation differences on non-monetary assets such as equities classified as available-for-sale financial assets are recognised in other comprehensive income.

(c) Revenue recognition

Revenue is measured at the fair value of the consideration received or receivable. The Company recognises revenue when the amount of revenue can be reliably measured, it is probable that future economic benefits will flow to the entity and specific criteria have been met for each type of revenue as described below. Revenue received in respect of future periods is reflected in the statement of financial position as a liability.

Revenue is recognised for the major classes of activities using the methods outlined below.

(i) Gross revenue from fundraising appeals

Proceeds from the fundraising appeals, which are controlled by the Company, are brought to account on an accrual basis.

1 Summary of significant accounting policies (continued)

(c) Revenue recognition (continued)

(ii) Donations and fundraising revenue

Donations are recognised when received or receivable when there is a reasonable assurance that the donation will be received. Donations of assets are recorded as revenue at their fair values.

(iii) Government grants and subsidies

Grants from the government are recognised at their fair value where there is a reasonable assurance that the grant will be received and the Company will comply with all attached conditions. Government grants relating to costs are deferred and recognised as income over the period necessary to match them with the costs that they are intended to compensate.

(iv) Interest income

Interest income is recognised as it accrues, taking into account the effective yield on the financial asset.

(d) Income tax

The Company is exempt from income tax under Section 50-5 of the *Income Tax Assessment Act 1997* and accordingly no provision has been made for income tax.

(e) Leases

Leases in which a significant portion of the risks and rewards of ownership are not transferred to the Company as lessee are classified as operating leases (note 14). Payments made under operating leases (net of any incentives received from the lessor) are charged to profit or loss on a straight-line basis over the period of the lease.

(f) Impairment of assets

Assets are tested for impairment whenever events or changes in circumstances indicate that the carrying amount may not be recoverable. An impairment loss is recognised for the amount by which the asset's carrying amount exceeds its recoverable amount. The recoverable amount is the higher of an asset's fair value less costs of disposal and value in use. Non-financial assets that suffered an impairment are reviewed for possible reversal of the impairment at the end of each reporting year.

(g) Cash and cash equivalents

For the purpose of presentation in the statement of cash flows, cash and cash equivalents includes cash on hand, deposits held at call with financial institutions, other short-term, highly liquid investments with original maturities of three months or less that are readily convertible to known amounts of cash and which are subject to an insignificant risk of changes in value.

(h) Trade receivables

Trade receivables are recognised initially at fair value and subsequently measured at amortised cost using the effective interest method, less provision for impairment. See note 7 for further information about the Company's accounting for trade receivables and 2(b) for a description of the Company's impairment policies.

Collectability of trade receivables is reviewed on an ongoing basis. Debts which are known to be uncollectible are written off by reducing the carrying amount directly. An allowance account (provision for impairment of trade receivables) is used when there is objective evidence that the Company will not be able to collect all amounts due according to the original terms of the receivables. Significant financial difficulties of the debtor, probability that the debtor will enter bankruptcy or financial reorganisation, and default or delinquency in payments (more than 90 days overdue) are considered indicators that the trade receivable is impaired. The amount of the impairment allowance is the difference between the asset's carrying amount and the present value of estimated future cash flows, discounted at the original effective interest rate. Cash flows relating to short-term receivables are not discounted if the effect of discounting is immaterial.

1 Summary of significant accounting policies (continued)

(h) Trade receivables (continued)

The amount of the impairment loss is recognised in profit or loss within other expenses. When a trade receivable for which an impairment allowance had been recognised becomes uncollectible in a subsequent period, it is written off against the allowance account. Subsequent recoveries of amounts previously written off are credited against other expenses in profit or loss.

(i) Property, plant and equipment

Property, plant and equipment is stated at historical cost less depreciation. Historical cost includes expenditure that is directly attributable to the acquisition of the items. Assets received by way of donation are recognised at their fair value at the date of acquisition in the financial report.

Subsequent costs are included in the asset's carrying amount or recognised as a separate asset, as appropriate, only when it is probable that future economic benefits associated with the item will flow to the Company and the cost of the item can be measured reliably. The carrying amount of any component accounted for as a separate asset is derecognised when replaced. All other repairs and maintenance are charged to profit or loss during the reporting year in which they are incurred.

Depreciation is calculated using the straight-line method to allocate their cost or revalued amounts, net of their residual values, over their estimated useful lives or, in the case of leasehold improvements and certain leased plant and equipment, the shorter lease term as follows:

• Plant and equipment	3 - 10 years
• Furniture and fittings	6 - 14 years
• Motor vehicles	5 - 7 years
• Leasehold improvements	9 years

The assets' residual values and useful lives are reviewed, and adjusted if appropriate, at the end of each reporting year.

An asset's carrying amount is written down immediately to its recoverable amount if the asset's carrying amount is greater than its estimated recoverable amount (note 1(f)).

Gains and losses on disposals are determined by comparing proceeds with carrying amount. These are included in profit or loss. When revalued assets are sold, it is Company policy to transfer any amounts included in other reserves in respect of those assets to retained earnings.

(j) Trade and other payables

These amounts represent liabilities for goods and services provided to the Company prior to the end of financial year which are unpaid. The amounts are unsecured and are usually paid within 30 days of recognition. Trade and other payables are presented as current liabilities unless payment is not due within 12 months from the reporting date. They are recognised initially at their fair value and subsequently measured at amortised cost using the effective interest method.

(k) Employee benefits

(i) Short-term obligations

Liabilities for wages and salaries, including non-monetary benefits and accumulating sick leave that are expected to be settled wholly within 12 months after the end of the period in which the employees render the related service are recognised in respect of employees' services up to the end of the reporting period and are measured at the amounts expected to be paid when the liabilities are settled. The liabilities are presented as current employee benefit obligations in the statement of financial position.

1 Summary of significant accounting policies (continued)

(k) Employee benefits (continued)

(ii) Other long-term employee benefit obligations

The liabilities for long service leave and annual leave are not expected to be settled wholly within 12 months after the end of the year in which the employees render the related service. They are therefore measured as the present value of expected future payments to be made in respect of services provided by employees up to the end of the reporting year using the projected unit credit method. Consideration is given to expected future wage and salary levels, experience of employee departures and periods of service. Expected future payments are discounted using market yields at the end of the reporting year of high-quality corporate bonds with terms and currencies that match, as closely as possible, the estimated future cash outflows. Remeasurements as a result of experience adjustments and changes in actuarial assumptions are recognised in profit or loss.

The obligations are presented as current liabilities in the statement of financial position if the entity does not have an unconditional right to defer settlement for at least twelve months after the reporting date, regardless of when the actual settlement is expected to occur.

(l) Goods and Services Tax (GST)

Revenues, expenses and assets are recognised net of the amount of associated GST, unless the GST incurred is not recoverable from the taxation authority. In this case it is recognised as part of the cost of acquisition of the asset or as part of the expense.

Receivables and payables are stated inclusive of the amount of GST receivable or payable. The net amount of GST recoverable from, or payable to, the taxation authority is included with other receivables or payables in the statement of financial position.

Cash flows are presented on a gross basis. The GST components of cash flows arising from investing or financing activities which are recoverable from, or payable to the taxation authority, are presented as operating cash flows.

2 Financial risk management

(a) Market risk

(i) Foreign exchange risk

Foreign exchange risk arises when future commercial transactions or recognised assets or liabilities are denominated in a currency that is not the Company's functional currency.

Management believes that the Company does not have exposure to foreign exchange rate movements.

(ii) Cash flow and fair value interest rate risk

The Company's exposure to interest rate risk arises predominantly from assets bearing variable interest rates, which includes cash balances held in banks. As interest income does not make up the main source of revenue, the management expects no significant interest rate risk on these balances.

Loans receivable from related parties, trade and other receivables, loans payable to related parties and trade and other payables are not impacted by movements in interest rates.

Management believes that the Company's overall exposure to interest rate movements is not material.

2 Financial risk management (continued)

(b) Credit risk

Individual receivables which are known to be uncollectible are written off by reducing the carrying amount directly. The other receivables are assessed collectively to determine whether there is objective evidence that an impairment has been incurred but not yet been identified. For these receivables the estimated impairment losses are recognised in a separate provision for impairment. The Company considers that there is evidence of impairment if any of the following indicators are present:

- significant financial difficulties of the debtor
- probability that the debtor will enter bankruptcy or financial reorganisation, and
- default or delinquency in payments (more than 90 days overdue).

Receivables for which an impairment provision was recognised are written off against the provision when there is no expectation of recovering additional cash.

Impairment losses are recognised in profit or loss within other expenses. Subsequent recoveries of amounts previously written off are credited against other expenses.

3 Critical estimates, judgements and errors

The preparation of financial statements requires the use of accounting estimates which, by definition, will seldom equal the actual results. Management also needs to exercise judgement in applying the Company's accounting policies.

(a) Significant estimates and judgements

Estimates and judgements are continually evaluated. They are based on historical experience and other factors, including expectations of future events that may have a financial impact on the entity and that are believed to be reasonable under the circumstances.

(b) Critical accounting estimates and assumptions

The Company makes estimates and assumptions concerning the future. The resulting accounting estimates will, by definition, seldom equal the related actual results. There are no areas involving a higher degree of judgment or complexity, or areas where assumptions and estimates are significant to the financial statements.

4 Revenue

	2017 \$	2016 \$
From continuing operations		
Gross revenue from fundraising appeals	426,539	91,270
Donations received	552,373	442,120
Government grants and subsidies	1,242,408	430,235
Sundry revenues	42,912	62,959
Total revenue from continuing operations	2,264,232	1,026,584

During the year the Company received grants in the amount of \$1,242,408 (2016: \$430,235) from the VIC Department of Education and the Federal Department of Education and Training that includes \$644,209.00 from the Federal Government to fund a capital works project.

Giant Steps Melbourne Limited
Notes to the financial statements
31 December 2017
(continued)

5 Other gains/(losses)

	2017 \$	2016 \$
Reimbursement of expenses from Stepping Stones Education Services Limited	8,300	-
	<u>8,300</u>	<u>-</u>

6 Expenses

	2017 \$	2016 \$
Defined contribution superannuation	72,663	53,569
<i>Depreciation</i>		
Plant and equipment	4,578	3,250
Furniture and fittings	241	177
Motor vehicles	6,664	-
Leasehold improvements	11,245	8,679
	<u>22,728</u>	<u>12,106</u>

7 Trade and other receivables

	2017 Current \$	Non- current \$	Total \$	2016 Current \$	Non- current \$	Total \$
Trade receivables	-	-	-	1,800	-	1,800
Receivables from related parties	12,343	-	12,343	84,186	-	84,186
Prepayments	16,361	-	16,361	10,445	-	10,445
	<u>28,704</u>	<u>-</u>	<u>28,704</u>	<u>96,431</u>	<u>-</u>	<u>96,431</u>

8 Property, plant and equipment

	Plant and equipment \$	Furniture and fittings \$	Motor vehicles \$	Leasehold improvements \$	Assets under construction \$	Total \$
At 1 January 2017						
Cost	23,964	1,872	-	93,938	-	119,774
Accumulated depreciation	(3,250)	(177)	-	(8,679)	-	(12,106)
Net book amount	20,714	1,695	-	85,259	-	107,668
Year ended 31 December 2017						
Opening net book amount	20,714	1,695	-	85,259	-	107,668
Additions	10,793	6,100	46,866	20,028	994,014	1,077,801
Disposals	-	-	-	-	-	-
Depreciation charge	(4,578)	(241)	(6,664)	(11,245)	-	(22,728)
Closing net book amount	26,929	7,554	40,202	94,042	994,014	1,162,741
At 31 December 2017						
Cost	34,756	7,972	46,866	113,966	994,014	1,197,574
Accumulated depreciation	(7,827)	(418)	(6,664)	(19,924)	-	(34,833)
Net book amount	26,929	7,554	40,202	94,042	994,014	1,162,741

9 Trade and other payables

	Current \$	2017 Non- current \$	Total \$	Current \$	2016 Non- current \$	Total \$
Trade payables	590,813	-	590,813	15,215	-	15,215
Accrued expenses	26,951	-	26,951	15,048	-	15,048
GST and other statutory liabilities	15,940	-	15,940	16,479	-	16,479
	633,704	-	633,704	46,742	-	46,742

10 Employee benefit obligations

	2017			2016		
	Current	Non-current	Total	Current	Non-current	Total
	\$	\$	\$	\$	\$	\$
Leave obligations (a)	62,549	8,071	70,620	57,543	6,683	64,226

(a) Leave obligations

The leave obligations cover the Company's liability for long service leave and annual leave.

11 Retained surplus

Movements in retained surplus were as follows:

	2017	2016
	\$	\$
Balance 1 January	66,568	-
Net surplus for the year	987,149	66,568
Balance 31 December	1,053,717	66,568

12 Remuneration of auditors

PwC

	2017	2016
	\$	\$
Audit and review of financial statements	10,300	10,000
Total remuneration for audit and other assurance services	10,300	10,000

PwC received \$3,000 (2016: \$nil) for assistance with bookkeeping and the preparation of the financial statements.

13 Contingencies

The Company had no contingent liabilities or assets at 31 December 2017 (2016: \$Nil).

14 Commitments

(a) Lease commitments: company as lessee

(i) Non-cancellable operating leases

The lease for the rental of premises occupied by the Company expires in June 2020.

	2017 \$	2016 \$
Commitments for minimum lease payments in relation to non-cancellable operating leases are payable as follows:		
Within one year	129,218	123,600
Later than one year but not later than five years	200,625	325,966
	<u>329,843</u>	<u>449,566</u>

(ii) Rental expense relating to operating leases

Minimum lease payments	125,763	122,100
------------------------	---------	---------

15 Remuneration of directors

No remuneration was received or is receivable by the directors of the Company (2016: \$nil).

16 Related party transactions

(a) Key management personnel compensation

	2017 \$	2016 \$
Short-term employee benefits	132,645	128,933
Post-employment benefits	12,601	12,249
	<u>145,246</u>	<u>141,182</u>

(b) Transactions with other related parties

The following transactions occurred with related parties:

	31 December 2017 \$	31 December 2016 \$
Donations transferred from Giant Steps Australia Limited	151,971	-
Reimbursement of expenses from Stepping Stones Education Services Limited	8,300	-
Charges from Giant Steps Australia Limited	(2,242)	-

During the financial year certain transactions were conducted between the Company and other related parties. These were all conducted on a commercial basis.

16 Related party transactions (continued)

(c) Outstanding balances arising for transactions with related parties

The following balances are outstanding at the end of the reporting year in relation to transactions with related parties:

	2017 \$	2016 \$
<i>Current receivables</i>		
Receivable from Giant Steps Australia Limited	3,214	84,186
Receivable from Stepping Stones Education Services Limited	9,129	-
	<u>12,343</u>	<u>84,186</u>

(d) Loans to/from related parties

	2017 \$	2016 \$
<i>Loans payable to Giant Steps Australia Limited</i>		
Beginning of the year	(30,000)	-
Loans advanced	-	(30,000)
Loans repayments made	30,000	-
End of year	<u>-</u>	<u>(30,000)</u>

(e) Terms and conditions

There were no interest charged during the year (2016: \$nil) on the loans payable to Giant Steps Australia Limited.

17 Events occurring after the reporting period

No matters or circumstances have occurred subsequent to year end that has significantly affected, or may significantly affect, the operations of the Company, the results of those operations or the state of affairs of the Company or economic entity in subsequent financial years.

**Giant Steps Melbourne Limited
Directors' declaration
31 December 2017**

In the directors' opinion:

- (a) the financial statements and notes set out on pages 7 to 22 are in accordance with the *Australian Charities and Not-for-profits Commission Act 2012 (ACNC)*, including:
 - (i) complying with Accounting Standards - Reduced Disclosure Requirements, the *Australian Charities and Not-for-profits Commission Act 2012* and other mandatory professional reporting requirements, and
 - (ii) giving a true and fair view of the Company's financial position as at 31 December 2017 and of its performance for the financial year ended on that date, and
- (b) there are reasonable grounds to believe that the Company will be able to pay its debts as and when they become due and payable.

This declaration is made in accordance with a resolution of directors.

s47F



Melbourne
29 June 2018



Independent auditor's report

To the members of Giant Steps Melbourne Limited

Our qualified opinion

In our opinion, except for the possible effects of the matter[s] described in the *Basis for qualified opinion* section of our report, the accompanying financial report of Giant Steps Melbourne Limited (the Company) is in accordance with Division 60 of the *Australian Charities and Not-for-profits Commission (ACNC) Act 2012*, including:

- (a) giving a true and fair view of the Company's financial position as at 31 December 2017 and of its financial performance for the year then ended
- (b) complying with Australian Accounting Standards - Reduced Disclosure Requirements and Division 60 of the *Australian Charities and Not-for-profits Commission Regulation 2013*.

What we have audited

The financial report comprises:

- the statement of financial position as at 31 December 2017
- the statement of comprehensive income for the year then ended
- the statement of changes in equity for the year then ended
- the statement of cash flows for the year then ended
- the notes to the financial statements, which include a summary of significant accounting policies
- the directors' declaration.

Basis for qualified opinion

Cash from donations and other fundraising activities are a significant source of revenue for the Company. The directors have determined that it is impracticable to establish control over the collection of revenue from these sources prior to entry into its financial records. Accordingly, as the evidence available to us regarding revenue from cash donations and other fundraising activities was limited, our audit procedures with respect to revenue from these sources had to be restricted to the amounts recorded in the Company's financial records. As a result, we are unable to express an opinion as to whether revenue from cash donations and other fundraising activities is complete.

We conducted our audit in accordance with Australian Auditing Standards. Our responsibilities under those standards are further described in the *Auditor's responsibilities for the audit of the financial report* section of our report.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our qualified opinion.

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Independence

We are independent of the Company in accordance with the ethical requirements of the Accounting Professional and Ethical Standards Board's APES 110 *Code of Ethics for Professional Accountants* (the Code) that are relevant to our audit of the financial report in Australia. We have also fulfilled our other ethical responsibilities in accordance with the Code.

Other information

The directors are responsible for the other information. The other information comprises the information included in the Company's Financial report for the year ended: 31 December 2017 for the year ended 31 December 2017, including the Directors' report, but does not include the financial report and our auditor's report thereon.

Our opinion on the financial report does not cover the other information and accordingly we do not express any form of assurance conclusion thereon.

In connection with our audit of the financial report, our responsibility is to read the other information identified above and, in doing so, consider whether the other information is materially inconsistent with the financial report or our knowledge obtained in the audit, or otherwise appears to be materially misstated.

If, based on the work we have performed on the other information obtained prior to the date of this auditor's report, we conclude that there is a material misstatement of this other information, we are required to report that fact. We have nothing to report in this regard.

Responsibilities of the directors for the financial report

The directors of the Company are responsible for the preparation of the financial report that gives a true and fair view in accordance with Australian Accounting Standards - Reduced Disclosure Requirements and *Australian Charities and Not-for-profits Commission (ACNC) Act 2012* and for such internal control as the directors determine is necessary to enable the preparation of the financial report that gives a true and fair view and is free from material misstatement, whether due to fraud or error.

In preparing the financial report, the directors are responsible for assessing the ability of the Company to continue as a going concern, disclosing, as applicable, matters related to going concern and using the going concern basis of accounting unless the directors either intend to liquidate the Company or to cease operations, or have no realistic alternative but to do so.

Auditor's responsibilities for the audit of the financial report

Our objectives are to obtain reasonable assurance about whether the financial report as a whole is free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion. Reasonable assurance is a high level of assurance, but is not a guarantee that an audit conducted in accordance with the Australian Auditing Standards will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material

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if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of the financial report.

A further description of our responsibilities for the audit of the financial report is located at the Auditing and Assurance Standards Board website at:

http://www.auasb.gov.au/auditors_responsibilities/ar4.pdf. This description forms part of our auditor's report.

PricewaterhouseCoopers

s47F

Sydney
29 June 2018

PricewaterhouseCoopers, ABN 52 780 433 757

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GIANT STEPS MELBOURNE LIMITED

ABN: 46 606 552 283

Financial report for the year ended: 31 December 2016

Registered Office

Step House
23 Punt Road
Gladesville NSW 2111

Principal Place of Business

11 Malmsbury Street
Kew VIC 3101

The Financial Report was authorised for issue by the Directors on 26 May 2017. The Company has the power to amend and reissue the Financial Report.

This Financial Report covers Giant Steps Melbourne Limited as an individual entity.

The Financial Report is presented in the Australian currency.

Giant Steps Melbourne Limited is a company limited by guarantee, incorporated and domiciled in Australia.

Giant Steps Melbourne Limited

ABN: 46 606 552 283

GENERAL PURPOSE FINANCIAL REPORT

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The Directors present their report on Giant Steps Melbourne Limited ("the Company") for the year ended 31 December 2016. The Company was incorporated on 19 June 2015 and commenced operations on 29 January 2016. As there was no activity prior to 31 December 2015, the financial report covers the results of operations for the year ended 31 December 2016.

Directors

The following persons were Directors of the Company since incorporation and up to date of this report unless otherwise stated.

The names of the Directors, their qualifications, experience and special responsibilities are as follows:

s47F



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Meeting of Directors

During the financial year, 5 meetings of Directors were held. Attendance was:

	Number eligible to attend	Number attended
s47F	5	5
	5	4
	5	5
	5	3
	5	5
	5	3
	3	3
	3	2
	3	3
	3	3
	2	2
	2	2
	2	2
	2	2
	2	2
	2	2
	2	2

Objectives, Strategy and Performance Measurement

Giant Steps seeks to develop intensive therapeutic and educational programs under a transdisciplinary model of service provision to enable children and young people with autism to reach their full potential. Giant Steps also seeks to provide support to families, to improve the understanding of autism in the wider community and to develop best practice amongst carers and professionals.

Through research and development pedagogical models have been developed specific to the needs of children and young people with autism. These models are recognised as the leading edge in autism intervention.

Funding models that include financial support from government, corporations, fundraising events and individual donations provide a strong funding base for Giant Steps operations. Giant Steps continues to ensure it liaises with government on a regular basis to have input into any funding changes and continues to build a strong corporate and parent network to assist with annual fundraising targets.

Giant Steps staff are employed under a competency based model and participate in an extensive development program as part of their employment.

Performance is measured on numerous levels including Board of Studies registration and accreditation; accountability for all government funding received; parent and staff satisfaction surveys; financial audits; accountability reporting for corporate sponsorship and donations received and detailed reporting around performance of students across the organisation.

The Board of Directors as well as the Executive Staff of Giant Steps Melbourne maintain close scrutiny of all aspects of the financial management of the organisation.

Principal Activities

The principal activities of Giant Steps Melbourne include the operation of a school for children and young adults with autism spectrum disorder. The school is registered and accredited by the VIC Board of Studies.

Members Liability

The company is registered under the *Australian Charities and Not-for-profits Commission Act 2012* as a company limited by guarantee. In the event of the Company being wound up each member is liable to contribute to the debts of the Company incurred whilst he/she was a member or within one year from his/her ceasing to be a member, or for the purposes of adjusting the rights of the contributories amongst themselves, such amount as may be required not exceeding \$200.

At 31 December 2016, the number of members of the Company was 11 and the amount capable of being called up for the purposes of a winding up was \$2,200.

This statement is made in accordance with a resolution of the Directors and is signed for and on behalf of the Directors by:

s47F



Melbourne
26 May 2017



Auditor's Independence Declaration

As lead auditor for the audit of Giant Steps Melbourne Limited for the year ended 31 December 2016, I declare that to the best of my knowledge and belief, there have been no contraventions of any applicable code of professional conduct in relation to the audit.

s47F

Sydney
26 May 2017

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STATEMENT OF COMPREHENSIVE INCOME
for the year ended 31 December 2016

Giant Steps Melbourne Limited

	Note	2016 \$
Revenue from ordinary activities	2	1,026,584
Direct costs of fundraising appeals		(6,745)
Employee benefits expense		(697,618)
Depreciation and amortisation expense	7	(12,106)
Rental of property and occupancy costs		(140,164)
Repairs and maintenance		(9,637)
Other expenses from continuing operations		<u>(93,746)</u>
Surplus for the year		<u>66,568</u>
Total comprehensive income for the year		<u><u>66,568</u></u>

The above Statement of Comprehensive Income should be read in conjunction with the accompanying notes.

STATEMENT OF FINANCIAL POSITION
as at 31 December 2016

Giant Steps Melbourne Limited

	Note	2016 \$
CURRENT ASSETS		
Cash and cash equivalents		3,437
Receivables	6	85,986
Prepayments		<u>10,445</u>
TOTAL CURRENT ASSETS		<u>99,868</u>
NON-CURRENT ASSETS		
Property, plant and equipment	7	<u>107,668</u>
TOTAL NON-CURRENT ASSETS		<u>107,668</u>
TOTAL ASSETS		<u>207,536</u>
CURRENT LIABILITIES		
Payables	8	46,742
Loans payable to related parties	13	30,000
Provisions	9	<u>57,543</u>
TOTAL CURRENT LIABILITIES		<u>134,285</u>
NON-CURRENT LIABILITIES		
Provisions	9	<u>6,683</u>
TOTAL NON-CURRENT LIABILITIES		<u>6,683</u>
TOTAL LIABILITIES		<u>140,968</u>
NET ASSETS		<u>66,568</u>
EQUITY		
Retained surplus	12	<u>66,568</u>
TOTAL EQUITY		<u>66,568</u>

The above Statement of Financial Position should be read in conjunction with the accompanying notes.

**STATEMENT OF CHANGES IN EQUITY
for the year ended 31 December 2016**

Giant Steps Melbourne Limited

	2016 \$
Total equity at the beginning of the year	-
Surplus for the year	<u>66,568</u>
Total equity at the end of the year	<u><u>66,568</u></u>

The above Statement Changes in Equity should be read in conjunction with the accompanying notes.

STATEMENT OF CASH FLOWS
for the year ended 31 December 2016

Giant Steps Melbourne Limited

	Note	2016 \$
CASH FLOWS FROM OPERATING ACTIVITIES		
Donations and grants received		940,598
Cash payments to suppliers and employees		<u>(847,387)</u>
Net cash inflow from operating activities		<u>93,211</u>
CASH FLOWS FROM INVESTING ACTIVITIES		
Payments for fixed assets		<u>(119,774)</u>
Net cash inflow from investing activities		<u>(119,774)</u>
CASH FLOWS FROM FINANCING ACTIVITIES		
Proceeds from related party loans	13	<u>30,000</u>
Net cash inflow from financing activities		<u>30,000</u>
 Net increase/(decrease) in cash held		 3,437
Cash at the beginning of the financial year		<u>-</u>
Cash at the end of the financial year		<u><u>3,437</u></u>

The above Statement of Cash Flows should be read in conjunction with the accompanying notes.

1 STATEMENT OF ACCOUNTING POLICIES

The following summary explains the significant accounting policies that have been adopted in the preparation of the financial report.

(a) Basis of Preparation

These general purpose financial statements have been prepared in accordance with Australian Accounting Standards – Reduced Disclosure Requirements, the Australian Charities and Not-for-profits Commission Act 2012, the Fundraising Act 1998 (VIC), the Fundraising Regulations 2009 (VIC) and other authoritative pronouncements of the Australian Accounting Standards Board. The company is a not-for-profit entity for financial reporting purposes under Australian Accounting Standards.

Compliance with Australian Accounting Standards – Reduced Disclosure Requirements

The financial statements of Giant Steps Melbourne Limited comply with Australian Accounting Standards – Reduced Disclosure Requirements as issued by the Australian Accounting Standards Board (AASB).

Historic Cost Convention

These financial statements have been prepared under the historic cost convention.

New and Amended Standards Adopted by the Company

None of the new standards and amendments to standards that are mandatory for the first time for the financial year beginning 1 January 2016 affected any of the amounts recognised in the current period or any prior periods and are not likely to affect further period.

(b) Critical Accounting Estimates

There were no areas involving judgement or estimates that were significant to the financial report.

(c) Revenue Recognition

Revenue is measured at the fair value of the consideration received or receivable. The Company recognises revenue when the amount of revenue can be reliably measured, it is probable that future economic benefits will flow to the entity and specific criteria have been met for each type of revenue as described below. Revenue received in respect of future periods is reflected in the balance sheet as a liability.

Revenue is recognised for the major classes of activities as follows:

Donations and fundraising revenue

Donations are recognised when received or receivable when there is a reasonable assurance that the donation will be received. Donations of assets are recorded as revenue at their fair values.

Government grants and subsidies

Grants from the government are recognised at their fair value where there is a reasonable assurance that the grant will be received and the Company will comply with all attached conditions. Government grants relating to costs are deferred and recognised as income over the period necessary to match them with the costs that they are intended to compensate.

Interest income

Interest income is recognised as it accrues, taking into account the effective yield on the financial asset.

(d) Cash and Cash Equivalents

For the purposes of the statement of cash flows, cash includes deposits at call with financial institutions and other highly liquid investments with short periods to maturity which are readily convertible to cash on hand and are subject to an insignificant risk of changes in value, net of outstanding bank overdrafts.

1 STATEMENT OF ACCOUNTING POLICIES (CONTINUED)**(e) Plant and Equipment**

Plant and equipment purchased is recorded at cost. Assets received by way of donation are recognised at their fair value at the date of acquisition in the financial report. The depreciable amounts of all plant and equipment are depreciated on a straight line basis over their useful life, commencing from the time the asset is held ready for use.

(f) Depreciation of Property, Plant and Equipment

Depreciation is calculated on a straight line basis to write off the net cost of each item of property, plant and equipment over its expected useful life to the Company. Estimates of remaining useful lives are made on a regular basis for all assets, with annual reassessments for major items. The expected useful lives are as follows:

Plant and equipment: 3 to 10 years

Furniture and fittings: 6 to 14 years

Where items of plant and equipment have separately identified components which are subject to regular replacement, those components are assigned useful lives distinct from the item of plant and equipment to which they relate.

(g) Leasehold Improvements

The cost of improvements to or on leasehold properties is amortised over the expected unexpired period of the lease including option to extend the lease or the estimated useful life of the improvement to the Company, whichever is the shorter. Leasehold improvements held at the reporting date are being amortised over 9 years.

(h) Income Tax

The Company is exempt from income tax under Section 50-5 of the Income Tax Assessment Act and accordingly no provision has been made for income tax.

(i) Recoverable Amount of Non-Current Assets

The recoverable amount of an asset is determined as the higher of the net selling price and value in use, which, for the assets of a not-for-profit entity which are not primarily held for the generation of net cash inflows, is deemed to be the depreciated replacement cost of the asset.

Where the carrying amount of a non-current asset is greater than its recoverable amount, the asset is written down to its recoverable amount. Where net cash inflows are derived from a group of assets working together, recoverable amount is determined on the basis of the relevant group of assets. The decrement in the carrying amount is recognised as an expense in net surplus or deficit in the reporting period which the recoverable amount write-downs occur.

1 STATEMENT OF ACCOUNTING POLICIES (CONTINUED)**(j) Employee Benefits****(a) Wages and salaries and annual leave**

Liabilities for wages and salaries, including non-monetary benefits, and annual leave expected to be settled within 12 months of the reporting date are recognised in respect of employees' services up to the reporting date and are measured at the amounts expected to be paid when the liabilities are settled. Liabilities for non-accumulating sick leave are recognised when the leave is taken and measured at the rates paid or payable.

(b) Long service leave

A liability for long service leave is recognised, and is measured as the present value of expected future payments to be made in respect of services provided by employees up to the reporting date. Consideration is given to expected future wage and salary levels, experience of employee departures and periods of service. Such liabilities are split between unconditional payments required to be made on departure and expected to be paid in the next twelve months, as current liabilities; and provisions conditional on additional future service prior to such payments becoming unconditional, as non-current liabilities. Expected future payments are discounted using market yields at the end of the reporting period of the high quality corporate bonds with terms and currencies that match, as closely as possible, the estimated future cash outflows.

(k) Payables

These amounts represent liabilities for goods and services provided to the Company prior to the end of the financial year which are unpaid. The amounts are unsecured and are usually paid within 30 days of recognition.

(l) Receivables

Receivables are recognised initially at fair value. These amounts represent amounts due from external parties and usually due for settlement no more than 30 days.

(m) Goods and Services Tax

Revenue, expenses and assets are recognised net of the amount of goods and services tax (GST), except where the amount of GST incurred is not recoverable from the Australian Taxation Office (ATO). In these circumstances the GST is recognised as part of the acquisition cost of the assets or of an item of expenses.

Receivables and payables are stated with the amount of GST included. The net amount of GST recoverable from, or payable to, the ATO is included as a receivable or payable in the balance sheet.

Cash flows are included in the cash flow statement on a gross basis. The GST component of cash flows arising from investing and financing activities which are recoverable from, or payable to, the ATO are classified as operating cash flows.

(n) Leases

Operating lease payments are charged to the income statement on a straight line basis over the period of the lease.

NOTES TO THE FINANCIAL STATEMENTS

Giant Steps Melbourne Limited

2016
\$

2 REVENUE FROM CONTINUING OPERATIONS

Gross revenue from fundraising appeals	91,270
Donations received	442,120
Government grants and subsidies	430,235
Sundry revenue	62,959
	<u>1,026,584</u>

Grants

During the year the Company received grants in the amount of \$430,235 from the VIC Department of Education and the Federal Department of Education and Training.

3 EXPENSES

Defined contribution superannuation	53,569
Operating leases	122,100

NOTES TO THE FINANCIAL STATEMENTS

Giant Steps Melbourne Limited

4 DIRECTORS AND KEY MANAGEMENT PERSONNEL

Key management personnel include Directors and management responsible for planning, directing and controlling the activities of the Company.

The following persons were Directors of the Company during the financial year:

s47F

Remuneration as disclosed in this report comprises:

Directors: No remuneration was received or is receivable by the Directors of the Company.

Key management: The key management group comprises the Principal.

	2016 \$
The total remuneration paid to the 1 management position was:	
Short-term employment benefits	128,933
Post-employment benefits	<u>12,249</u>
Total	<u><u>141,182</u></u>

5 REMUNERATION OF AUDITORS

During the year, the following fees were paid or payable for services provided by the auditor of the Company.

Audit and other assurance services	<u><u>10,000</u></u>
------------------------------------	----------------------

6 RECEIVABLES

Other debtors	<u>85,986</u>
Total	<u><u>85,986</u></u>

NOTES TO THE FINANCIAL STATEMENTS

Giant Steps Melbourne Limited

2016
\$

7 PROPERTY, PLANT AND EQUIPMENT

Furniture and fittings – at cost	1,872
Less: Accumulated depreciation	<u>(177)</u>
	<u>1,695</u>
Plant and equipment – at cost	23,965
Less: Accumulated depreciation	<u>(3,250)</u>
	<u>20,715</u>
Leasehold improvements – at cost	93,937
Less: Accumulated amortisation	<u>(8,679)</u>
	<u>85,258</u>
	<u><u>107,668</u></u>

Movements in Carrying Amounts

Movement in the carrying amounts for each class of property, plant and equipment between the beginning and at the end of the current financial year

	Furniture & Fittings	Plant & Equipment	Leasehold Improvements	Total
Balance at the beginning of the year	-	-	-	-
Additions	1,872	23,965	93,937	119,773
Depreciation expense	<u>(177)</u>	<u>(3,250)</u>	<u>(8,679)</u>	<u>(12,106)</u>
Carrying amount at the end of the year	<u>1,695</u>	<u>20,715</u>	<u>85,258</u>	<u>107,668</u>

NOTES TO THE FINANCIAL STATEMENTS**Giant Steps Melbourne Limited**2016
\$**8 PAYABLES**

Trade creditors and other payables	46,024
Outgoings accrued	<u>718</u>
	<u>46,742</u>

9 EMPLOYEE BENEFITS

<i>Current</i>	
Provision for annual leave	37,138
Provision for long service leave	<u>20,405</u>
	<u>57,543</u>
<i>Non-Current</i>	
Provision for long service leave	<u>6,683</u>
	<u>64,226</u>

10 LEASE COMMITMENTS

The lease for the rental of premises occupied by Giant Steps Melbourne expires in June 2020.

Commitments for minimum lease payments in relation to non-cancellable operating leases are payable as follows:

Within one year	123,600
Later than one year but not later than five years	325,966
Later than five years	<u>-</u>
	<u>449,566</u>

11 RETAINED SURPLUS

Retained surplus at the beginning of the financial year	-
Surplus/(deficit) for the year	<u>66,568</u>
Retained surplus at the end of the financial year	<u>66,568</u>

NOTES TO THE FINANCIAL STATEMENTS

Giant Steps Melbourne Limited

2016
\$

12 RELATED PARTY TRANSACTIONS

During the financial year certain transactions were conducted between the Company and other related parties. These were all conducted on a commercial basis.

Related parties include: Giant Steps Sydney Limited.

Related parties

Aggregate amounts included in the determination of surplus that resulted from transactions with each class of other parties:

Aggregate amounts receivable from, and payable to, each class of other parties at balance sheet date

Current loans and receivables

Giant Steps Sydney Limited	<u>84,186</u>
	<u>84,186</u>

Current loans and payables

Giant Steps Sydney Limited	<u>30,000</u>
	<u>30,000</u>

DIRECTORS' DECLARATION

Giant Steps Melbourne Limited

In the Directors' opinion:

- (a) the financial statements and notes set out on pages 8 to 18 are in accordance with the Australian Charities and *Not-for-profits Commission Act 2012*, including:
- (i) complying with Accounting Standards – Reduced Disclosure Requirements, *Australian Charities and Not-for-profits Commission Act 2012* and other mandatory professional reporting requirements and;
 - (ii) giving a true and fair view of the Company's financial position as at 31 December 2016 and of its performance, for the financial year ended on that date; and
- (b) there are reasonable grounds to believe that the Company will be able to pay its debts as and when they become due and payable.

This declaration is made in accordance with a resolution of the Directors and is signed for and on behalf of the Directors by:

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Melbourne
26 May 2017



Independent auditor's report

To the shareholders of Giant Steps Melbourne Limited

Our qualified opinion

In our opinion, except for the possible effects of the matter described in the *Basis for qualified opinion* section of our report, the accompanying financial report of Giant Steps Melbourne Limited (the Company) is in accordance with Division 60 of the *Australian Charities and Not-for-profits Commission (ACNC) Act 2012*, including:

- (a) giving a true and fair view of the Company's financial position as at 31 December 2016 and of its financial performance for the year then ended
- (b) complying with Australian Accounting Standards - Reduced Disclosure Requirements and Division 60 of the *Australian Charities and Not-for-profits Commission Regulation 2013*.

What we have audited

The financial report comprises:

- the statement of financial position as at 31 December 2016
- the statement of comprehensive income for the year then ended
- the statement of changes in equity for the year then ended
- the statement of cash flows for the year then ended
- the notes to the financial statements, which include a summary of significant accounting policies
- the directors' declaration.

Basis for qualified opinion

Cash from donations and other fundraising activities are a significant source of revenue for the Company. The directors have determined that it is impracticable to establish control over the collection of revenue from these sources prior to entry into its financial records. Accordingly, as the evidence available to us regarding revenue from cash donations and other fundraising activities was limited, our audit procedures with respect to revenue from these sources had to be restricted to the amounts recorded in the Company's financial records. As a result, we are unable to express an opinion as to whether revenue from cash donations and other fundraising activities is complete.

We conducted our audit in accordance with Australian Auditing Standards. Our responsibilities under those standards are further described in the *Auditor's responsibilities for the audit of the financial report* section of our report.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our qualified opinion.

Independence

We are independent of the Company in accordance with the ethical requirements of the Accounting Professional and Ethical Standards Board's APES 110 *Code of Ethics for Professional Accountants* (the

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Code) that are relevant to our audit of the financial report in Australia. We have also fulfilled our other ethical responsibilities in accordance with the Code.

Other information

The directors are responsible for the other information. The other information obtained at the date of this auditor's report comprises the Directors' Report included in the financial report, but does not include the financial report and our auditor's report thereon.

Our opinion on the financial report does not cover the other information and accordingly we do not express any form of assurance conclusion thereon.

In connection with our audit of the financial report, our responsibility is to read the other information identified above and, in doing so, consider whether the other information is materially inconsistent with the financial report or our knowledge obtained in the audit, or otherwise appears to be materially misstated.

If, based on the work we have performed on the other information obtained prior to the date of this auditor's report, we conclude that there is a material misstatement of this other information, we are required to report that fact. We have nothing to report in this regard.

Responsibilities of the directors for the financial report

The directors of the Company are responsible for the preparation of the financial report that gives a true and fair view in accordance with Australian Accounting Standards - Reduced Disclosure Requirements and the *Australian Charities and Not-for-profits Commission (ACNC) Act 2012* and for such internal control as the directors determine is necessary to enable the preparation of the financial report that gives a true and fair view and is free from material misstatement, whether due to fraud or error.

In preparing the financial report, the directors are responsible for assessing the ability of the Company to continue as a going concern, disclosing, as applicable, matters related to going concern and using the going concern basis of accounting unless the directors either intend to liquidate the Company or to cease operations, or have no realistic alternative but to do so.

Auditor's responsibilities for the audit of the financial report

Our objectives are to obtain reasonable assurance about whether the financial report as a whole is free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion. Reasonable assurance is a high level of assurance, but is not a guarantee that an audit conducted in accordance with the Australian Auditing Standards will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of the financial report.



A further description of our responsibilities for the audit of the financial report is located at the Auditing and Assurance Standards Board website at:
http://www.auasb.gov.au/auditors_files/ar3.pdf. This description forms part of our auditor's report.

A handwritten signature in blue ink, appearing to read "PricewaterhouseCoopers".

PricewaterhouseCoopers

s47F

Sydney
26 May 2017

Giant Steps Sydney Endowment Fund

ABN 47 439 794 083

**Special purpose financial report
for the year ended 31 December 2017**

Giant Steps Sydney Endowment Fund
ABN 47 439 794 083

Special purpose financial report - 31 December 2017

Contents

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These financial statements are the financial statements of Giant Steps Sydney Endowment Fund as an individual entity. The financial statements are presented in the Australian dollar (\$).

The Trustee of Giant Steps Sydney Endowment Fund is Giant Steps Endowment Fund Pty Limited a company limited by shares, incorporated and domiciled in Australia.

Its registered office is:

Giant Steps Endowment Fund Pty Limited as trustee for
Giant Steps Sydney Endowment Fund
Step House
23 Punt Road
Gladesville NSW 2111

The financial statements were authorised for issue by the Trustees on 12 July 2018. The Trustee has the power to amend and reissue the financial statements.

Giant Steps Sydney Endowment Fund
Statement of comprehensive income
For the year ended 31 December 2017

	Notes	2017 \$	2016 \$
Revenue from continuing operations	3	92,209	91,532
Net fair value gains of financial assets at fair value through profit or loss		21,486	18,106
Other expenses	4	(5,357)	(9,983)
Surplus for the year		<u>108,348</u>	<u>99,655</u>
Total comprehensive income for the year		<u>108,348</u>	<u>99,655</u>

The above statement of comprehensive income should be read in conjunction with the accompanying notes.

Giant Steps Sydney Endowment Fund
Statement of financial position
As at 31 December 2017

	Notes	2017 \$	2016 \$
ASSETS			
Current assets			
Cash and cash equivalents	5	670,274	494,505
Receivables	6	38,836	12,546
Financial assets at fair value through profit or loss	7	1,621,260	1,712,971
Total current assets		<u>2,328,370</u>	<u>2,220,022</u>
Net assets		<u>2,328,370</u>	<u>2,220,022</u>
EQUITY			
Retained surplus	8	<u>2,328,370</u>	<u>2,220,022</u>
Total equity		<u>2,328,370</u>	<u>2,220,022</u>

The above statement of financial position should be read in conjunction with the accompanying notes.

Giant Steps Sydney Endowment Fund
Statement of changes in equity
For the year ended 31 December 2017

	Retained surplus \$
Balance at 1 January 2016	<u>2,120,367</u>
Surplus for the year	99,855
Total comprehensive income for the year	<u>99,855</u>
Balance at 31 December 2016	<u>2,220,022</u>
Balance at 1 January 2017	<u>2,220,022</u>
Surplus for the year	108,348
Total comprehensive income for the year	<u>108,348</u>
Balance at 31 December 2017	<u>2,328,370</u>

The above statement of changes in equity should be read in conjunction with the accompanying notes.

Giant Steps Sydney Endowment Fund
Statement of cash flows
For the year ended 31 December 2017

	Notes	2017 \$	2016 \$
Cash flows from operating activities			
Payments to suppliers and employees		(384)	-
Interest received		10,826	16,295
Dividend income received		15,684	97,781
Bank and management charges		(5,357)	(9,955)
Net cash inflow from operating activities	13	<u>20,789</u>	<u>104,121</u>
Cash flows from investing activities			
Payments for financial assets at fair value through profit or loss		-	(298,850)
Receipts from sale of financial assets at fair value through profit or loss		155,000	304,607
Net cash inflow from investing activities		<u>155,000</u>	<u>5,757</u>
Net increase in cash and cash equivalents		<u>175,789</u>	<u>109,878</u>
Cash and cash equivalents at the beginning of the financial year		494,505	384,627
Cash and cash equivalents at end of the financial year	5	<u>670,274</u>	<u>494,505</u>

The above statement of cash flows should be read in conjunction with the accompanying notes.

Contents of the notes to the financial statements

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1 Summary of significant accounting policies

The principal accounting policies adopted in the preparation of these financial statements are set out below. These policies have been consistently applied to all the years presented, unless otherwise stated. Comparative information is reclassified where appropriate to enhance comparability.

(a) Basis of preparation

(i) Special purpose financial report

In the Trustees' opinion, the Fund is not a reporting entity because there are no users dependent on general purpose financial reports.

This is a special purpose financial report that has been prepared for the sole purpose of complying with the *Trust Deed* requirements to prepare and distribute a financial report to the members and must not be used for any other purpose.

The financial report has been prepared in accordance with the recognition and measurement principles of Australian Accounting Standards and other mandatory professional requirements in Australia. It contains only those disclosures considered necessary by the Trustees to meet the needs of the members. Giant Steps Sydney Endowment Fund is a for-profit entity for the purpose of preparing the financial statements.

(ii) Historical cost convention

These financial statements have been prepared under the historical cost basis, except for the following:

- financial assets and liabilities held at fair value through profit or loss - measured at fair value

(iii) New and amended standards adopted by the Fund

Management are in the process of assessing the impact of the new standards and amendments to standards that are mandatory for the first time for the financial year beginning 1 January 2017.

(b) Foreign currency translation

(i) Functional and presentation currency

Items included in the financial statements are measured using the currency of the primary economic environment in which the entity operates ('the functional currency'). The financial statements are presented in Australian dollars (\$), which is Giant Steps Sydney Endowment Fund's functional and presentation currency.

(c) Revenue recognition

Revenue is measured at the fair value of the consideration received or receivable. The Fund recognises revenue when the amount of revenue can be reliably measured, it is probable that future economic benefits will flow to the entity and specific criteria have been met for each type of revenue as described below.

Revenue is recognised for the major classes of activities using the methods outlined below.

(i) Donations

Donations are recognised when received or receivable when there is a reasonable assurance that the donation will be received.

(ii) Dividends and distributions

Dividends and distributions are recognised as revenue when the right to receive payment is established.

(iii) Interest income

Interest income is recognised as it accrues, taking into account the effective yield on the financial asset.

(d) Income tax

The Fund is exempt from income tax under Section 50-5 of the *Income Tax Assessment Act 1997* and accordingly no provision has been made for income tax.

1 Summary of significant accounting policies (continued)

(e) Cash and cash equivalents

For the purpose of presentation in the statement of cash flows, cash includes deposits at call with financial institutions and other highly liquid investments with short periods to maturity which are readily convertible to cash on hand and are subject to an insignificant risk of changes in value, net of outstanding bank overdrafts.

(f) Trade receivables

Receivables are recognised initially at fair value. Receivables are due for settlement no more than 120 days from the date of recognition.

(g) Financial assets held at fair value through profit or loss

The Fund classifies its investment in equity securities, hybrid securities and managed funds as financial assets designated at fair value through profit or loss. These investments are initially measured at fair value excluding any transactions costs. Subsequent to initial recognition, the investments are measured at fair value with changes in their fair value recognised in the statement of comprehensive income.

The fair value of the equity and hybrid securities traded in active markets is based on their quoted market prices at the end of the reporting period without any deduction for estimated future selling costs. The fair value of the managed funds is determined by reference to the redemption value per unit as reported by the manager of the managed funds.

(h) Goods and Services Tax (GST)

Revenues, expenses and assets are recognised net of the amount of associated GST, unless the GST incurred is not recoverable from the taxation authority. In this case it is recognised as part of the cost of acquisition of the asset or as part of the expense.

Receivables and payables are stated inclusive of the amount of GST receivable or payable. The net amount of GST recoverable from, or payable to, the taxation authority is included with other receivables or payables in the statement of financial position.

Cash flows are presented on a gross basis. The GST components of cash flows arising from investing or financing activities which are recoverable from, or payable to the taxation authority, are presented as operating cash flows.

(i) Reclassifications

Certain accounts in prior years are reclassified to be consistent with current year reclassifications.

2 Critical estimates, judgements and errors

The preparation of financial statements requires the use of accounting estimates which, by definition, will seldom equal the actual results. Management also needs to exercise judgement in applying the Fund's accounting policies.

(a) Significant estimates and judgements

Estimates and judgements are continually evaluated. They are based on historical experience and other factors, including expectations of future events that may have a financial impact on the entity and that are believed to be reasonable under the circumstances.

(b) Critical accounting estimates and assumptions

The Fund makes estimates and assumptions concerning the future. The resulting accounting estimates will, by definition, seldom equal the related actual results. There are no areas involving a higher degree of judgment or complexity, or areas where assumptions and estimates are significant to the financial statements.

3 Revenue

	2017 \$	2016 \$
From continuing operations		
Interest received	10,828	16,297
Dividends and distributions	81,383	75,235
	<u>92,209</u>	<u>91,532</u>

4 Expenses

	2017 \$	2016 \$
Investment management fee		
Bank charges	5,247	9,826
	<u>110</u>	<u>57</u>
	<u>5,357</u>	<u>9,983</u>

5 Cash and cash equivalents

	2017 \$	2016 \$
Current assets		
Cash at bank and in hand	670,274	494,505
	<u>670,274</u>	<u>494,505</u>

6 Receivables

	Current \$	2017 Non- current \$	Total \$	Current \$	2016 Non- current \$	Total \$
Dividends receivable	36,006	-	36,006	12,100	-	12,100
GST receivable	830	-	830	446	-	446
	<u>36,836</u>	<u>-</u>	<u>36,836</u>	<u>12,546</u>	<u>-</u>	<u>12,546</u>

7 Financial assets at fair value through profit or loss

Financial assets at fair value through profit or loss are all designated at fair value through profit or loss and include the following:

	2017 \$	2016 \$
Equity securities	1,547,440	1,484,245
Hybrid securities	72,800	227,706
Managed funds	1,020	1,020
	<u>1,621,260</u>	<u>1,712,971</u>

Changes in fair values of financial assets at fair value through profit or loss are recorded in other gains/(loss) in statement of comprehensive income (2017 - gains of \$21,496 ; 2016 - gains of \$18,106).

8 Retained surplus

Movements in retained surplus were as follows:

	2017 \$	2016 \$
Balance 1 January	2,220,022	2,120,367
Net surplus for the year	108,348	99,655
Balance 31 December	<u>2,328,370</u>	<u>2,220,022</u>

9 Remuneration of trustee

No remuneration was received or is receivable by the Trustee.

10 Remuneration of auditors

During the year the auditors did not receive any remuneration or benefits in relation to the audit of the Fund (2016: \$nil). PwC received \$3,000 (2016: \$nil) for assistance with bookkeeping and the preparation of financial statements.

11 Contingent liabilities and contingent assets

The Fund had no contingent liabilities or assets at 31 December 2017 (2016: \$Nil).

12 Events occurring after the reporting period

No matters or circumstances have occurred subsequent to year end that has significantly affected, or may significantly affect, the operations of the Fund, the results of those operations or the state of affairs of the Fund or economic entity in subsequent financial years.

13 Cash flow information

Reconciliation of profit for the year to net cash inflow from operating activities

	2017 \$	2016 \$
Profit for the year		
Adjustment for	108,348	99,655
Net fair value gains on financial assets at fair value through profit or loss	(21,486)	-
Dividend income reinvested	(41,793)	-
Change in operating assets and liabilities:		
(Increase)/decrease in receivables	(24,280)	4,466
Net cash inflow from operating activities	20,769	104,121

Giant Steps Sydney Endowment Fund
Trustee's declaration
31 December 2017

As stated in note 1(a) to the financial statements, in the Trustee's opinion, the Trust is not a reporting entity because there are no users dependent on general purpose financial reports. This is a special purpose financial report that has been prepared to meet the requirements of the Trust Deed.

In the Trustee's opinion:

- (a) the financial statements and notes set out on pages 1 to 11
 - (i) complying with Accounting Standards and other mandatory professional reporting requirements, and
 - (ii) giving a true and fair view of the entity's financial position as at 31 December 2017 and of its performance for the financial year ended on that date, and
- (b) there are reasonable grounds to believe that the Fund will be able to pay its debts as and when they become due and payable.

This declaration is made in accordance with a resolution of Trustee.

s47F

Director of Giant Steps Endowment Fund Pty Limited

s47F

Director of Giant Steps Endowment Fund Pty Limited

Sydney
12 July 2018

Independent auditor's report

To the Directors of the Trustee of Giant Steps Sydney Endowment Fund

Our opinion

In our opinion the accompanying financial report gives a true and fair view of the financial position of Giant Steps Sydney Endowment Fund (the Trust) as at 31 December 2017 and of its financial performance and its cash flows for the year then ended in accordance with Australian Accounting Standards and in light of the requirements of the Trust Deed.

What we have audited

The financial report comprises:

- the statement of financial position as at 31 December 2017
- the statement of comprehensive income for the year then ended
- the statement of changes in equity for the year then ended
- the statement of cash flows for the year then ended
- the notes to the financial statements, which include a summary of significant accounting policies
- the declaration of the trustee.

Basis for opinion

We conducted our audit in accordance with Australian Auditing Standards. Our responsibilities under those standards are further described in the *Auditor's responsibilities for the audit of the financial report* section of our report.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our opinion.

Independence

We are independent of the Trust in accordance with the ethical requirements of the Accounting Professional and Ethical Standards Board's APES 110 *Code of Ethics for Professional Accountants* (the Code) that are relevant to our audit of the financial report in Australia. We have also fulfilled our other ethical responsibilities in accordance with the Code.

Emphasis of matter - basis of accounting and restriction on distribution and use

We draw attention to Note 1 in the financial report, which describes the basis of accounting. The financial report has been prepared for internal purposes to assist Giant Steps Sydney Endowment Fund. As a result, the financial report may not be suitable for another purpose. Our report is intended solely for Giant Steps Sydney Endowment Fund and should not be distributed to or used by parties other than Giant Steps Sydney Endowment Fund. Our opinion is not modified in respect of this matter.

PricewaterhouseCoopers, ABN 52 780 433 757

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Liability limited by a scheme approved under Professional Standards Legislation.

Responsibilities of management and the trustee for the financial report

Management is responsible for the preparation of the financial report that gives a true and fair view in accordance with Australian Accounting Standards and in light of the requirements of the Trust Deed, and for such internal control as Management determine is necessary to enable the preparation of the financial report that is free from material misstatement, whether due to fraud or error.

In preparing the financial report, Management is responsible for assessing the ability of the Trust to continue as a going concern, disclosing, as applicable, matters related to going concern and using the going concern basis of accounting unless Management either intend to liquidate the Trust or to cease operations, or have no realistic alternative but to do so.

The trustee is responsible for overseeing the Trust's financial reporting process.

Auditor's responsibilities for the audit of the financial report

Our objectives are to obtain reasonable assurance about whether the financial report as a whole is free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion. Reasonable assurance is a high level of assurance, but is not a guarantee that an audit conducted in accordance with the Australian Auditing Standards will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of the financial report.

A further description of our responsibilities for the audit of the financial report is located at the Auditing and Assurance Standards Board website at:
http://www.auasb.gov.au/auditors_responsibilities/ar4.pdf. This description forms part of our auditor's report.

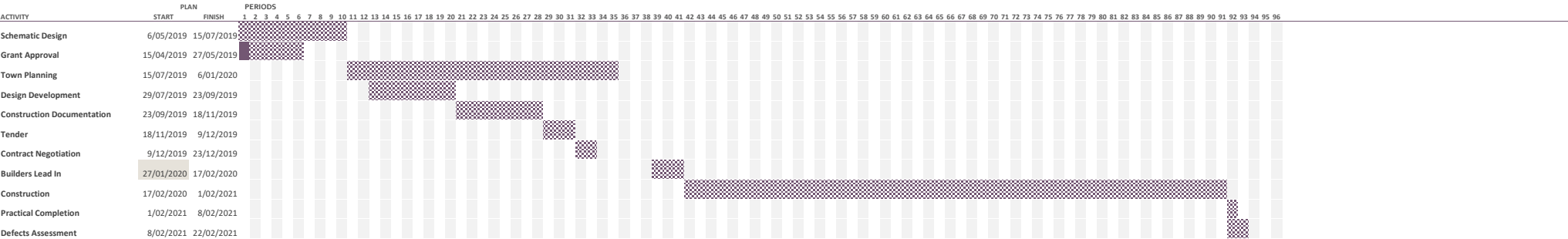


PricewaterhouseCoopers

s47F

Sydney
12 July 2018

Giant Steps Melbourne





Giant Steps Melbourne

Strategic Plan



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Vision Statement

Giant Steps Melbourne will be recognised as a centre of excellence for the creation, implementation and dissemination of innovative and effective programs and services for individuals with Autism Spectrum Disorder and their families.

Mission Statement

Giant Steps Melbourne seeks to develop intensive therapeutic and educational programs to ensure that each individual has the opportunity to reach their full potential.

Giant Steps Melbourne also seeks to provide support to families, improve understanding of Autism Spectrum Disorder in the wider community and to develop best practice amongst carers and professionals.

Core Values

- Maintain a culture of best practice service to individuals with Autism Spectrum Disorder.
- Remain open to the acceptance of new ideas and approaches, seeking continuous improvement in all that we do.
- Recognise the skills of our staff, encouraging commitment and dedication from a team of quality people.
- Strengthen professional relationships within and outside Giant Steps.
- Adopt collaborative approaches to challenges.
- Promote constructive reciprocal involvement within the community.
- Pursue growth opportunities consistent with our core undertakings whilst maintaining prudent financial and risk management.
- Celebrate our achievements.



Philosophy and History

Giant Steps was established in Sydney in 1995. Giant Steps Sydney has evolved to become a significant service provider for children profoundly impacted by Autism Spectrum Disorder (ASD). Giant Steps operates a transdisciplinary model combining teaching, music, speech and occupational therapies with the knowledge of the children's parents and carers, to create highly effective individualised programs for our students.

Giant Steps Sydney currently operates Early Learning, Primary and Secondary Schools and Post-School Services. In 2014 Giant Steps opened a Mental Health Clinic at our site in Gladesville. The organisation also operates a Diagnostic and Assessment Centre and provides a number of family support services including Siblings Programs and outreach services.

In 2016, following sustained enquiry and identifying a significant need for our services, Giant Steps opened a Primary and Secondary school in Melbourne implementing the same transdisciplinary models that have been established in Sydney.

At Giant Steps we believe that individuals with ASD should be valued members of their community and active participants in everyday life.

Since its inception Giant Steps has been ambitious in what it has sought to achieve. By continuing to innovate, create and imagine and with a philosophy of inclusion, Giant Steps has successfully established a model for the implementation of intensive trans-disciplinary programs for children with ASD.

The attitude that things can be done permeates throughout the Giant Steps organisation. A philosophy that there is always an approach, which will improve the quality of life of an individual with ASD and their families, continues to be the foundation on which Giant Steps is built.

The commitment, energy, enthusiasm and drive that have typified the development of Giant Steps assure the ongoing success of the organisation and its programs.

We always remember that people with ASD often represent a considerable challenge to those who care for, train, educate and support them. We aim to ensure that the knowledge skills and techniques that have been developed at Giant Steps are utilised to unlock the potential of people with ASD so that their quality of life can be greatly enhanced and their contribution to society demonstrated valued and respected.

It is the endeavour of Giant Steps to provide services to as many individuals with ASD as possible. We recognise that individuals with ASD with higher support needs have limited opportunity to access appropriate services and Giant Steps will continue to be committed to providing services that meet their needs. Development of new programs or the expansion of existing services will only occur in a manner consistent with our Vision, Mission and Core Values.



Knowledge and Understanding

Objective

Provide a high quality administration, education and therapeutic base in Melbourne.

Rationale

Giant Steps has established a highly qualified and skilled professional team committed to the ongoing development of trans-disciplinary programs for the treatment of ASD.

The knowledge and understanding developed by this team has been replicated in Melbourne and will be at the core of the ongoing success of Giant Steps Melbourne.

Status

- Well credentialed, experienced Board of Directors.
- Team structures established across all Giant Steps' programs. Education and Therapy teams established for individual Giant Steps' programs.
- Staff work across programs and the level of integration of therapy and educational priorities has increased and deepened over time.
- Well established service delivery model with strong disciplines in program development and service protocols.
- Parent information nights, case conferences and individual education program meetings are conducted on a regular basis by staff for parents and care givers.
- Instructional procedures, strategies and techniques documented.
- Training programs established to ensure consistency of approach and base line skill set for all staff.
- Continue to engage with the community via presentations by senior Giant Steps Melbourne staff to other independent schools.
- Continue to participate in projects with independent research facilities such as Deakin University.
- Website in place.
- Induction manual in place and reviewed annually.
- Operational procedures and internal workplace policies documented and reviewed.
- External training opportunities assessed and undertaken by relevant staff.



- Internal review process for staff includes staff appraisal system and competency based remuneration. Increased staff retention.
- Parent participation in development and implementation of each individual's individual program.
- Students and families currently accessing Giant Steps Australia Mental Health Clinic.
- Ongoing liaison with other services providers nationally and internationally.
- Collaboration with research bodies, professional networks and universities.
- Regularly present at conferences across education, health and social welfare.
- Advocate for best practice services for children with ASD at local, state and federal levels.
- Significant waiting list for existing services and strong enquiry from both existing and potential families for post school and other services currently available in Sydney.

Goals

- Continue to create innovative and effective programs in Melbourne for individuals with ASD.
- Maintain and enhance current skill base.
- Maintain and regularly review program approaches.
- Continue to work collaboratively with Giant Steps Australia to ensure training procedures are reflective of most current practices.
- Maintain and grow staff training approach.
- Improved access to mental health professionals either through the expansion of Giant Steps Australia Mental Health Clinic or the establishment of a similar service in Melbourne.

Action Required

- Maintain professional network to ensure qualified, skilled teachers, therapists and support staff are available to support existing services and addition of new services,
- Ensure close links are maintained with Giant Steps Australia and external professional learning programs.



Funding and Infrastructure

Objective

Optimise the resources and funding arrangements for Giant Steps Melbourne's programs.

Rationale

Establish adequate and sustainable funding arrangements for Giant Steps Melbourne's services. Continued development of the organisation is dependent upon appropriate financial, infrastructure and human resources being in place.

Status

- Regular checks and processes in place to monitor charitable status.
- Endowment Fund established (1997).
- Funding Committee Melbourne established (2014).
- Parent Advocacy Group established (2015).
- Giant Steps has a number of large corporate and personal sponsors.
- Fundraising events provide recurring revenues.
- State and Federal funding in place.
- 20 year lease of premises in place.
- \$1.278 million capital upgrades completed January 2018.

Goals

- Continue to seek, develop and recruit supporters of Giant Steps Melbourne.
- Continue to develop relationships and networks with philanthropic trusts and foundations to support Giant Steps Melbourne.
- Continue to grow reserves to support the growth of Giant Steps Melbourne.
- Continued development of Giant Steps' profile and services.

Action Required

- Maintain regular contact and information exchange on both a personal and organisational level with Giant Steps' supporters.



- Obtain funding for further expansion of Giant Steps existing and new services (using the establishment of services in Sydney as a model for the development of Melbourne).



Primary School (F-6)

Objective

The provision of a Primary trans-disciplinary program for children with ASD in Melbourne.

Rationale

Giant Steps provides an intensive trans-disciplinary education and therapeutic program, developing foundation skills. The goal of the program is to provide opportunities for students to learn new skills and acquire knowledge that is life-long.

The development of these skills facilitates participation in the inclusion process. One of the outcomes of the program is the participation of students into mainstream education and/or their local communities at an age appropriate level.

History

- Giant Steps Melbourne Primary School established 2016 using the Giant Steps Sydney model.
- Giant Steps Melbourne school registration completed in 2015.
- Admissions policy and procedure established responding to strong demand for Giant Steps services.
- F-6 curriculum and team established.
- Programs are differentiated according to individual need.
- Inclusion occurs through involvement in a range of learning activities including community access, support classes and other activities such as reverse integration.
- F-6 enrolls children aged 5-12 with a primary diagnosis of ASD.
- Increased intake dependent on funding and resource availability.

Status

- Giant Steps continuing to respond to parent enquiry.
- Growing enrolment and waiting list.
- Primary school teaching, therapy and education staff established (transdisciplinary model). Staff training programs established and coordinated with Giant Steps Australia.
- Graduation determined using a collaborative team approach involving parents.



- Relationships established with other independent schools
- A number of community participation activities in place.
- A number of students now participate in school camps providing an additional level of respite to their families

Goals

- To transition students where possible.
- To progress student educational outcomes in line with the Victorian Curriculum.
- Increased participation in inclusive settings.
- Functional and active involvement in family and community settings.
- Maintain a continuous improvement approach when reviewing existing and new teaching and learning programs.
- Maintain a continuous improvement approach when reviewing learning, assessment and reporting.
- Expand student cohort with new facilities to 30 – 35 students over the next 5 years.

Action Required

- Obtain funding and secure premises to facilitate expansion of the program
- Ensure student waiting list is up to date and investigate options for accepting more students whilst expanding infrastructure.
- Maintain staff training at a high level, which ensures appropriate skill level exists for education and therapy staff.
- Promote staff retention by providing ongoing mentoring, support and training.
- Ongoing development of teaching resources to support learning for each student including technology, equipment and experiences.



Secondary School

Objective

The provision of a Secondary trans-disciplinary program for children with ASD in Melbourne.

Rationale

Giant Steps provides an intensive trans-disciplinary service for secondary aged students. The goal of the program is to provide opportunities for students to learn new skills and acquire knowledge focusing on developing independent living skills, job training and academic development in preparation for adulthood.

History

- Giant Steps Australia secondary program established (2003).
- Giants Steps Melbourne secondary program established (2016).
- Giant Steps Melbourne school registration completed in 2015.
- Secondary team structure developed and successfully operating.
- Curriculum and individualised programs in place.
- Inclusion in mainstream school/community participation occurring where appropriate.
- Staff training ongoing.
- Program review and development ongoing.

Status

- Giant Steps Melbourne premises secured July 2015 (five year lease with a five year option).
- Growing enrolment and waiting list.
- Giant Steps responding to significant parent enquiry but limited capacity to facilitate given significant site constraints.
- Senior Secondary VCAL/foundation level certification obtained 2019.
- Small social enterprise being developed.
- Staff training programs established and coordinated with Giant Steps Australia.
- Working with families to assist when co diagnosis and the emergence of mental health issues in our adolescent population become difficult to manage.
- Working with families and their respite workers to share the knowledge and experience of supporting individual students.



Goals

- Maintain community referenced curriculum to facilitate independence.
- Maintain curriculum as per VRQA requirements.
- Maintain job skills training at Giant Steps Melbourne and in the work place.
- Maintain philosophy of inclusion in school and community.
- Establish vocational education programs within a number of businesses and organisations within the community.
- Seek to respond to demand by expanding secondary to accommodate 30-35 students over the next 5 years.

Action Required

- Obtain funding and secure premises to facilitate expansion of the program
- Continue to develop options in regard to organisations prepared to be involved in job-skills training.
- Consider options regarding mental health needs of our students.
- Ensure student waiting list is up to date and investigate options for accepting more students whilst expanding infrastructure.
- Maintain staff training at a high level, which ensures appropriate skill level exists for education and therapy staff.



Future Services



Expansion of Services

Giant Steps Melbourne has focused on the establishment of a Primary and a Secondary school with enrolments commencing in 2016. The Primary and Secondary schools are established, proven to be financially sustainable and will be expanded to respond to demand. Using the experience of Giant Steps Australia we would expect that new services will be required. The parameters under which new services would be added are as follows:

- New services will be separate but integrated. They may have common management, administrations and some common staff.
- New services will not be introduced if they have the potential to dilute existing services.
- New services will only be added if it has a high possibility of being sustainable.
- The order of rollout of services may vary if funds are available for a specific program.
- Pace of rollout of new services and the expansion of existing services will be controlled to minimize the risk of stretching resources too thinly.



Post-School Services

(Established Sydney, potential to establish in Melbourne in 2021)

Objective

The provision of post school services for young adults within a framework of person centred planning.

Rationale

Giant Steps has developed a significant knowledge and skill base in the management and creation of opportunities for young adults with ASD and/or significant support requirements.

Giant Steps Post-School Services seek to offer programs catering to the needs of young adults with profound Autism. The program seeks to support each individual to choose the supports, services and programs that promote independence, wellbeing and participation in the community.

Status

- Established in Sydney in 2009 with five young adults and 20 young adults currently in the program.
- Significant enquiry from both existing and other Melbourne families regarding post school services.
- Establishment similar to what is currently offered in Sydney.
- Strong links to Giant Steps Australia post school model providing resources staff and training for the establishment of post school services in Melbourne.

Goals

- Establish post school program in Melbourne in 2021.
- Expand to accommodate up to 25 students by 2026.
- Provide high quality post school provision.
- Ensure program is able to access other service provisions that compliment individual goals of the adult with ASD.
- Establish stronger links with State Government departments for the purpose of linkage of services and funding and development opportunities.
- Program will utilise NDIS funding and other funding options to provide high quality service.



- Program will have a person centred focus.
- Service will have formal links to Giant Steps and be established in line with Giant Steps strategic principles.
- Program to be inclusive of young adults across the spectrum.

Action Required

- Obtain funding and secure premises to facilitate establishment of the program
- Begin to establish staff and resources required to be ready to initiate the service in 2021.



Early Intervention Services

(Established Sydney, potential to establish in Melbourne in 2022)

Objective

Implement a trans-disciplinary early intervention program.

Rationale

It has long been recognised that there are substantial benefits in providing intensive programs for children with ASD as early as possible; this is supported in the research evidence.

Giant Steps will operate a trans-disciplinary early intervention program for pre-school aged children with autism. Programming will support the transition of students to the most beneficial school setting.

Status

- Giant Steps Melbourne has established a significant education and therapy skill base.
- Our teachers, therapists and educational staff have significant knowledge regarding autism intervention which can be applied in early intervention.
- The establishment of an early intervention program by Giants Steps would provide an important and skilled option for families with children aged between 2 and 5 years of age with a primary diagnosis of ASD.
- Giant Steps Early Learning established in Sydney in 1998.
- Giant Steps Early Learning enrolls children aged 2 – 5 with a primary diagnosis of ASD.
- Off-campus day for all students included in program.
- Recognised provider under the NDIS.

Goals

- Recognising the benefit of early intervention Giant Steps Melbourne will establish an early learning program in 2022.
- Within 5 years Giant Steps Melbourne will operate 2 part week programs catering for up to 20 children (2 groups).
- Transition from Giant Steps Early Learning to the most beneficial school placement.
- Students actively participate in their local school and community.



- Giant Steps will respond flexibly to meet the needs of the current student cohort.

Action Required

- Obtain funding and secure premises to facilitate establishment of the program
- Establish relationship with existing early intervention services in Melbourne.



Other Services



Respite Care

Objective

Provision of respite services.

Rationale

To enable individuals with ASD to remain in the family home, both the individual and family need support. The provision of respite services becomes an increasing need and priority.

With Giant Steps' detailed understanding of the requirements of individuals with ASD we are well placed to coordinate the provision of respite services.

Status

- Giant Steps' staff and facilities in Melbourne are currently utilised during all school holidays breaks to provide a holiday program for primary and secondary students (3 terms, 4 days, December/January school holidays 6 days).
- Giant Steps' staff and facilities in Sydney are currently utilised during all school holidays breaks to provide holiday programs for Secondary students.
- A number of Giant Steps staff in Sydney and Melbourne provide respite to families after hours on a fee-for-service basis.
- Currently disseminating information on available respite services to Giant Steps' families in Sydney and Melbourne.
- Reviewing and developing more formalised arrangements regarding staff provision to external service providers and families.

Goals

- Coordinate respite care to allow flexibility for both the family and individual with ASD.

Action Required

- Investigate more formalised staff provision arrangements on a fee for service basis with other service providers and individual families.



Outreach/Family Support

Objective

Provision of outreach and family support services.

Rationale

Giant Steps recognises the need to support families as well as the individual with ASD. This is achieved through the provision of family support services such as siblings groups, family support worker as well as the ongoing relationship between Giant Steps' staff, families and caregivers.

Giant Steps also recognises the need for training for professionals working in the autism field and community understanding of the impact of autism on both the individual with autism and their families.

Outreach services may be available and include educational and therapy services for students enrolled at Giant Steps Melbourne and training for professional working with children and adults with autism.

Giant Steps also seeks to engage the community in understanding autism and provide community members with the knowledge required to engage and participate in activities with children and young adults with autism.

History

- Giant Steps has facilitated a number of training seminars for professionals and other service providers involved with the treatment of ASD.
- A number of Giant Steps Sydney and Melbourne staff provide educational and/or therapy support outside of school hours through a range of funding mechanisms.
- Diagnostic and Assessment Centre established in Sydney in 2010.
- Mental Health Clinic established in Sydney in 2014 and now provide services to Giant Steps Melbourne.
- Family support position created in Sydney in 2009.
- Outreach services have been provided for students and teachers in mainstream schools through inclusion process.
- Siblings programs established in Sydney in 2005.



Goals

- Establish of a community facility in Giant Steps Melbourne in 2021 for general use by the community and also a facility that will allow training and community programs to be implemented.
- Provision of information, support and training to Giant Steps Melbourne's families.
- Provision of information and training to families, professionals and other service providers.
- Increase the provision of diagnostic and assessment capabilities facilitating the earliest possible support and program establishment.

Action Required

- Provide training and information seminars on a demand driven basis.
- Review provision of broader outreach services in the event of specific funding becoming available.
- Investigate the employment of a family support worker in line with the Sydney model.
- Once organisation has reach appropriate size establish a sibling support program.
- Continue to develop relationships with relevant government agencies and other NGO's.



Giant Steps Melbourne

Current Services

Primary and Secondary Schools
Mental Health Clinic
Family Support
Siblings Programs
Outreach Services

Future Melbourne Services

Early Intervention Services
Post-School Services

Giant Steps Sydney

Existing Services

Early Intervention Program
Primary and Secondary Schools
GS Autism Services for Adults
Family Support Programs
Mental Health Clinic
Siblings Programs
Outreach Services
Play Steps
Autism Panel Provider
Diagnostic and Assessment Centre
Training
Private Services for Therapy and Educational Programs
Autism Hub (www.autismhub.net.au)



Australian Government

Department of Infrastructure, Transport,
Cities and Regional Development

To: The Hon Michael McCormack MP (for decision)

cc: Ms Pip Spence PSM, Acting Secretary

cc: Dr Rachel Bacon, Deputy Secretary

cc: Ms Diana Hallam, Executive Director

COMMUNITY DEVELOPMENT GRANTS – GIANT STEPS AUTISM SCHOOL EXPANSION, KEW, VICTORIA (2019 GOVERNMENT COMMITMENT)

Action required by: 6 November 2019

Reason: Routine

Recommendations:	
<p>1. That, for the purposes of section 71 of the <i>Public Governance, Performance and Accountability Act 2013</i> (PGPA Act), you agree with the Department of Infrastructure, Transport, Cities and Regional Development's assessment at <u>Attachment A</u> that expenditure of relevant money as a grant for funding of up to \$9,700,000 (GST exclusive) from the Community Development Grants Programme to Giant Steps Melbourne Ltd for the Giant Steps Autism School Expansion project would be a proper use of relevant money.</p>	<p>Agreed / Not Agreed</p>
<p>2. That you approve the expenditure of relevant money as a grant for funding of up to \$9,700,000 (GST exclusive) from the Community Development Grants Programme to Giant Steps Melbourne Ltd for the Giant Steps Autism School Expansion project, subject to the Department imposing the risk treatments identified at <u>Attachment A</u> and any conditions requested by you in writing.</p>	<p>Approved / Not Approved</p>
<p>3. That you sign the attached letters to the proponent and the Treasurer and Member for Kooyong, the Hon Josh Frydenberg MP, advising of your decision at <u>Attachment B</u>.</p>	<p>Signed / Not Signed</p>
<p>Signatory: The Hon Michael McCormack MP Date:</p> <p>Comments:</p>	

Key Points:

Date the project was committed and by whom	The project is a 2019 Government commitment and is consistent with the joint media release by you, the Treasurer, the Hon Josh Frydenberg MP and the Hon Dan Tehan MP, Minister for Education, which states that Giant Steps Melbourne Ltd will receive \$9,700,000 for the Giant Steps Autism School Expansion project.
Brief project description	The project will construct a new secondary school building including teaching and therapy spaces, student and staff facilities and playground; construct a post-school community facilities building, including teaching and therapy spaces, a commercial kitchen and community hall; and construct new car parking spaces.
Project timeline	The proponent has advised the project commenced in April 2019 (the preliminary scoping stage) and will be completed by 30 June 2021.
Value with relevant money?	Yes
Sensitivities	Nil
Are there any identified risks?	Yes, as detailed in the Risk Analysis Summary Table at <u>Attachment A</u> <ul style="list-style-type: none"> • designs have not been confirmed; and • final costs have not been confirmed.
Can these risks be managed?	Yes, through treatments in the Agreement, as detailed in the Risk Analysis Summary Table at <u>Attachment A</u> <ul style="list-style-type: none"> • confirmation of final designs, and • confirmation of final costs.
GST	s47G

Stakeholder Implications:

Following your approval, the Department will commence negotiation of an Agreement with Giant Steps Melbourne Ltd for the Giant Steps Autism School Expansion project.

Name: Donna Wieland
 Position: General Manager
 Branch: Regional Programs
 Division: Regional Development & Local Government
 Ph: 6274 7446
 Mob: s47F

Contact Officer: s22
 Section: Community Development Grants
 s22

Attachments

A: Assessment of project proposal and proponent organisation

B: Letters advising of your decision, and

C: Public Governance, Performance and Accountability Act 2013, Rules and the Commonwealth Grants Rules and Guidelines, 1 July 2014 requirements.



Australian Government

Department of Infrastructure, Transport,
Cities and Regional Development

To: The Hon Michael McCormack MP (for decision)

cc: Pip Spence PSM, Acting Secretary

cc: Dr Rachel Bacon, Deputy Secretary

cc: Ms Diana Hallam, Executive Director

COMMUNITY DEVELOPMENT GRANTS – GIANT STEPS AUTISM SCHOOL EXPANSION, KEW, VICTORIA (2019 GOVERNMENT COMMITMENT)

Action required by: 6 November 2019

Reason: Routine

Recommendations:

1. That, for the purposes of section 71 of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act), you **agree** with the Department of Infrastructure, Transport, Cities and Regional Development's assessment at Attachment A that expenditure of relevant money as a grant for funding of up to \$9,700,000 (GST exclusive) from the Community Development Grants Programme to Giant Steps Melbourne Ltd for the Giant Steps Autism School Expansion project would be a proper use of relevant money.

Agreed / Not Agreed

2. That you **approve** the expenditure of relevant money as a grant for funding of up to \$9,700,000 (GST exclusive) from the Community Development Grants Programme to Giant Steps Melbourne Ltd for the Giant Steps Autism School Expansion project, subject to the Department imposing the risk treatments identified at Attachment A and any conditions requested by you in writing.

Approved / Not Approved

3. That you **sign** the attached letters to the proponent and the Treasurer and Member for Kooyong, the Hon Josh Frydenberg MP, advising of your decision at Attachment B.

Signed / Not Signed

M. McCormack

The Hon Michael McCormack MP

Date:

7/11/19

Comments:

Key Points:

Date the project was committed and by whom	The project is a 2019 Government commitment and is consistent with the joint media release by you, the Treasurer, the Hon Josh Frydenberg MP, and the Hon Dan Tehan MP, Minister for Education, which states that Giant Steps Melbourne Ltd will receive \$9,700,000 for the Giant Steps Autism School Expansion project.
Brief project description	The project will construct a new secondary school building including teaching and therapy spaces, student and staff facilities and playground; construct a post-school community facilities building, including teaching and therapy spaces, a commercial kitchen and community hall; and construct new car parking spaces.
Project timeline	The proponent has advised the project commenced in April 2019 (the preliminary scoping stage) and will be completed by 30 June 2021.
Value with relevant money?	Yes
Sensitivities	Nil
Are there any identified risks?	Yes, as detailed in the Risk Analysis Summary Table at <u>Attachment A</u> <ul style="list-style-type: none"> • designs have not been confirmed; and • final costs have not been confirmed.
Can these risks be managed?	Yes, through treatments in the Agreement, as detailed in the Risk Analysis Summary Table at <u>Attachment A</u> <ul style="list-style-type: none"> • confirmation of final designs, and • confirmation of final costs.
GST	The proponent is registered for GST. The project GST inclusive amount is \$10,670,000.

Stakeholder Implications:

Following your approval, the Department will commence negotiation of an Agreement with Giant Steps Melbourne Ltd for the Giant Steps Autism School Expansion project.

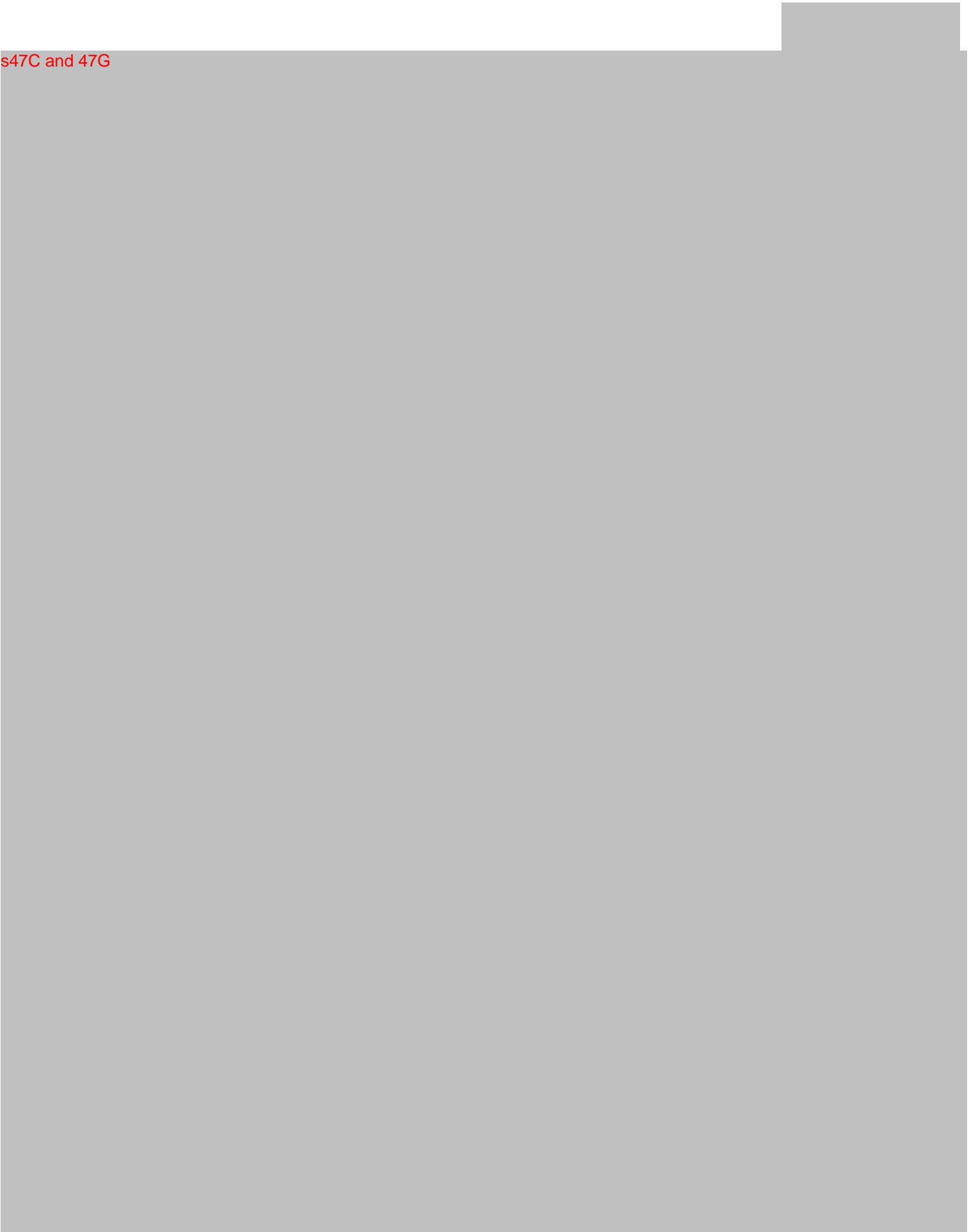
Name: Donna Wieland
 Position: General Manager
 Branch: Regional Programs
 Division: Regional Development & Local Government
 Ph: 6274 7446
 Mob: s47F

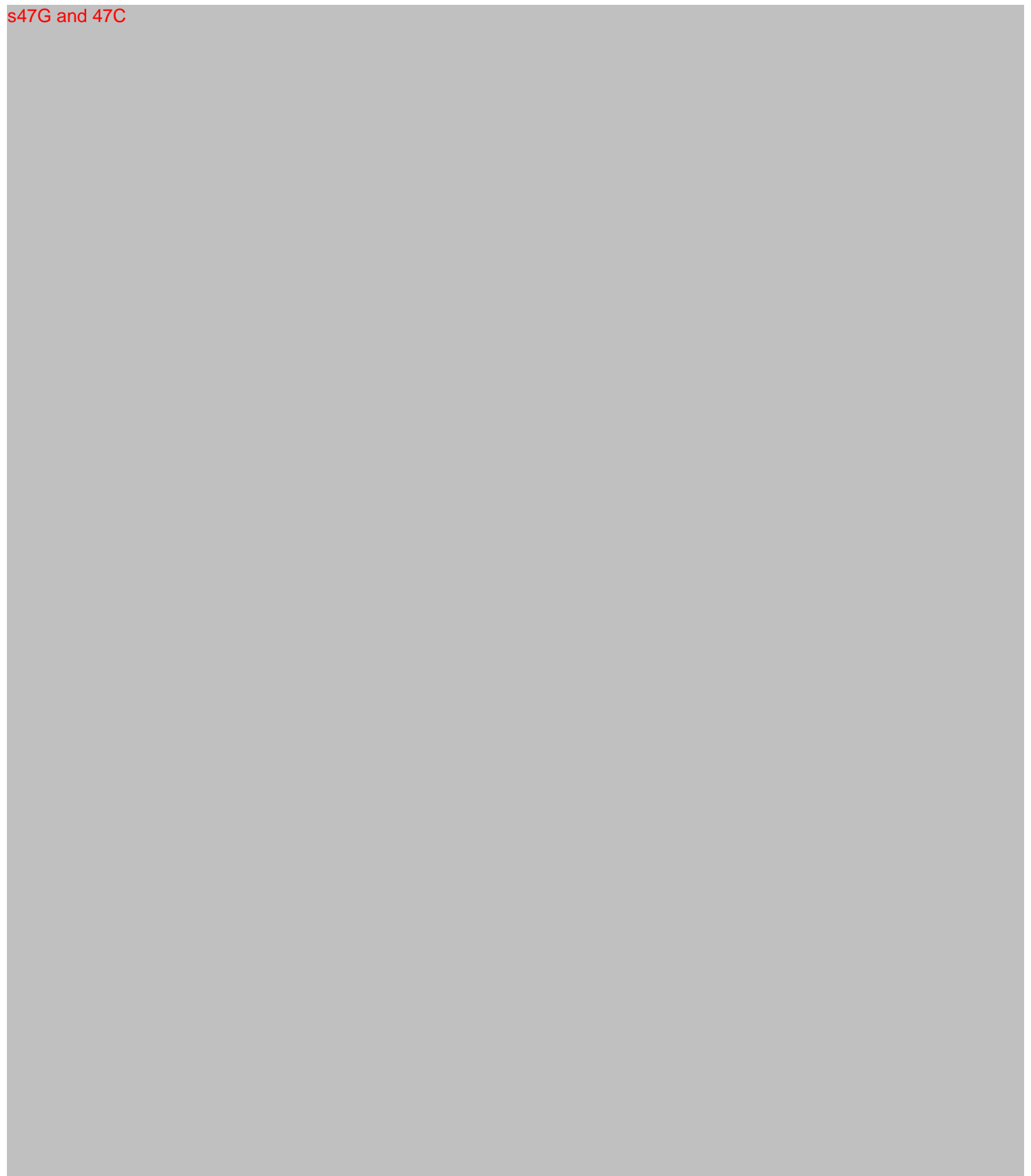
Contact Officer: s22
 Section: Community Development Grants

s22

Attachments

- A: Assessment of project proposal and proponent organisation
- B: Letters advising of your decision, and
- C: *Public Governance, Performance and Accountability Act 2013*, Rules and the Commonwealth Grants Rules and Guidelines, 1 July 2014 requirements.





¹ A full project assessment has been recorded in the project file and is available if required.



The Hon Michael McCormack MP

**Deputy Prime Minister
Minister for Infrastructure, Transport and Regional Development
Leader of The Nationals
Federal Member for Riverina**

Ref: s22

s47F

04 NOV 2019

Chairman
Giant Steps Melbourne Ltd
PO Box 586
KEW VIC 3101

s47F

Dear

I am pleased to advise you that I have approved funding of up to \$9,700,000 (GST exclusive) under the Community Development Grants Programme to Giant Steps Melbourne Ltd for the Giant Steps Autism School Expansion project. This approval delivers on a 2019 Australian Government commitment.

I ask that you keep the details of this letter confidential until a Funding Agreement is signed.

Provision of funding is dependent on the preparation and execution by both parties of a Funding Agreement that sets out the terms and conditions under which the funding is provided, and the settling of other details, including confirmation of final designs and costs. You will shortly be contacted by an officer from the Department of Infrastructure, Transport, Cities and Regional Development (the Department) to discuss the Funding Agreement.

Please be aware you must enter into a Funding Agreement within four weeks of the project being approved otherwise the offer of funding will be reviewed and may be withdrawn. You may wish to seek guidance from the Australian Taxation Office or your tax adviser on the impact of Community Development Grants funding on your organisation's taxation liabilities.

I have written to the Hon Josh Frydenberg MP, Member for Kooyong, advising of the approval for the Giant Steps Autism School Expansion project.

The Hon Michael McCormack MP

Parliament House Canberra | (02) 6277 7520 | minister.mccormack@infrastructure.gov.au
Suite 2, 11-15 Fitzmaurice Street, Wagga Wagga NSW 2650 | michael.mccormack.mp@aph.gov.au

Your Funding Agreement outlines your obligations regarding acknowledgement and publicity for this project. Should you hold an event to celebrate a milestone for your project, please contact the Department via the project officer you normally deal with. I would appreciate it if you could provide three non-parliamentary sitting dates for your event at least eight weeks prior to the earliest date, so I can do my best to make arrangements to attend. If I am unavailable, I will organise for a representative to attend on behalf of the Australian Government and the Department will liaise directly with you.

I wish you every success with the Giant Steps Autism School Expansion project.

Yours sincerely

A handwritten signature in black ink, appearing to read "Michael McCormack". The signature is written in a cursive, slightly stylized font.

Michael McCormack



The Hon Michael McCormack MP

**Deputy Prime Minister
Minister for Infrastructure, Transport and Regional Development
Leader of The Nationals
Federal Member for Riverina**

s22

The Hon Josh Frydenberg MP
Treasurer
Member for Kooyong
695 Burke Road
CAMBERWELL VIC 3124

04 NOV 2019

Josh
Dear Treasurer

I am writing to advise that I have approved funding of up to \$9,700,000 (GST exclusive) under the Community Development Grants Programme to Giant Steps Melbourne Ltd for the Giant Steps Autism School Expansion project. This funding approval delivers on a 2019 Australian Government commitment in your electorate.

Provision of funding is dependent on the preparation and execution by both parties of an Agreement that sets out the terms and conditions under which the funding is provided, and the settling of other details, including confirmation of final designs and costs.

The Community Development Grants Programme is administered by the Department of Infrastructure, Transport, Cities and Regional Development which will contact Giant Step Melbourne Ltd shortly to discuss the details of the Agreement.

You may wish to contact the project proponent directly to let them know their project has been approved ahead of my letter arriving. My office will contact you in the future should media or event opportunities arise for this project.

I enclose details of the project for your information.

Yours sincerely

Michael McCormack

Enc

Community Development Grants Programme – Approved Project

Project ID:	CDG1085
Project Title:	Giant Steps Autism School Expansion
Project Description:	The project will construct a new secondary school building including teaching and therapy spaces, student and staff facilities and playground; construct a post-school community facilities building, including teaching and therapy spaces, a commercial kitchen and community hall; and construct new car parking spaces.
Proponent/Organisation Name:	Giant Steps Melbourne Ltd
Proponent/Organisation Type:	Public Company Limited by Guarantee
Project Location:	11 Malmsbury Street, Kew VIC 3101
Primary Electorate:	Kooyong
Funding Cash Commitment:	\$9,700,000 (GST exclusive)
Total Cash Project Value:	s47G and 47F
Project Contact:	

s22

From: s22
Sent: Tuesday, 24 September 2019 2:17 PM
To: s47F
Subject: RE: WHS approves builders / suppliers list [SEC=UNCLASSIFIED]

Hi s47F

Apologies for the delayed reply.

Accredited contractors can be found here: <http://www.fsc.gov.au/sites/fsc/resources/pages/accreditationregister>

Kind regards,

s22

s22

Community Development Grants
 Regional Programs Branch | Regional Development and Local Government Division Department of Infrastructure,
 Transport, Cities and Regional Development GPO Box 594, Canberra ACT 2601 t s22

s22

w www.infrastructure.gov.au

Please note: I do not work on Wednesdays The Department proudly acknowledges the Traditional Owners and Custodians of Australia, and their continuing connections to the land, waters and communities. We pay our respects to them and to their Elders past, present and emerging.

-----Original Message-----

From: s47F
Sent: Friday, 20 September 2019 2:18 PM
To: s22
Subject: WHS approves builders / suppliers list

Hi s22

Could you please direct me to the link for the WHS approved suppliers pls? I've had a scout online but can't seem to find it as yet.

Thank you!

s47F

***** IMPORTANT MESSAGE ***** This e-mail message is intended only for the addressee(s) and contains information which may be confidential.

If you are not the intended recipient please advise the sender by return email, do not use or disclose the contents, and delete the message and any attachments from your system. Unless specifically indicated, this email does not constitute formal advice or commitment by the sender or the Commonwealth Bank of Australia (ABN 48 123 123 124 AFSL and Australian credit licence 234945) or its subsidiaries.

We can be contacted through our web site: commbank.com.au.

If you no longer wish to receive commercial electronic messages from us, please reply to this e-mail by typing Unsubscribe in the subject line.

s22

From: s47F
Sent: Monday, 14 October 2019 4:30 PM
To: s22
Subject: Re: Any update on status - Giant Steps project grant [SEC=UNCLASSIFIED]

Thanks s22

Appreciate the response and completely understand.

All the very best,

s47F

> On 14 Oct 2019, at 11:12 am, s22
 >
 > Hi s47F
 >
 > Thank you for your email.
 >
 > Unfortunately I don't have any updates at this stage. It's still in the final stage so although I anticipate an outcome shortly, I am unable to predict/guarantee an exact timeframe as it varies.
 >
 > I will be in touch as soon as I have an update.
 >
 > Apologies I can't be of more assistance at this stage.
 >
 > Kind regards,
 > s22
 >
 > s22
 > Community Development Grants
 > Regional Programs Branch | Regional Development and Local Government
 > Division Department of Infrastructure, Transport, Cities and Regional
 > Development GPO Box 594, Canberra ACT 2601 t s22
 > s22
 > w www.infrastructure.gov.au
 > Please note: I do not work on Wednesdays The Department proudly
 > acknowledges the Traditional Owners and Custodians of Australia, and their continuing connections to the land, waters and communities. We pay our respects to them and to their Elders past, present and emerging.
 >
 >
 > ----Original Message-----
 > From: s47F
 > Sent: Sunday, 13 October 2019 6:13 PM
 > To: s22
 > Cc: s47F
 > Subject: Any update on status - Giant Steps project grant
 >
 > Hi s22
 >
 > Hope you've had a great weekend? I have a couple of Board Members becoming alert to the time passed since submission of the grant. I have explained the process and the approval steps.

>

> To this end, I would be appreciative of any update or news you may of heard, understanding this may be, as we last discussed, time frames are within expectations at this stage and the approval will take 4-8 weeks from when you submitted?

>

> Thanking you for your assistance and confirmation either way.

>

> All the best,

>

s47F

>

> -----

> Disclaimer

>

> This message has been issued by the Department of Infrastructure, Transport, Cities and Regional Development.

> The information transmitted is for the use of the intended recipient only and may contain confidential and/or legally privileged material.

> Any review, re-transmission, disclosure, dissemination or other use of, or taking of any action in reliance upon, this information by persons

> or entities other than the intended recipient is prohibited and may result in severe penalties.

> If you have received this e-mail in error, please notify the Department on (02) 6274-7111

> and delete all copies of this transmission together with any attachments.

> -----

>

s22

From: s22
Sent: Friday, 8 November 2019 12:25 PM
To: s47F
Subject: CDG1085 - draft funding agreement
Attachments: s22 - Signed letter.pdf; CDG1085 Agreement Template - Threshold 3.docx

Hi s47F

As advised earlier today, the Minister has approved funding for CDG1085 – Giant Steps Autism School Expansion project. The Minister’s letter should arrive soon but I’ve also attached a copy to this email.

Please find attached a first draft of the Agreement for your review and input. I’ve highlighted specific sections for you to check and provide your input (such as the activity section, milestone dates/payments etc). I am happy for you to add/reduce the number of milestones as you best see fit. Please note that majority of this Agreement is standard (boiler plate template) and should not be amended. However, I would appreciate your input on the project specific details.

Once you have provided your approval for the draft Agreement, a formal letter of offer and an approved version of the Agreement will be forwarded to you for signature. Please note, the Minister’s letter specifies that you must enter into an Agreement within four weeks.

If you could please review the draft Agreement and provide your input (using track changes), would be much appreciated.

Thank you again for all your help in getting to this stage.

I look forward to working with you.

Kind regards,

s22

s22

Community Development Grants
 Regional Programs Branch | Regional Development and Local
 Government Division
 Department of Infrastructure, Transport, Cities and Regional
 Development
 GPO Box 594, Canberra ACT 2601
 t s22
 e s22
 w www.infrastructure.gov.au

Please note: I do not work on Wednesdays

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Australian Government
 Department of Infrastructure, Transport,
 Cities and Regional Development



The Hon Michael McCormack MP

**Deputy Prime Minister
Minister for Infrastructure, Transport and Regional Development
Leader of The Nationals
Federal Member for Riverina**

s22

04 NOV 2019

s47F

Chairman
Giant Steps Melbourne Ltd
PO Box 586
KEW VIC 3101

Dear s47F

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I wish you every success with the Giant Steps Autism School Expansion project.

Yours sincerely

A handwritten signature in dark ink, appearing to read "Michael McCormack". The signature is written in a cursive, slightly slanted style.

Michael McCormack



Australian Government

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

DEED OF AGREEMENT

**FUNDING AGREEMENT IN RELATION TO THE GIANT STEPS AUTISM
SCHOOL EXPANSION (CDG1085)**

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

Giant Steps Melbourne Ltd
ABN 46 606 552 283

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FUNDING AGREEMENT (LONG FORM)

**FUNDING AGREEMENT IN RELATION TO THE GIANT STEPS AUTISM
SCHOOL EXPANSION (CDG1085)**

Parties

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

1. **The Commonwealth of Australia** as represented by the Department of Infrastructure, Transport, Cities and Regional Development
ABN 86 267 354 017, 111 Alinga Street, Canberra, Australian Capital Territory
(**Commonwealth**)
2. **Giant Steps Melbourne Ltd**
ACN 606552283, 11 Malmsbury Street, Kew, VIC 3101
(**Recipient**)

Context

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

Operative provisions

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

1. Interpretation

1.1. Definitions

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

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

Approved Auditor	means a person who is: <ul style="list-style-type: none">a. registered as a company auditor under the Corporations Act 2001 (Cth) or an appropriately qualified member of the Institute of Chartered Accountants in Australia or of CPA Australia;b. not a principal, member, shareholder, officer, agent, subcontractor, employee or related entity of the Recipient or of a related body corporate (the terms 'related entity' and 'related body corporate' have the same meaning as in section 9 of the Corporations Act 2001 (Cth)); andc. not the Recipient's Qualified Accountant;
Asset	means any item of property, purchased, leased, hired, financed, created or otherwise brought into existence either wholly or in part with use of the Funding, which has a value of over \$5,000 exclusive of GST, but excludes any Intellectual Property Rights and Real Property (including any property once it becomes part of the structure of Real Property).
Auditor-General	means the office established under the Auditor-General Act 1997 (Cth) and includes any other entity that may, from time to time, perform the functions of that office;
Australian Accounting Standards	refers to the standards of that name maintained by the Australian Accounting Standards Board created by section 226 of the Australian Securities and Investments Commission Act 2001 (Cth);
Australian Auditing Standards	refers to the standards made by the Auditing and Assurance Standards Board created by section 227A of the Australian Securities and Investments Commission Act 2001 (Cth);
Australian Privacy Principle	has the same meaning as it has in the Privacy Act 1988 (Cth).
Budget	means the budget set out in Annexure B of the Schedule;
Business Day (in a place)	means a weekday other than a public holiday in the place specified or, if no place is specified, in the State or Territory specified in Item M of the Schedule;
Capital Works	means any part of the Activity that comprises construction and building activities and includes the Capital Works listed at item E.2.2 of the Schedule.

Commence Construction	means to begin a continuous programme of on-site construction for the Activity's Capital Works. For the purposes of this definition, only significant and continuous site preparation work such as major clearing or excavation or placement or assembly, or installation of facilities or equipment at the site constitute a programme of on-site construction.
Commonwealth	where the context permits, includes officers, delegates, employees and agents and successors of the Department of Infrastructure, Regional Development and Cities;
Commonwealth Material	means any Material: <ul style="list-style-type: none">a. provided by the Commonwealth to the Recipient for the purposes of this Agreement; orb. derived at any time from the Material referred to in paragraph a;
Completion Date	means the day after the Recipient has done all that it is required to do under clauses 2 and 6 of this Agreement to the satisfaction of the Commonwealth;
Constitution	means (depending on the context): <ul style="list-style-type: none">a. a company's constitution, which (where relevant) includes rules and any amendments that are part of the company's constitution, orb. in relation to any other kind of body:<ul style="list-style-type: none">i. the body's charter, rules or memorandum, orii. any instrument or Law constituting or defining the constitution of the body or governing the activities of the body or its members.
Cost Estimate	means the estimate for the Project which is the sum of the Funding and Other Contributions specified in Annexure B to the Schedule.
Cost Item	means an item of expenditure specified in the Budget at Annexure B to the Schedule.

Confidential Information	means: <ul style="list-style-type: none">a. the information described in Item N; andb. information that the parties agree in writing after the Date of this Agreement is confidential information for the purposes of this Agreement;
Date of this Agreement	means the date written on the execution page of this Agreement, or if no date or more than one date is written there, then the date on which the Agreement is signed by the last party to do so;
Depreciated	means the amount representing the reduction in value of an Asset calculated in accordance with Australian Accounting Standards;
Director	means any of the following: <ul style="list-style-type: none">a. a person appointed to the position of a director or alternate director and acting in that capacity for a body corporate within the meaning of the Corporations Act 2001 (Cth) regardless of the name given to their position;b. a member of the governing committee of an Aboriginal and Torres Strait Islander corporation under the Corporations (Aboriginal and Torres Strait Islander) Act 2006 (Cth);c. a member of the committee of an organisation incorporated pursuant to State or Territory laws relating to the incorporation of associations; ord. a member of the board, committee or group of persons (however described) that is responsible for managing or overseeing the affairs of the body corporate;
Dispose	means to sell, licence, lease or sublease, or otherwise transfer or give up ownership or the right to occupy or use, or to enter into an agreement to do any of the preceding acts and 'Disposal' means the method of so disposing;
Existing Material	means all Material in existence prior to the Date of this Agreement: <ul style="list-style-type: none">a. incorporated in;b. supplied with, or as part of; orc. required to be supplied with, or as part of, the Activity Material;

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

Law	<p>includes:</p> <ol style="list-style-type: none">Acts of the Commonwealth and the State(s) and Territory(s) in which the Activity will be undertaken, and any other relevant State or Territory;ordinances, regulations, by-laws, orders and proclamations or other instruments of legal effect made under those Acts referred to in paragraph (a);directions by any person exercising statutory powers regarding the Recipient or the Activity, including the Real Property; andall the requirements, standard, approvals, licences, registrations or permits of any government (including local government) department, authority, agency or regulatory body that apply to the Activity, including the Real Property;
Material	<p>means anything in relation to which Intellectual Property rights arise;</p>
Milestone	<p>means a milestone or stage of completion of the Activity as set out in Annexure A of this Agreement;</p>
Moral Rights	<p>includes the following rights of an author of copyright Material:</p> <ol style="list-style-type: none">the right of attribution of authorship;the right of integrity of authorship; andthe right not to have authorship falsely attributed;
Open Access Licence	<p>means a licence to the public on broad open access terms that allows any member of the public to perform a wide range of acts in respect of the material subject to certain restrictions. An Open Access Licence includes any Australian Government open access licence and any Creative Commons Attribution licence (see http://creativecommons.org.au/learn-more/licences);</p>
Operational	<p>means that the completed Project is operating in a way that enables it to achieve its Purpose;</p>
Operational Period	<p>means the period during which the Recipient must keep the completed Project Operational;</p>

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

Report	means Activity Material that is provided to the Commonwealth for reporting purposes as stipulated in Item D of the Schedule;
Real Property	<p>means:</p> <p>a. any land, buildings or fixtures including the Capital Works (both during and after completion) and the Works Locations; and</p> <p>b. any interest in the property specified in paragraph (a);</p> <p>that are purchased, leased, upgraded or otherwise created or brought into existence wholly or in part with the use of the Funding and includes the property listed at item E.2.1 of the Schedule.</p>
Schedule	means the schedule to this Agreement and may include Annexures and incorporate other documents by reference;
Specified Personnel	means the Recipient's Personnel specified in Item I as Personnel required to undertake all or any part of the Activity;
Term	refers to the period described in clause 1.4.1 of this Agreement;
Third Party Interest	means any legal or equitable right, interest, power or remedy in favour of any person other than the Commonwealth or the Recipient in connection with the Agreement, including any right of possession, receivership, control or power of sale, and any mortgage, charge, security or other interest;
Undepreciated	in relation to the value of an Asset, means the value of the Asset which has not been Depreciated; and
Works Location	means a location where the Capital Works are to be undertaken including any premises in, or land on, which those Capital Works are to be undertaken and includes a Works Location listed in item E.2.3 of the Schedule.

1.2. **Interpretation**

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

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

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

1.3. Guidance on construction of Agreement

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

1.4. Duration of Term

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

2. Activity, Project and Operational Period

2.1. Conduct of Activity

2.1.1. The Recipient agrees to carry out the Activity:

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

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

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

2.2. Liaison and monitoring

2.2.1. The Recipient agrees to:

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

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

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

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

2.3. **Subcontractors**

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

2.4. **Reserved**

2.5. **Responsibility of the Recipient**

2.5.1. The Recipient is fully responsible for the performance of the Activity and for ensuring compliance with the requirements of this Agreement, and will not be relieved of that responsibility because of any:

- a. involvement by the Commonwealth in the performance of the Activity;
- b. subcontracting of the Activity;
- c. acceptance by the Commonwealth of Specified Personnel; or
- d. payment of any amount of Funding to the Recipient.

2.6. **Reports**

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

2.7. **Project**

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

2.8. **Operational Period**

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

2A. Capital Works

2A.1. **Performance**

2A.1.1 The Recipient must perform the Capital Works:

- a. in accordance with the designs and plans submitted by the Recipient to the Commonwealth;
- b. in a good and workmanlike manner by qualified tradespeople; and
- c. with a minimum of delay.

2A.2. **Applicable Laws**

2A.2.1 The Recipient warrants and agrees that the Capital Works (whether undertaken before, on or after the Date of this Agreement) have been (if applicable) and will be carried out in accordance with all applicable Laws including, but not limited to, all necessary planning and regulatory approvals.

2A.2.2 The Recipient agrees to ensure that:

- a. the Works Locations comply at all times with all applicable Laws regarding their use as a site for the Capital Works; and
- b. the completed Capital Works comply with all Laws relating to their ongoing use throughout the Operational Period.

2A.3. Commence Construction

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

2A.4. Completion

2A.4.1 The Recipient must:

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

3. Funding

3.1. Payment of Funding

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

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

- 3.2.1. Without limiting the Commonwealth's rights, the Commonwealth may suspend any payment in whole or in part until the Recipient has performed its obligations under this Agreement.
- 3.2.2. Reserved.
- 3.2.3. The Commonwealth may reduce the amount of Funding payable under this Agreement where the Recipient:

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

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

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

4. Taxes, duties and government charges

- 4.1.1. Except as provided by clause 4, the Recipient agrees to pay all taxes, duties and government charges imposed or levied in Australia or overseas in connection with the performance of this Agreement.
- 4.1.2. Unless otherwise indicated, any Funding and all other consideration for any supply made under this Agreement is exclusive of any GST imposed on the supply.
- 4.1.3. If one party (the supplier) makes a taxable supply to the other party (the taxable supply recipient) under this Agreement, on receipt of a tax invoice from the supplier, the taxable supply recipient will pay without setoff an additional amount to the supplier equal to the GST imposed on the supply in question.
- 4.1.4. No party may claim or retain from the other party any amount in relation to a supply made under this Agreement for which the first party can obtain an input tax credit or decreasing adjustment.

5. Debt and Interest

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

6. Management of Funding

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

6.2. Budget

6.2.1. The Recipient agrees to only spend the Funding for the Activity and in accordance with the Budget.

6.2.2. Subject to clauses 6.2.3 and 6.2.4, the Recipient may spend the Funding on any separate category of expenditure item within the Budget.

6.2.3. The Recipient agrees to obtain prior written approval from the Commonwealth for any transfer of Funding between categories of expenditure items within the Budget which exceed a percentage of the total Budget as specified in Item B of the Schedule.

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

6.3. Account and financial records

6.3.1. The Recipient agrees to ensure that the Funding is held in an account in the Recipient's name and which the Recipient solely controls, with an authorised deposit-taking institution authorised under the Banking Act 1959 (Cth) to carry on banking business in Australia and that is an account that complies with any other requirements specified in Item A.7 in the Schedule.

6.3.2. Reserved

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

- a. notify the Commonwealth, prior to the receipt of any Funding, of details sufficient to identify the account;
- b. on notification from the Commonwealth, provide the Commonwealth and the authorised deposit-taking institution with a written authority for the Commonwealth to obtain any details relating to any use of the account;
- c. if the account changes, notify the Commonwealth within 10 Business Days of the change occurring and provide the Commonwealth with details of the new account;
- d. Reserved.

6.3.4. The Recipient agrees to:

- a. keep financial accounts and records relating to the Funding and the Project and Activity that identify
 - i. all receipts and payments related to the Project and Activity; and
 - ii. all interest earned on the Funding.
- b. unless otherwise notified by the Commonwealth, prepare financial statements for the Project and Activity in accordance with Australian Accounting Standards including:

- i. Reserved; and
- ii. a register of the Assets and a register of Real Property created, acquired, written-off or Disposed of during the Financial Year to date compared with the Budget; and

6.4. **Use as security**

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

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

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

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

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

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

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

6.5.4. If the completed Project ceases to be Operational during the Operational Period, the Commonwealth may give the Recipient notice requiring the Recipient to repay all or part of the Funding to the Commonwealth within the period specified in the notice and the Recipient must comply with that notice.

6.5.5. On completion of the Project, if the cost of the completed Project is less than the Cost Estimate, the Commonwealth may give the Recipient notice requiring the

Recipient to return any unexpended Funding to the Commonwealth within the period specified in the notice and the Recipient must comply with that notice.

- 6.5.6. This clause survives termination or expiry of the Agreement.

7. Other Contributions and Cost Savings

7.1. Other Contributions

- 7.1.1. The Recipient must, within six (6) months of the date of the Agreement provide to the Commonwealth satisfactory written evidence that confirms the Other Contributions identified in Item C and detailed in Annexure B of the Schedule, including the amounts to be provided, the due dates for each of these amounts and the terms and conditions of the provision of the Other Contributions.

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

- a. suspend payment of the Funding or an instalment of the Funding until the Other Contributions are obtained (as the case may be);
- b. reduce the total Funding payable under this Agreement by an amount that, in the Commonwealth's opinion, represents an equivalent proportion of the overall reduction in the total value of the Other Contributions (as the case may be) resulting from the failure; or
- c. terminate this Agreement in accordance with clause 17.2.

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

- 7.1.4. The Recipient agrees to notify the Commonwealth within 10 Business Days of entering into any arrangement under which the Recipient is entitled to receive any additional monetary or in-kind contributions in respect of the Project and Activity that are not identified as Other Contributions in Item C and Annexure B of the Schedule. Any such additional contribution that the Recipient becomes entitled to receive after the Date of this Agreement constitutes Other Contributions for the purposes of the Agreement (and Schedule 1 is deemed to be varied accordingly) on the date on which the Recipient notifies the Commonwealth of that contribution under this clause 7.1.4.

- 7.1.5. If the Recipient is provided with or obtains (and/or was required to provide or obtain) any Other Contributions and the cost of the completed Project is less than the Cost Estimate, the Commonwealth may give the Recipient notice requiring the Recipient to return to the Commonwealth, within the period specified in the notice, an amount equal to the Commonwealth's Proportion of the Cost Savings. In this subclause 7.1.5, 'the Commonwealth's Proportion of the Cost Savings' means $\text{savings} \times \%$ where:

- a. $\text{savings} = (\text{the Cost Estimate} - \text{the actual cost of the Project} - \text{any Funds previously repaid to the Commonwealth under this Agreement})$; and

- b. $\% = (\text{the Funding} \div (\text{the maximum Funding} + \text{the maximum Other Contributions excluding any in-kind Other Contributions}))$

7.1.6. If the Recipient receives a notice given by the Commonwealth under subclause 18, the Recipient must comply with the notice within the period specified within the notice.

7.2. **Cost Savings**

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

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

8. **Statutory Approvals**

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

8.1A The Recipient must also provide satisfactory written evidence that the statutory approvals obtained under subclause 8.1 are sufficient for the Recipient to Commence Construction within six months after the Date of this Agreement.

8.2 If the Recipient does not comply with the requirement in subclause 8.1, the Commonwealth may at the Commonwealth's sole discretion:

- a. suspend payment of the Funding until the evidence of the statutory approvals referred to in subclause 8.1 has been received; or
- b. terminate this Agreement in accordance with clause 17.2.

9. **Assets**

9.1. **Acquisition of Asset**

9.1.1. The Recipient agrees not to use the Funding to acquire or create any Asset, apart from those detailed in the Item E, without obtaining the Commonwealth's prior written approval. Approval may be given subject to any conditions the Commonwealth may impose.

9.1.2. Unless it is specified in Item E that the Commonwealth or a third party owns the Asset or the Commonwealth provides written consent to a third party owning the

Asset, then the Recipient must ensure that it owns any Asset acquired with the Funding.

9.2. Terms applicable to Asset

9.2.1. If the Commonwealth owns the Asset clauses 9.4 and 9.6.2 do not apply.

9.2.2. If the Asset is owned by a third party then the Recipient agrees to ensure that the terms of the lease, hire or finance arrangement are consistent with clause 9.3, and clauses 9.4, 9.5 and 9.6 do not apply.

9.3. Recipient's responsibilities for Asset

9.3.1. Throughout the Term, the Recipient agrees to:

- a. use any Asset in accordance with this Agreement and for the purposes of the Activity;
- b. not encumber or Dispose of any Asset, or deal with or use any Asset other than in accordance with this clause 9 without the Commonwealth's prior written approval;
- c. hold all Assets securely and safeguard them against theft, loss, damage, or unauthorised use;
- d. maintain all Assets in good working order;
- e. maintain all appropriate insurances for all Assets to their full replacement cost noting the Commonwealth's interest, if any, in the Asset under the Agreement;
- f. if required by law, maintain registration and licensing of all Assets;
- g. be fully responsible for, and bear all risks relating to, the use or Disposal of all Assets; and
- h. if specified in Item E, maintain an Assets register in the form and containing the details as described in Item E and as and when requested by the Commonwealth, provide copies of the Assets register to the Commonwealth.

9.4. Sale or Disposal of Asset during Term

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

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

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

9.5. Loss, damage, etc of Asset

9.5.1. If any of the Assets are lost, damaged or destroyed, the Recipient agrees to promptly reinstate the Assets including from the proceeds of the insurance, and

this clause 9 continues to apply to the reinstated Assets. The proportion of any surplus from the proceeds of the insurance, which reflects the proportion of the cost of the Asset that was funded from the Funding, must be notified to the Commonwealth and accounted for as Funding and used for the Activity.

9.6. Dealing with Asset

- 9.6.1. On expiry of the Activity Period or earlier termination of the Agreement, the Commonwealth may require the Recipient to deal with an Asset as the Commonwealth may, at the sole discretion of the Commonwealth, notify the Recipient.
- 9.6.2. Subject to clause 9.6.1, if on expiry of the Activity Period or the earlier termination of this Agreement, an Asset has not been fully Depreciated, the Commonwealth may, by written notice, require the Recipient to:
- a. pay to the Commonwealth within 20 Business Days of the expiry of the Activity Period or earlier termination of the Agreement, an amount equal to the proportion of the Undepreciated value of the Asset that is equivalent to the proportion of the cost of the Asset that was funded from the Funding;
 - b. sell the Asset for the best price reasonably obtainable and pay to the Commonwealth within 20 Business Days of the sale the proportion of the proceeds of the sale that is equivalent to the proportion of the cost of the Asset (less an amount equal to the reasonable Disposal costs incurred by the Recipient) that was funded from the Funding; or
 - c. continue to use the Asset for the purposes, and in accordance with any conditions, notified by the Commonwealth.

10. Real Property

10.1. Approval

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

10.2. Outgoings

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

10.3. Recipient's Responsibilities for Real Property

- 10.3.1 Throughout the Term of this Agreement, including the Operational Period, the Recipient agrees to:
- a. hold the Real Property securely and safeguard it against theft, loss, damage, or unauthorised use;
 - b. maintain the Real Property in good condition;
 - c. maintain all appropriate insurances for the Real Property to its full replacement cost and use that insurance to rectify any damage to or

destruction to the Real Property and this clause 10.3.1 continues to apply to the Real Property once rectified. The Recipient must notify the Commonwealth of any surplus from the proceeds of this insurance and the Recipient must use and account for that surplus as Funding under this Agreement;

- d. if required by any Law, maintain registration and licensing of the Real Property;
- e. be fully responsible for, and bear all risks relating to, the use or Disposal of all Real Property;
- f. if specified in item E.2 of the Schedule, maintain a Real Property register in the form and containing the details as described in that item of the Schedule; and
- g. as and when requested by the Commonwealth, provide copies of the Real Property register to the Commonwealth.

10.4. Recipient's Use of Real Property

10.4.1. The Recipient agrees to ensure that:

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

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

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

10.5. Third Party Interests

10.5.1. If a third party has proprietary or other rights or interests in relation to any Real Property, the Recipient agrees to:

- a. enter into legally binding written agreements under which all such third parties agree to:
 - i. the use of the Works Locations to undertake the Capital Works throughout the Activity Period;
 - ii. the use of the Works Locations, and completed Capital Works for the Purpose specified in item A.3 of the Schedule throughout the Operational Period; and

- iii. the use of any other Real Property for the Activity throughout the Activity Period and for the Purpose specified in item A.3 of the Schedule throughout the Operational Period;
- b. not do anything that would give any such third party a right to rescind its agreement to one or more of the uses specified in paragraph (a); and
- c. within 10 Business Days of a request from the Commonwealth, provide evidence to the Commonwealth that the Recipient has complied with the requirements of this subclause 10.5.

10.6. Dealing with Real Property

10.6.1. If:

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

then:

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

10.6.2. If the Recipient fails to pay the Commonwealth an amount as required by a notice given under subclause 10.6.1:

- a. the Recipient must pay the Commonwealth the Interest on the unpaid amount from the date it was due, for the period it remains unpaid; and
- b. that amount, and Interest owed under this subclause 10.6.2, will be recoverable by the Commonwealth as a debt due to the Commonwealth by the Recipient.

10.6.3. The provisions relating to this clause 10 shall survive the termination or expiration of this Agreement.

11. Records

11.1. Keeping Records

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

11.2. Retention of Records

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

12. Intellectual Property

12.1. Use of Commonwealth Material

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

12.2. Rights in Activity Material

- 12.2.1. Subject to this clause 12, Intellectual Property in Activity Material vests or will vest in the Recipient.
- 12.2.2. Clause 12.2.1 does not affect the ownership of Intellectual Property in any Commonwealth Material incorporated into the Activity Material.
- 12.2.3. The Recipient grants to (or will procure for) the Commonwealth a permanent, irrevocable, royalty-free, worldwide, non-exclusive licence (including a right of sublicense) to use, reproduce, exploit, communicate, adapt and distribute the Activity Material for any purpose.
- 12.2.4. The Recipient agrees that the licence granted in clause 12.2.3 includes a right for the Commonwealth to licence the Activity Material to the public under an Open Access Licence.
- 12.2.5. The Recipient agrees, on request by the Commonwealth, to create, sign, execute or otherwise deal with any document necessary or desirable to give effect to this clause 12.
- 12.2.6. The Recipient warrants that:
- a. it is entitled; or
 - b. it will be entitled at the relevant time,

to deal with the Intellectual Property in the Activity Material in the manner provided for in this clause 12.

12.3. **Moral Rights**

12.3.1. In this clause 12.3:

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

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

but does not include false attribution of authorship.

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

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

12.3.3. Where clause 12.3.1 does not apply, the Recipient agrees:

- a. to obtain from each author a written consent which extends directly or indirectly to the performance of the Permitted Acts by the Commonwealth or any person claiming under or through the Commonwealth (whether occurring before or after the consent is given) and, upon request, will provide the executed original of any such consent to the Commonwealth; and
- b. to ensure that each author's attention is drawn to the Commonwealth's general policies and practices regarding Moral Rights.

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

13. Confidential Information

13.1. **Confidential Information not to be disclosed**

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

13.2. Written Undertakings

- 13.2.1. The Recipient must, on request by the Commonwealth at any time, arrange for:
- a. its Personnel; or
 - b. any person with a Third Party Interest,
- to give a written undertaking in a form acceptable to the Commonwealth relating to the use and non-disclosure of the Commonwealth's Confidential Information.

13.3. Exceptions to Obligations

- 13.3.1. The obligations on the parties under this clause 13.3 will not be taken to have been breached to the extent that Confidential Information:
- a. is disclosed by a party to its Personnel solely in order to comply with obligations, or to exercise rights, under this Agreement;
 - b. is disclosed to a party's internal management Personnel, solely to enable effective management or auditing of Agreement-related activities;
 - c. is disclosed by the Commonwealth to the responsible Minister;
 - d. is disclosed by the Commonwealth, in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia;
 - e. is shared by the Commonwealth (including other agencies), where this serves the Commonwealth of Australia's legitimate interests;
 - f. is authorised or required by law to be disclosed; or
 - g. is in the public domain otherwise than due to a breach of this clause 13.3.
- 13.3.2. Where a party discloses Confidential Information to another person pursuant to clauses 13.3.1.a - 13.3.1.e, the disclosing party must notify the receiving person that the information is confidential.
- 13.3.3. In the circumstances referred to in clauses 13.3.1.a, 13.3.1.b and 13.3.1.e, the disclosing party agrees not to provide the information unless the receiving person agrees to keep the information confidential (subject to the exceptions in this clause 13.3).
- 13.3.4. The Recipient agrees to secure all of the Commonwealth's Confidential Information against loss and unauthorised access, use, modification or disclosure.
- 13.4. Period of Confidentiality**
- 13.4.1. The obligations under this clause 13.4 will continue, notwithstanding the expiry or termination of this Agreement:
- a. in relation to an item of information described in Item N – for the period set out in respect of that item; and
 - b. in relation to any item of information agreed after the Date of this Agreement to be Confidential Information – for the period agreed by the parties in writing in respect of that item, and if no such period is agreed by the parties, in perpetuity.

13.5. No reduction in Privacy Obligations

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

14. Acknowledgement and publicity

14.1. Acknowledgement of support

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

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

14.2. Right to publicise Funding

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

14.3. No restriction on advocacy activities

- 14.3.1. The Commonwealth confirms that, subject to clause 14.3.2:
- a. no right or obligation arising under this Agreement should be interpreted as limiting the Recipient's ability to enter into public debate or criticism of the Commonwealth of Australia or its agencies, employees, servants or agents;
 - b. the Commonwealth does not require the Recipient to obtain advance approval of any involvement by the Recipient in public debate or advocacy activities.
- 14.3.2. Nothing in this clause 14.3 limits or derogates from the Recipient's obligations under clauses 13 and 21.2.

15. Liability

15.1. Proportionate liability regime

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

15.2. Indemnity

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

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

arising from:

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

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

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

15.3. Meaning of 'fault'

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

16. Dispute resolution

16.1. Procedure for dispute resolution

16.1.1. The parties agree that a dispute arising under this Agreement will be dealt with as follows, and that, subject to clause 16.4, neither party will commence legal proceedings in relation to that dispute until this procedure is completed:

- a. the party claiming that there is a dispute will give the other party a notice setting out the nature of the dispute;
- b. within five (5) Business Days (or such other period as agreed by the parties in writing) each party will nominate a representative not having any prior involvement in the dispute;
- c. the representatives will try to settle the dispute by direct negotiation between them;

- d. failing settlement within a further 10 Business Days or such other period as agreed by the parties in writing (or failure of one or both parties to nominate a representative within the period set out in clause 16.1.1.b), the parties may agree to refer the dispute to an independent third person with power:
 - i. to intervene and direct some form of resolution, in which case the parties will be bound by that resolution; or
 - ii. to mediate and recommend some form of non-binding resolution;
- e. the parties will co-operate fully with any process instigated under clause 16.1.1.d in order to achieve a speedy resolution; and
- f. if the parties have been unable to agree to refer the dispute to an independent third person, or they have agreed and a resolution is not reached within a further 20 Business Days (or such other period as the parties) may agree in writing), either party may commence legal proceedings.

16.2. Costs

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

16.3. Continued performance

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

16.4. Application of clause

- 16.4.1. This clause 16 does not apply to:
- a. legal proceedings by either party for urgent interlocutory relief; or
 - b. action by the Commonwealth under or purportedly under clauses 3, 6, 17 and 21.2.

17. Termination or reduction in scope of Agreement

17.1. Termination for convenience

- 17.1.1. The Commonwealth may by notice, at any time and in its absolute discretion, terminate this Agreement or reduce the scope of the Agreement immediately.
- 17.1.2. The Recipient agrees, on receipt of a notice of termination or reduction, to:
- a. stop or reduce the performance of the Recipient's obligations as specified in the notice;
 - b. take all available steps to minimise loss resulting from that termination or reduction;
 - c. continue performing any part of the Activity not affected by the notice; and

- d. immediately return to the Commonwealth any Funding in accordance with clause 17.1.5, or deal with any such Funding as directed by the Commonwealth.

17.1.3. In the event of termination under clause 17.1.1, the Commonwealth will be liable only:

- a. to pay Funding due and owing to the Recipient under the payment provisions of the Agreement before the date of the notice of termination; and
- b. to reimburse any expenses the Recipient unavoidably incurs that relate directly and entirely to the Activity and not covered by clause 17.1.3.a.

17.1.4. The Commonwealth will not be liable to pay amounts under 17.1.3.a and 17.1.3.b which would, added to any payments already paid to the Recipient under this Agreement, together exceed the Funding set out in Item A.7 of the Schedule and Annexure A.

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

- a. is not legally committed for expenditure by the Recipient in accordance with the Agreement and due and payable by the Recipient by the date that the notice of termination is received; or
- b. has not, in the Commonwealth's opinion, been spent by the Recipient in accordance with the Agreement.

17.1.6. In the event of a reduction in the scope of the Agreement under clause 17.1.1, the Commonwealth's liability to pay any part of the Funding will, unless there is agreement in writing to the contrary, reduce in accordance with the reduction in the Activity.

17.1.7. The Commonwealth's liability to pay any compensation under or in relation to this clause 17.1 is subject to:

- a. the Recipient's compliance with this clause 17.1; and
- b. the Recipient's substantiation of any amount claimed under clause 17.1.3.b.

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

17.2. Termination for fault

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

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

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

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

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

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

17.3. **Preservation of other rights**

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

18. Notices

18.1. Format, addressing and delivery

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

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

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

18.2. When received

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

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

18.2.2. If a notice is received:

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

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

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

19.1. In this clause 19:

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

Building Contractor	has the same meaning as in the Act.
Building Industry Participant	has the same meaning as in the Act.
Building Work	has the same meaning as in subsection 3(4) of the Building Code.
Commonwealth Funded Building Work	means Building Work in items 1-8 of Schedule 1 of the Building Code.
Contractor	means a Building Contractor or Building Industry Participant who the Funding Recipient has entered, or proposes to enter, into a contract with to undertake any of the Works.
Exclusion Sanction	has the same meaning as in subsection 3(3) of the Building Code
Funding	means the funding provided by the Commonwealth to the Funding Recipient.
Funding Recipient	means the entity that the Commonwealth is providing funding or assistance to in relation to building works to which the Building Code applies.
Related Entity	has the same meaning as in subsection 3(2) of the Building Code.
Works	means Commonwealth Funded Building Work that is being indirectly funded by the Commonwealth through the provision of the Funding to the Funding Recipient.

- 19.2. The Funding Recipient must ensure that:
- tender processes and calls for expressions of interest (howsoever described) in respect of Commonwealth Funded Building Work are conducted in a manner consistent with this code of practice; and
 - respondents are only permitted to participate in tender processes where the respondent is not subject to an exclusion sanction.
- 19.3. The Funding Recipient must ensure that any request for expressions of interest or request for tender (howsoever described) for Commonwealth Funded Building Work requires a respondent:
- to confirm that the respondent and any related entity will comply with the Building Code when undertaking the Commonwealth Funded building Work; and

- b. to confirm that the respondent, and any related entities; will comply with the Building Code from the time of lodging an expression of interest or tender response (if not already obligated to do so); and
- c. to confirm that it is not subject to an exclusion sanction at the time of lodging an expression of interest or tender; and
- d. to demonstrate a positive commitment to the provision of appropriate training and skill development for their workforce. Such commitment may be evidenced by compliance with any state or territory government building training policies and supporting the delivery of nationally endorsed building and construction competencies; and
- e. to include details of the number of current apprentice and trainee employees and the number of classes of persons that hold visas under the Migration Act 1958 that are engaged by the respondent, and that are intended to be engaged by the respondent to undertake the Commonwealth Funded Building Work; and
- f. to advise whether the respondent has, within the preceding 3 year period:.
 - i. had an adverse decision, direction or order made by a court or tribunal for a breach of a designated building law, work health and safety law or the Migration Act 1958; or
 - ii. been required to pay any amount under an adjudication certificate (provided in accordance with a law relating to the security of payments that are due to persons in respect of building work) including by any related entity to a building contractor or building industry participant; or
 - iii. owed any unsatisfied judgement debts (including such debts owed by any related entity) to a building contractor or building industry participant.

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

- a. ensure the requirement to have a Workplace Relations Management Plan (WRMP) for the Works approved by ABCC is included in all expression of interest and tender documents; and
- b. on behalf of the funding entity:
 - i. apply to the ABCC to have a WRMP for the Works approved; and
 - ii. ensure that an application to the ABCC for approval of a WRMP for the Works is made in the manner and form required by the ABCC Commissioner; and
 - iii. ensure that the proposed WRMP for the Works is accompanied by any supporting evidence required by the ABCC; and

- iv. obtain and provide additional information to the ABCC when requested, to enable the ABCC to make a decision whether or not to approve the proposed WRMP for the Works.

20. Work Health and Safety

20.1. Use of Commonwealth's premises

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

20.2. Assistance to the Commonwealth

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

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

The Scheme	means the Scheme described at Section 43 of the Building and Construction Industry (Improving Productivity) Act 2016.
Builder	has the meaning given in Section 43(8) of the Building and Construction Industry (Improving Productivity) Act 2016.
Building Work	has the meaning given to it by Section 6 of the Building and Construction Industry (Improving Productivity) Act 2016.
Exclusions	means the building work is prescribed under section 26 of the Fair Work (Building Industry—Accreditation Scheme) Regulation 2016

- 20.3.1. Construction projects that utilise funds provided under this agreement are bound by the application of the Australian Government building and construction

industry Work Health and Safety Accreditation Scheme (the Scheme) and the following conditions:

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

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

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

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

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

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

21. General Provisions

21.1. Constitution

- 21.1.1. The Recipient warrants that the Recipient's Constitution is not, and will not become, inconsistent with this Agreement.
- 21.1.2. The Recipient must provide a copy of the Recipient's Constitution to the Commonwealth, upon request.
- 21.1.3. The Recipient must obtain the Commonwealth's written approval to any amendments to the Recipient's Constitution which may affect the Recipient's eligibility for the Funding or the Recipient's capacity to comply with this Agreement. If the Recipient alters the Constitution in breach of this subclause 21.1.3, the Commonwealth may terminate this Agreement in accordance with clause 17.2 of this Agreement.

21.2. Obligations of Recipient in relation to privacy

- 21.2.1. The Recipient agrees, in conducting the Activity:

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

21.2.2. The Recipient agrees to notify the Commonwealth immediately if it becomes aware of a breach or possible breach of any of its obligations under this clause 21.2.

21.2.3. The provisions of this clause 21.2 survive the termination or expiration of this Agreement.

21.3. **Audit and Access**

21.3.1. The Recipient agrees:

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

21.3.2. The rights referred to in clause 21.3.1. are subject to:

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

21.3.3. The Auditor-General and Information Officer (and their delegates) are persons authorised for the purposes of clause 21.3.1.

21.3.4. This clause 21.3 does not detract from the statutory powers of the Auditor-General or Information Officer.

21.4. **Access to Documents**

21.4.1. In this clause 21.4, 'document' and 'Commonwealth contract' have the same meaning as in the Freedom of Information Act 1982 (Cth). This clause 21.4 only applies if this Agreement is a 'Commonwealth contract', as defined in the Freedom of Information Act 1982 (Cth).

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

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

21.5. **Insurance**

21.5.1. The Recipient agrees:

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

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

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

21.6.1. In this clause 21.6:

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

21.6.2. The Recipient agrees to ensure that:

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

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

21.7. **Conflict of interest**

21.7.1. In this clause 21.7:

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

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

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

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

21.8. **Relationship of parties**

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

21.8.2. The Recipient agrees:

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

21.9. **Waiver**

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

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

21.10. **Variation of Agreement**

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

21.11. **Assignment**

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

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

21.12. **Survival**

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

- a. Intellectual Property;
- b. confidentiality;
- c. security;
- d. privacy;
- e. dealing with copies;
- f. books and records;
- g. audit and access;
- h. an indemnity;
- i. acknowledgement and publicity;
- j. rights or obligations following termination or expiry of the Agreement; or

- k. any other provision which expressly or by implication from its nature is intended to continue.

21.13. **Compliance with Legislation and Policies**

21.13.1. In this clause 21.13:

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

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

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

21.14. **Applicable law and jurisdiction**

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

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

21.15. **Child Safety**

In this Agreement:

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

Child-Related Personnel

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

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

National Principles for Child Safe Organisations

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

National Principles for Child Safe Organisations as published by the Australian Government;

Relevant Legislation

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

Working With Children Check or WWCC

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

Relevant Checks and authority

21.15.1. The Grantee must:

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

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

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

- a. implement the National Principles for Child Safe Organisations;
- b. ensure that all Child-Related Personnel implement the National Principles for Child Safe Organisations;
- c. complete and update, at least annually, a risk assessment to identify the level of responsibility for Children and the level of risk of harm or abuse to Children;
- d. put into place and update, at least annually, an appropriate risk management strategy to manage risks identified through the risk assessment required by this clause 21.15.2;
- e. provide training and establish a compliance regime to ensure that all Child-Related Personnel are aware of, and comply with:
 - i. the National Principles for Child Safe Organisations;
 - ii. the Grantee's risk management strategy required by this clause 21.15.2;
 - iii. Relevant Legislation relating to requirements for working with Children, including Working With Children Checks;

- iv. Relevant Legislation relating to mandatory reporting of suspected child abuse or neglect, however described; and
 - f. provide the Commonwealth with an annual statement of compliance with clauses 21.15.1 and 21.15.2, in such form as may be specified by the Commonwealth.
- 21.15.3. With reasonable notice to the Grantee, the Commonwealth may conduct a review of the Grantee's compliance with this clause 21.15.
- 21.15.4. The Grantee agrees to:
 - a. notify the Commonwealth of any failure to comply with this clause 21.15;
 - b. co-operate with the Commonwealth in any review conducted by the Commonwealth of the Grantee's implementation of the National Principles for Child Safe Organisations or compliance with this clause 21.15; and
 - c. promptly, and at the Grantee's cost, take such action as is necessary to rectify, to the Commonwealth's satisfaction, any failure to implement the National Principles for Child Safe Organisations or any other failure to comply with this clause 21.15.

Executed as a deed

Executed by the parties as evidence of their agreement.

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

Name of signatory *Signature*

Position *Insert Date*

In the presence of:

Name of witness *Signature of witness*

Executed on behalf of **GIANT STEPS**)
MELBOURNE LTD, CAN 606552283)
by Barry Irvin who by signing warrants)
they are authorised to bind **Giant**)
Steps Melbourne Ltd) *Signature*

Insert Date

In the presence of:

Name of witness *Signature of witness*

SCHEDULE 1 PARTICULARS

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

A.1. Programme

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

A.2. Project

The project to be undertaken by the Recipient is the Giant Steps Autism School Expansion at 11 Malmsbury Street, Kew VIC, 3101. The Project will include the Activity that the Programme will fund, defined in more detail in item A.5 of the Schedule.

The Project Completion Date is **30 June 2021**.

A.3. Purpose

The Purpose for which the completed Project is required to be used is:

To provide expanded autism services in Melbourne to help meet demand and increase student enrolments across all programs to enable the provision of individualised programs for children and young adults with Autism.

A.4. Operational Period

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

Amount of Funding	Duration of Operational Period
Over \$1,000,000	Five (5) years

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

A.5. Activity

The Activity to be undertaken by the Recipient is the Giant Steps Autism School Expansion project including:

- Planning and design;
- construction of a secondary school building of at least xm^2 comprising:
 -
- construction of a post-school facilities building of at least Xm^2 , comprising:
 -
- upgrades to XXXXXXXXXXXX
- landscaping

- [insert deliverables]

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

A.6. Reserved

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

The total Funding for the Activity is **\$9,700,000** GST exclusive. The Funding will be paid as follows:

1. The first payment of Funding specified in the table at Annexure A will not be made until:
 - a) this Agreement has been executed by all Parties and all Milestones specified in the table at Annexure A that relate to the first payment have been achieved to the Commonwealth's satisfaction; and
 - b) all Reports identified in item D of the Schedule as being due on or before the due date for the first payment have been received and accepted by the Commonwealth; and
2. The second and each subsequent payment specified in the table at Annexure A will not be made until:
 - a) all Milestones specified in the table at Annexure A that relate to the relevant payment have been achieved to the Commonwealth's satisfaction;
 - b) all Reports identified in item D of this Schedule as being due on or before the due date for the relevant payment have been received and accepted by the Commonwealth; and
 - c) the Recipient has provided the Commonwealth with evidence that all previously paid Funds have been expended or committed.

Invoicing

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

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

**B. Budget
(clause 6.2)**

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

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

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

C. Other Contributions
(clause 7)

C.1. Other Contributions

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

D. Reporting
(clauses 1.1.1, 2.6)

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

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

D.1.2 Each Progress Report must contain:

- a. details of progress and performance against the Activity, and the Project (to the extent that it is directly related to the relevant part of the Activity which is being covered by that Progress Report) and evidence of completion of the Milestones listed in Annexure A of the Schedule that are due for completion (including but not limited to photographs to demonstrate completion of Milestones) during the period between the Recipient's previous Progress Report and the due date of this Progress Report (or in the case of the first Progress Report, the period between the Date of this Agreement and the due date of the first Progress Report);
- b. details of mitigating circumstances and remedial action undertaken in the event a Milestone is not met or completed in the manner and/or by the time specified;
- c. copies of any published reports, promotional material, media publicity, pamphlets or other documentation relevant to the Project;
- d. evidence that the Recipient has obtained and/or utilised in-kind Other Contributions specified in the table at Annexure B;
- e. a statement of receipts (which separately identifies any interest earned on the Funding) and expenditure to date in respect of the Funding; and
- f. a statement of receipts and expenditure to date in respect of Other Contributions (excluding in-kind).

D.1.3 The Activity Completion Report must contain:

- a. evidence that the Activity and the Milestones have been completed;

- b. an analysis of the planning, implementation and overall process the Recipient followed to deliver the Activity;
- c. any recommendations on improved practice, relevant to the Recipient's and the Commonwealth's practices, that may assist in the delivery of future projects;
- d. a copy of the current Assets register described in item E.1.2 of this Schedule and a copy of the Real Property register described in item E.2.4 of this Schedule;
- e. evidence that the Recipient has obtained in-kind Other Contributions for the Activity specified in the table at Annexure B;
- f. an up to date Audited Financial Report in respect of the Activity; and
- g. copies of any published reports, promotional material, media publicity, pamphlets or other documentation relevant to the Activity, not already included in the Progress Report/s.
- h. a copy of the Assets register described in item E.1 of this Schedule and a copy of the Real Property register described in item E.2 of this Schedule.

D.1.4 The Project Completion Report must contain:

- a. evidence that the Project has been completed;
- b. an analysis of the planning, implementation and overall process the Recipient followed to deliver the Project;
- c. any recommendations on improved practice, relevant to the Recipient's and the Commonwealth's practices, that may assist in the delivery of future projects;
- d. a copy of the Assets register described in item E.1 of this Schedule and a copy of the Real Property register described in item E.2 of this Schedule.
- e. evidence that the Recipient obtained in-kind contributions specified in the table at Annexure B;
- f. an Audited Financial Report; and
- g. copies of any published reports, promotional material, media publicity, pamphlets or other documentation relevant to the Project, not already included in the Progress Report/s.

In addition, the Project Completion Report must also:

- h. describe the Recipient's activities during the Term;
- i. discuss in detail the conduct, benefits and outcomes of the Activity as a whole and the Activity's results and findings; and
- j. Reserved

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

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

D.2. Audit and certification

- D.2.1. The Activity Completion Report and Project Completion Report must be accompanied by a copy of a letter to the Recipient from the Approved Auditor, or a report from the Approved Auditor, that includes:
- a. separate audited statements of receipts and expenditure in respect of the Funding and Other Contributions (excluding in-kind), which must:
 - i. comply with all relevant Australian Accounting Standards
 - ii. separately identify any interest earned on the Funding
 - iii. include a definitive statement made by an Approved Auditor as to whether:
 1. the statements of receipts and expenditure are fair and true
 2. Funding and Other Contributions (excluding in-kind) were held and expended in accordance with this Agreement
 - b. a certificate, signed by the Recipient's Chief Executive Officer, Chief Financial Officer or a person authorised by the Recipient to execute documents and legally bind the Recipient by their execution, that:
 - i. all Funding and Other Contributions (excluding in-kind) received was expended for the purpose of the Activity and Project and expended and held in a manner in accordance with this Agreement
 - ii. salaries and allowances paid to persons involved in the Activity are in accordance with any applicable award or agreement in force under any relevant Law on industrial or workplace relations.

D.3. Other Reports

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

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

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

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

E.1. Assets

E.1.1. For the purposes of Clause 9, the Recipient may create, acquire or upgrade the following Assets:

None Specified

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

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

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

E.2. Real Property

E.2.1. The Real Property includes the Giant Steps Autism School Expansion.

E.2.2. The Capital Works includes design, construction and fit-out of the Real Property at the Works Location.

E.2.3. The Works Locations includes 11 Malmsbury Street, Kew, VIC, 3101

E.2.4. The Recipient must for the Term of this Agreement maintain a Real Property Register in the following form and containing the following information:

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

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

F. Insurance
(clause 21.5)

The Recipient must maintain:

- a. workers compensation insurance as required by law where the Recipient carries out activities under this Agreement;
- b. public liability insurance to the value of at least \$10 million for each and every claim, or occurrence giving rise to a claim, in respect to activities undertaken under this Agreement, where occurrence means either a single occurrence or a series of occurrences if these are linked or occur in connection with one another from one original cause, as the case may be; and
- c. insurance against any loss or damage to an Asset or Real Property for its full replacement cost including where relevant the costs of demolition and removal of debris and the cost of architects, engineers and other consultants.

G. Reserved

H. Acknowledgement and publicity
(clause 14)

- H.1.1 If the Recipient erects or maintains any signage in relation to the Project, the signage must be approved by the Commonwealth prior to use and contain an acknowledgement of the Funding as required under Clause 14 of this Agreement. Any signage must remain in place during the Operational Period for the Project as specified in Item A.4. Signage for the Activity may be paid from the Budget if approved by Us. Signage for any other part of the Project must be at the Recipient's own cost.
- H.1.2 If a Federal, State or Local Government election is announced, the Recipient must cover any sign that is displayed within 100 metres of a polling place with an opaque (impenetrable to sight), durable and water repellent material from a period not less than 48 hours before the commencement of polling at that polling place until the polls close.
- H.1.3 The Recipient must include the Commonwealth logo in all signage, publications and promotional activities related to the Activity.
- H.1.4 The Recipient must not use the Commonwealth's logo without the Commonwealth's approval. If the Commonwealth provides approval for the Recipient's use of the Commonwealth's logo, the Recipient must use it in accordance with the Commonwealth's Print Style Guidelines (as advised by the Commonwealth).

- H.1.5 All the Recipient's publicity, announcements and media releases relating to the Activity must be cleared through the Commonwealth's contact officer specified at item L of the Schedule with at least 10 Business Days' notice, before release.
- H.1.6 The Commonwealth reserves the right to publicise and report on the provision of Funding to the Recipient, including progress on completing the Activity and the Project. The Commonwealth may do this by including the information specified in clause 14.2 in media releases, general announcements about the Funding and in annual reports and in electronic media.
- H.1.7 The Recipient must conduct an official opening of the completed Activity and Project unless otherwise agreed by the Commonwealth.
- H.1.8 The Recipient must provide to the Commonwealth with at least 3 options for dates for the official opening, or any other milestone events that the Recipient chooses to conduct (e.g. stage completion), for the Activity and the Project. These dates must be provided at least 56 days prior to the first proposed date for each event to be conducted.
- H.1.9 The date of official openings or other official public function for the completed Activity and Project must be agreed by the Commonwealth.
- H.1.10 The Recipient must invite the Commonwealth's representative to officiate at any official opening or other official public function relating to the Activity or the Project.
- H.1.11 The Commonwealth Minister's prior agreement must be sought, to invite any other Commonwealth or State elected official or other officials to attending either function. This invitation must be provided to the Commonwealth no later than 56 days before the date of the official opening or other official public function relating to the Activity or the Project.
- H.1.12 The Recipient must coordinate requests for the Commonwealth's agreement to the date of official openings and requests for Commonwealth representation at official openings or other official functions relating to the Activity or the Project through the Commonwealth's contact officer specified at item L of the Schedule.

I. Reserved

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

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

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

- Migration Act 1958
- Work Health and Safety Act 2011.

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

Community Development Grants Programme – Grant Programme Guidelines

K. Statutory Approvals

(clause 2A.2)

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

L. Notices

(clause 18.1)

The Commonwealth's details for notices are as follows:

Name: General Manager
Regional Programs Branch

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

Email: CDG@infrastructure.gov.au

The Recipient's details for notices are as follows:

Name: s47F

Position: s47F

Address: s47F

Telephone: s47F

E-mail: s47F

M. Applicable Law

(clause 21.14)

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

N. Confidential Information

(clause 13)

Commonwealth's Confidential Information

Agreement Provisions/Schedules/Attachments

None Specified

Agreement related material

None Specified

Recipient’s Confidential Information

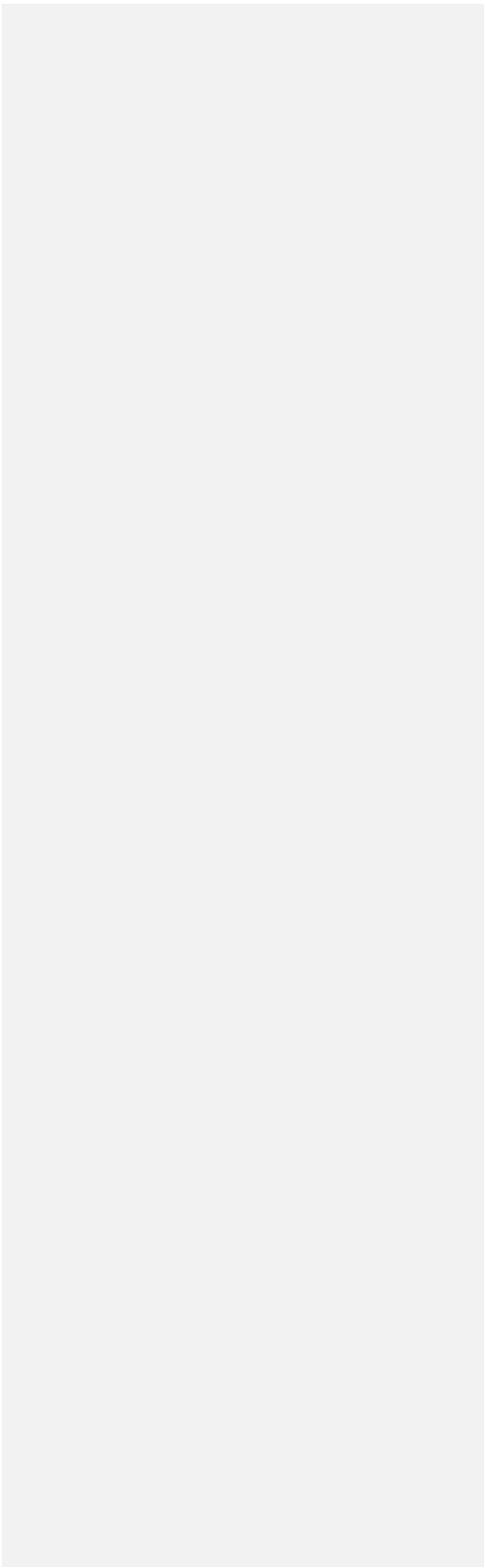
Agreement Provisions/Schedules/Attachments

None Specified

Agreement related material

None Specified

DRAFT



ANNEXURE A

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

Report	Milestone(s) / Information covered by the Report	Milestone Completion Date	Payment amount (GST Exclusive)	Due Date for Report	Due Date for Funding Payment
Progress Report 1	<p>Evidence acceptable to the Commonwealth that the following have been achieved:</p> <ul style="list-style-type: none"> confirmation of final designs; confirmation of final costs; confirmation that the construction phase has commenced; and 10 per cent of the Project is completed and certified by the Project Manager, Quantity Surveyor, or similar. 	<p>XXXX</p> <p>(Note: the number of milestones & completion dates & payment amounts are negotiable)</p>	\$970,000	<p>XXXX</p> <p>(Note: report due date is 1 month after milestone date)</p> <p>(Note – if milestone requirements are achieved earlier, reports can be submitted earlier & payments made earlier)</p>	<p>XXXX</p> <p>(Note: the payment date is approx 2 weeks after report due date)</p>

Commented [KN1]: Please note the payment amount should match the percentage completion amount

Report	Milestone(s) / Information covered by the Report	Milestone Completion Date	Payment amount (GST Exclusive)	Due Date for Report	Due Date for Funding Payment
Progress Report 2	<p>Evidence acceptable to the Commonwealth that the following have been achieved:</p> <ul style="list-style-type: none"> Confirmation that the contractor is compliant with the Code for the Tendering and Performance of Building Work 2016 and accredited under the Australian Government Building and Construction WHS Accreditation Scheme; and <> per cent of the Project is completed and certified by the Project Manager, Quantity Surveyor, or similar. 	XXXX	\$XXXX	XXXX	XXXX
Progress Report 3	<p>Evidence acceptable to the Commonwealth that the following have been achieved:</p> <p><> per cent of the Project is completed and certified by the Project Manager, Quantity Surveyor, or similar.</p>	XXXX	\$XXXX	XXXX	XXXX
Progress Report 4	<p>Evidence acceptable to the Commonwealth that the following have been achieved:</p> <p><> per cent of the Project is completed and certified by the Project Manager, Quantity Surveyor, or similar.</p>	XXXX	\$XXXX	XXXX	XXXX
Progress Report 5	<p>Evidence acceptable to the Commonwealth that the following have been achieved:</p> <p><> per cent of the Project is completed and certified by the Project Manager, Quantity Surveyor, or similar.</p>	XXXX	\$XXXX	XXXX	XXXX

Report	Milestone(s) / Information covered by the Report	Milestone Completion Date	Payment amount (GST Exclusive)	Due Date for Report	Due Date for Funding Payment
Progress Report 6	<p>Evidence acceptable to the Commonwealth that the following have been achieved:</p> <ul style="list-style-type: none"> an Event Invitation has been submitted to the Department as required at Item H of the Schedule; and <> per cent of the Project is completed and certified by the Project Manager, Quantity Surveyor, or similar. 	XXXX	\$XXXX	XXXX	XXXX
Project Completion Report	<p>Evidence acceptable to the Commonwealth that the following has been achieved:</p> <ul style="list-style-type: none"> the Activity, at Item A.5 of the Schedule, is complete; the Project, at Item A.2 of the Schedule, is complete; all approvals required to enable public access and use of the facility have been met; and the Project is fully Operational. 	30 June 2021	\$970,000	30 September 2021	13 August 2021

Note: the project completion report due date needs to be 3 months after the milestone completion date to allow sufficient time for the Audited Financial report

Commented [KN2]: Please note the final payment amount needs to be at least 10%

ANNEXURE B

BUDGET FOR THE EXPENDITURE OF CDG FUNDING		
Cost item	Description	Amount (GST exclusive)
Design, construction & fit out	Giants Steps Autism School Expansion	\$9,700,000
Funding (A)		\$9,700,000

OTHER CONTRIBUTIONS (FINANCIAL)			
Name of Contributor	Cost Item	Description of item	Amount (GST exclusive)
Giants Steps Autism School Expansion			
Other Contributions (Financial) (B)			

TOTAL COST ESTIMATE (A + B) (GST exclusive):	\$19,400,000
---	---------------------

OTHER CONTRIBUTIONS (IN-KIND)	
Name of Contributor	Description of Other Contribution (In-kind)
N/A	N/A

s22

From: s22
Sent: Friday, 13 December 2019 1:12 PM
To: s47F
Cc: CDG
Subject: CDG1085 - Funding agreement and new project officer

Hi s47F

Apologies for the delayed reply. I'm still waiting to hear back from the program manager, s22 about the items you raised regarding the agreement.

Also, I would like to advise that as of midday 20 December 2019 I will be leaving the Department and the CDG Team.

You will be contacted shortly by a new Project Officer who will manage your project going forward on behalf of the Department.

I would like to thank you for all your help in progressing the project to this stage and wish you all the best for the successful completion of your project.

To ensure any questions or information you may provide reaches the new Project Officer, can you please ensure emails are sent to cdg@infrastructure.gov.au as this mailbox is monitored to make sure emails reach the intended recipient.

I will, however, get back to you about the funding agreement next week.

Kind regards,

s22

s22

Community Development Grants
 Regional Programs Branch | Regional Development and Local
 Government Division
 Department of Infrastructure, Transport, Cities and Regional
 Development
 GPO Box 594, Canberra ACT 2601
 t s22
 e s22
 w www.infrastructure.gov.au

s22

The Department proudly acknowledges the Traditional Owners and Custodians of Australia, and their continuing connections to the land, waters and communities. We pay our respects to them and to their Elders past, present and emerging.



Australian Government

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

**Great Cities. Strong Regions.
 Connecting Australians.**

From: s47F
Sent: Wednesday, 4 December 2019 10:51 PM
To: s22 @infrastructure.gov.au>
Cc: s47F
Subject: Community Grant Agreement Draft - Giant Steps - For your review

[CBA Information Classification: Customer and Personal]

Hello s22

I hope all is well with you. Thank you for your guidance last month and as requested we have filled in the Schedules in mark up. I hope these meet your requirements.

We have also reviewed the rest of the agreement, which we appreciate is in standard form, however there were a couple of items that we feel may be drafting discrepancies worth a discussion / drawing to your attention.

s47G



2. There appears to be a transposing error in clause 21 which refers to the "Grantee" rather than the "Recipient" which is used throughout the rest of the document.

s47G



I'd be pleased to discuss any of the proposed changes. Otherwise, we look forward to receiving execution copies of the Funding Agreement at your convenience.

Kind Regards,

s47F



s47F



s47F





s22

From: s47F
Sent: Monday, 16 December 2019 10:43 AM
To: s22
Cc: s47F
Subject: Contact for Giant Steps while Amanda is away

Hi s22

My name is s47F and I am a fellow Board member of s47F at Giant Steps Melbourne. Please feel free to contact me should you need anything further regarding our draft agreements while s47F is away.

Best

s47F

s47F

s47F

s22

From: s22
Sent: Tuesday, 17 December 2019 3:41 PM
To: s22
Subject: RE: Community Grant Agreement Draft - Giant Steps - For your review
 [SEC=OFFICIAL]

OFFICIAL

Hi s22

Clause 9.6.2 is a Commonwealth protection clause, however in my 14 years of Regional Programs it has never been implemented other than 9.6.2 (c) at the completion of the project where the recipient is directed to operate the asset for the set period under the funding agreement.

Based on the email from the grantee below I'm not really sure what their concern is. Are you able to arrange a telephone call so that we can discuss.

Thanks

s22

From: s22
Sent: Thursday, 5 December 2019 10:16 AM
To: s22 <s22@infrastructure.gov.au>
Subject: FW: Community Grant Agreement Draft - Giant Steps - For your review

Hi s22

Please see below email from Giant Steps Melbourne Ltd re the draft FA for CDG1085 – Giant Steps Autism School Expansion project.

I know you are very busy but I'd appreciate your advice, particularly re clause 9.6.2.

Happy to discuss.

Many thanks,

s22

s22
 Community Development Grants
 Regional Programs Branch | Regional Development and Local
 Government Division
 Department of Infrastructure, Transport, Cities and Regional
 Development
 GPO Box 594, Canberra ACT 2601
 t s22
 e s22 <s22@infrastructure.gov.au>
 w www.infrastructure.gov.au

s22

The Department proudly acknowledges the Traditional Owners and Custodians of Australia, and their continuing connections to the land, waters and communities. We pay our respects to them and to their Elders past, present and emerging.



From: s47F
Sent: Wednesday, 4 December 2019 10:51 PM
To: s22 <s22@infrastructure.gov.au>
Cc: s47F
Subject: Community Grant Agreement Draft - Giant Steps - For your review

[CBA Information Classification: Customer and Personal]

Hello s22

I hope all is well with you. Thank you for your guidance last month and as requested we have filled in the Schedules in mark up. I hope these meet your requirements.

We have also reviewed the rest of the agreement, which we appreciate is in standard form, however there were a couple of items that we feel may be drafting discrepancies worth a discussion / drawing to your attention.

s47G

2. There appears to be a transposing error in clause 21 which refers to the “Grantee” rather than the “Recipient” which is used throughout the rest of the document.

s47G

I'd be pleased to discuss any of the proposed changes. Otherwise, we look forward to receiving execution copies of the Funding Agreement at your convenience.

Kind Regards,

s47F

s47F

s47F

s22

From: s22
Sent: Friday, 20 December 2019 10:58 AM
To: s47F
Cc: s22, s47F
Subject: RE: Community Grant Agreement Draft - Giant Steps - For your review

Hi s47F

Apologies for the late reply.

As advised the other week, today is my last day at the Department and the CDG team.

The program manager, s22 is happy to chat to you about your concerns regarding the draft funding agreement. s22 number is s22 and I've also copied her into this email.

Also, as per my email the other week, just a reminder for you to please send emails to cdg@infrastructure.gov.au as this mailbox is monitored to make sure emails reach the intended recipient.

Wishing you a Merry Christmas and a Happy New Year,

Kind regards,
 s22

s22

Community Development Grants
 Regional Programs Branch | Regional Development and Local
 Government Division
 Department of Infrastructure, Transport, Cities and Regional
 Development
 GPO Box 594, Canberra ACT 2601
 t s22
 e s22
 w www.infrastructure.gov.au

Please note: I do not work on Wednesdays

The Department proudly acknowledges the Traditional Owners and Custodians of Australia, and their continuing connections to the land, waters and communities. We pay our respects to them and to their Elders past, present and emerging.



Australian Government
 Department of Infrastructure, Transport,
 Cities and Regional Development

**Great Cities. Strong Regions.
 Connecting Australians.**

From: s47F
Sent: Wednesday, 4 December 2019 10:51 PM
To: s22 @infrastructure.gov.au>
Cc: s47F
Subject: Community Grant Agreement Draft - Giant Steps - For your review

[CBA Information Classification: Customer and Personal]

Hello s22

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We have also reviewed the rest of the agreement, which we appreciate is in standard form, however there were a couple of items that we feel may be drafting discrepancies worth a discussion / drawing to your attention.

s47G

2. There appears to be a transposing error in clause 21 which refers to the “Grantee” rather than the “Recipient” which is used throughout the rest of the document.

s47G

I’d be pleased to discuss any of the proposed changes. Otherwise, we look forward to receiving execution copies of the Funding Agreement at your convenience.

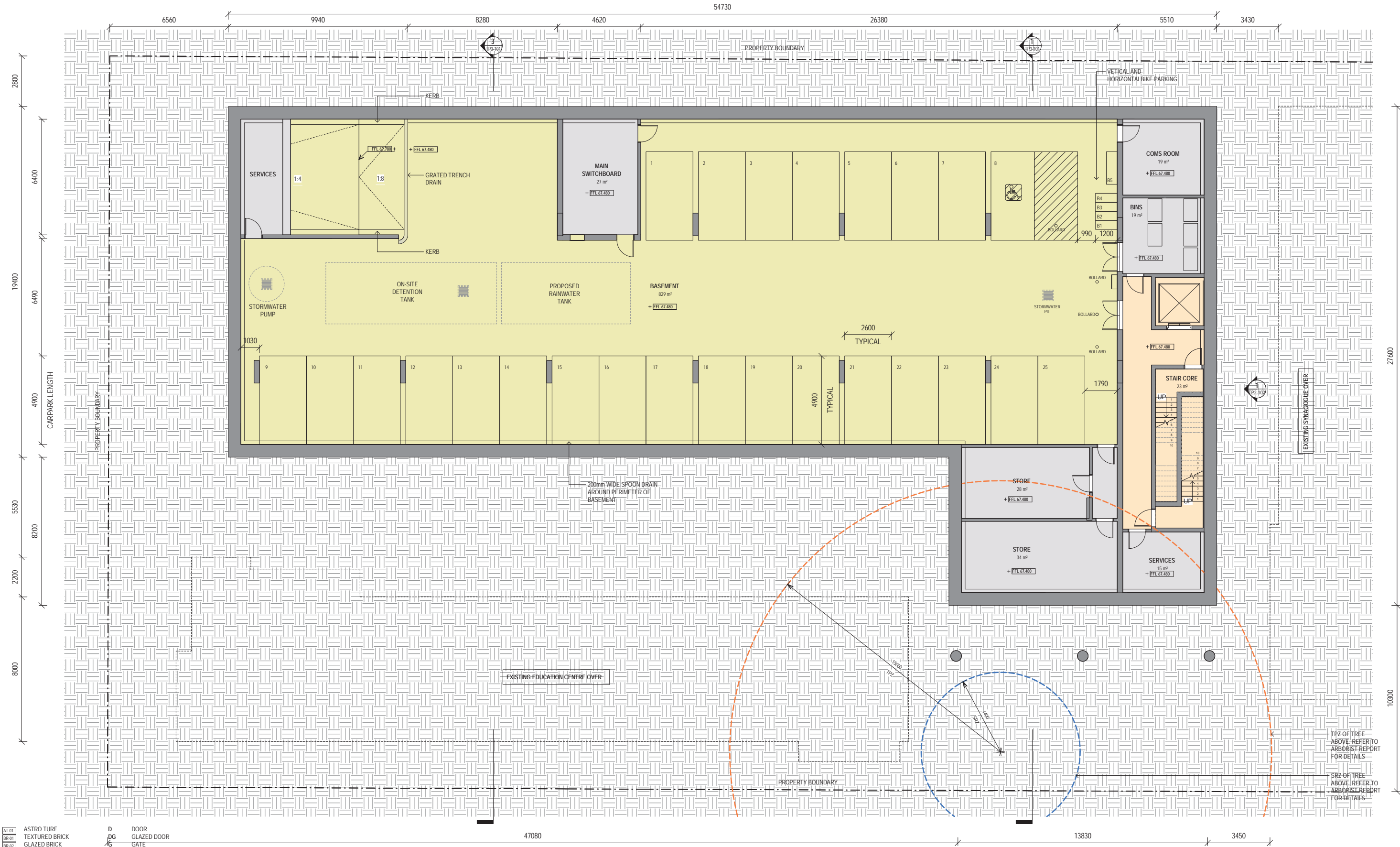
Kind Regards,

s47F

s47F

s47F





AT-01	ASTRO TURF	D	DOOR
BR-01	TEXTURED BRICK	DG	GLAZED DOOR
BR-02	GLAZED BRICK	G	GATE
GR-01	METAL PLATE / SURROUND	S	SCREEN
ET-01	TIMBER FENCE	SDG	SLIDING DOOR
ET-02	TIMBER PLANTER BOX	TD	TILT UP DOOR
ET-03	TIMBER PERGOLA	W	WINDOW
GL-01	CLEAR GLAZING		
MF-01	METAL SCREEN		
MF-02	POLYCARBONATE SCREEN		
PV-01	STONE PAVING		
TD-01	TIMBER DECK		

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Pty Ltd Architects
One Harwood Place Melbourne Vic 3000
T +613 9654 6227 jcba.com.au

REV DATE DESCRIPTION

PROJECT #
19-051
DATE

SCALE
1:100
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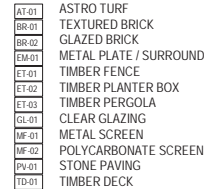


PROJECT
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KEW
STATUS
TOWN PLANNING

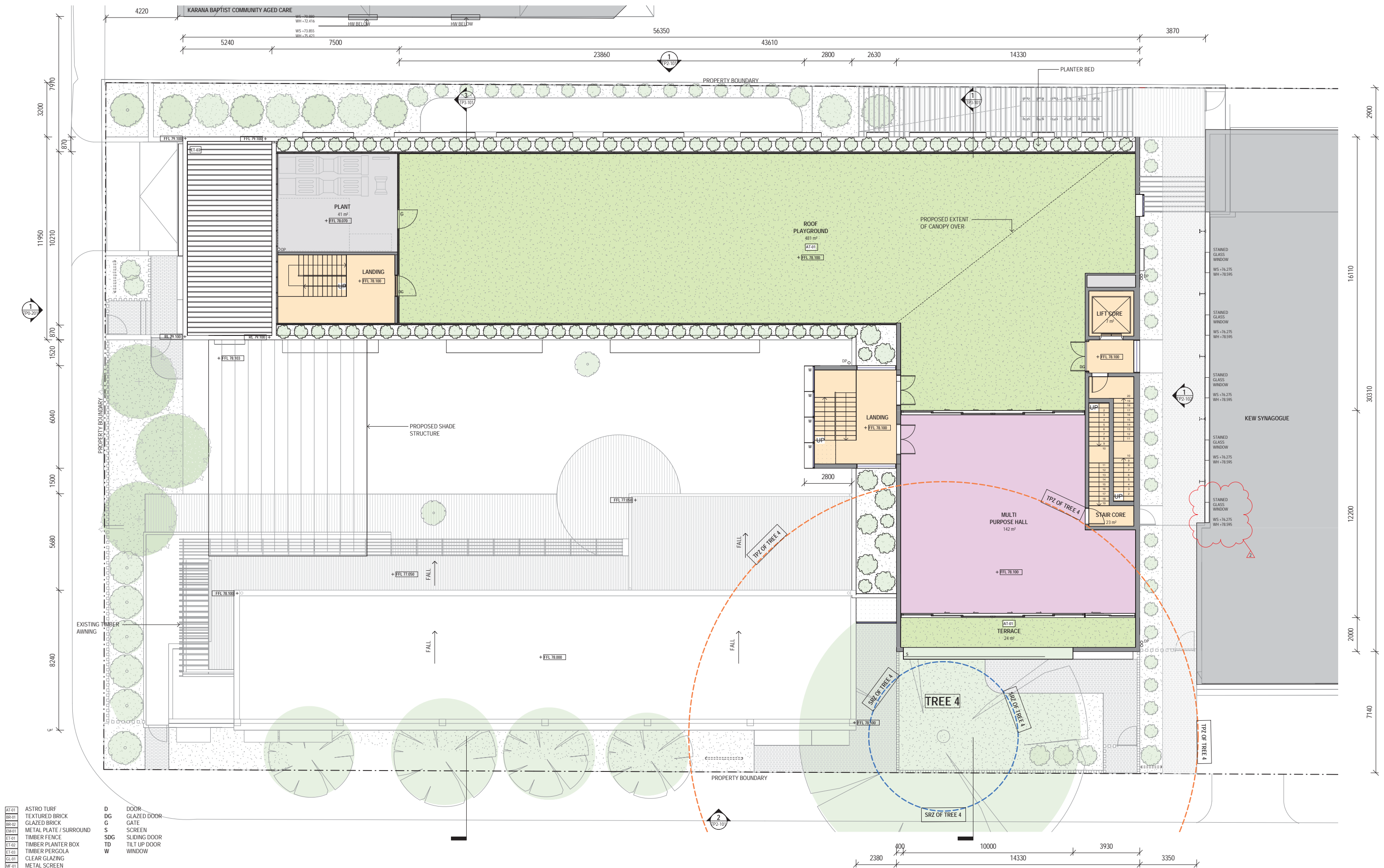
DRAWING TITLE
PROPOSED BASEMENT FLOOR PLAN
DRAWING NUMBER
TP1-102
REVISION SET

Jackson
Clements
Burrows
Architects





Jackson
Clements
Burrows
Architects



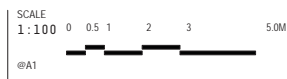
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| BR-01 | TEXTURED BRICK | DG | GLAZED DOOR |
| BR-02 | GLAZED BRICK | G | GATE |
| SM-01 | METAL PLATE / SURROUND | S | SCREEN |
| ET-01 | TIMBER FENCE | SDG | SLIDING DOOR |
| ET-02 | TIMBER PLANTER BOX | TD | TILT UP DOOR |
| ET-03 | TIMBER PERGOLA | W | WINDOW |
| GL-01 | CLEAR GLAZING | | |
| MF-01 | METAL SCREEN | | |
| MF-02 | POLYCARBONATE SCREEN | | |
| PV-01 | STONE PAVING | | |
| TD-01 | TIMBER DECK | | |

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REV	DATE	DESCRIPTION
1	14.02.2020	RFI RESPONSE
2	11.03.2020	STAINLESS WINDOW REVISION

PROJECT #
19-051

DATE
11.03.2020



PROJECT
**GIANT STEPS MELBOURNE CAMPUS
KEW**

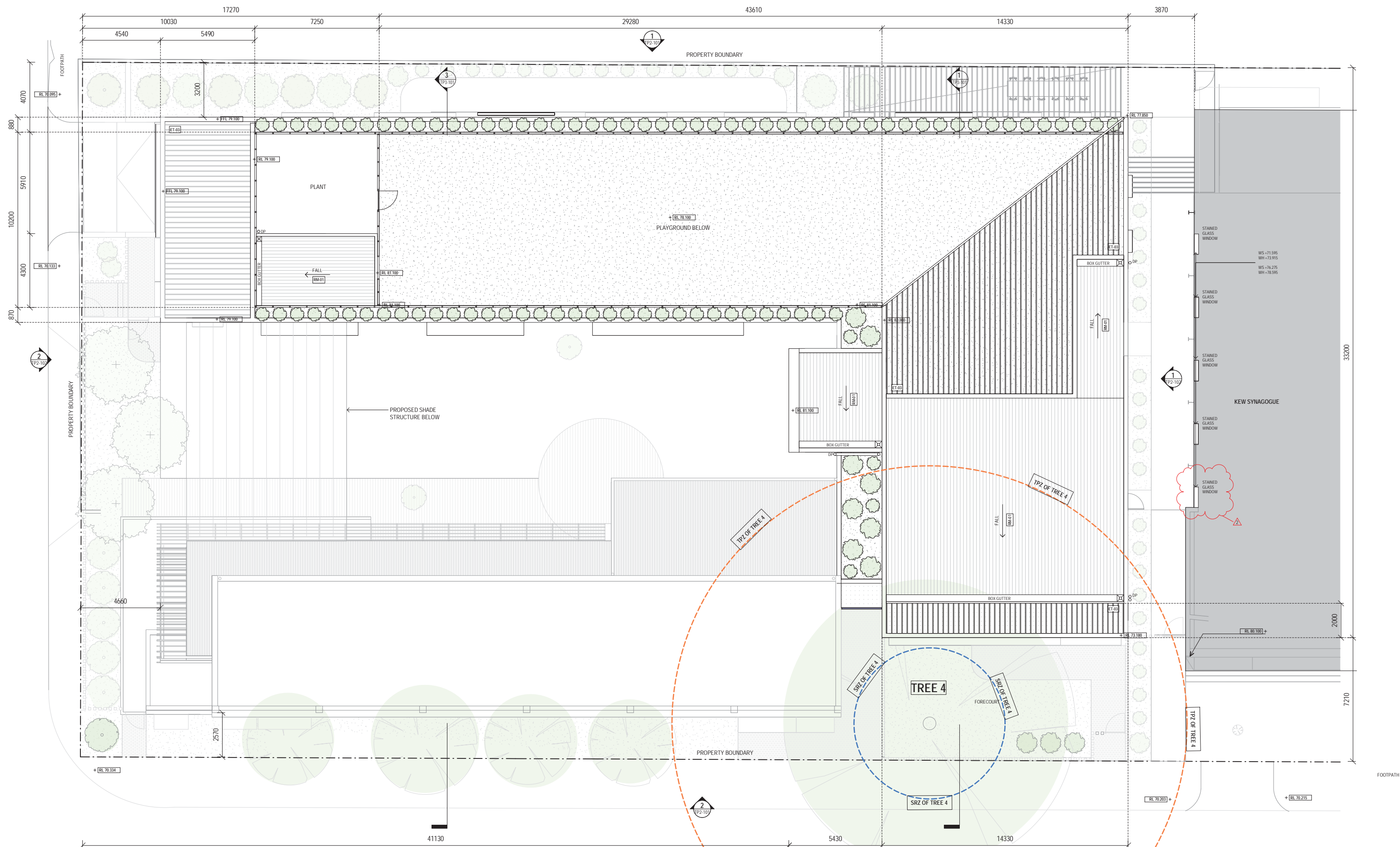
STATUS
TOWN PLANNING

DRAWING TITLE
PROPOSED SECOND FLOOR PLAN

DRAWING NUMBER
TP1-105

REVISION SET
2

Jackson
Clements
Burrows
Architects





Australian Government

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

DEED OF AGREEMENT

**FUNDING AGREEMENT IN RELATION TO THE GIANT STEPS AUTISM
SCHOOL EXPANSION (CDG1085)**

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

Giant Steps Melbourne Ltd
ABN 46 606 552 283

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FUNDING AGREEMENT (LONG FORM)

**FUNDING AGREEMENT IN RELATION TO THE GIANT STEPS AUTISM
SCHOOL EXPANSION (CDG1085)**

Parties

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

1. **The Commonwealth of Australia** as represented by the Department of Infrastructure, Transport, Cities and Regional Development
ABN 86 267 354 017, 111 Alinga Street, Canberra, Australian Capital Territory
(**Commonwealth**)
2. **Giant Steps Melbourne Ltd**
ACN 606552283, 11 Malmsbury Street, Kew, VIC 3101
(**Recipient**)

Context

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

Operative provisions

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

1. Interpretation

1.1. Definitions

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

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

Approved Auditor	means a person who is: <ul style="list-style-type: none">a. registered as a company auditor under the Corporations Act 2001 (Cth) or an appropriately qualified member of the Institute of Chartered Accountants in Australia or of CPA Australia;b. not a principal, member, shareholder, officer, agent, subcontractor, employee or related entity of the Recipient or of a related body corporate (the terms 'related entity' and 'related body corporate' have the same meaning as in section 9 of the Corporations Act 2001 (Cth)); andc. not the Recipient's Qualified Accountant;
Asset	means any item of property, purchased, leased, hired, financed, created or otherwise brought into existence either wholly or in part with use of the Funding, which has a value of over \$5,000 exclusive of GST, but excludes any Intellectual Property Rights and Real Property (including any property once it becomes part of the structure of Real Property).
Auditor-General	means the office established under the Auditor-General Act 1997 (Cth) and includes any other entity that may, from time to time, perform the functions of that office;
Australian Accounting Standards	refers to the standards of that name maintained by the Australian Accounting Standards Board created by section 226 of the Australian Securities and Investments Commission Act 2001 (Cth);
Australian Auditing Standards	refers to the standards made by the Auditing and Assurance Standards Board created by section 227A of the Australian Securities and Investments Commission Act 2001 (Cth);
Australian Privacy Principle	has the same meaning as it has in the Privacy Act 1988 (Cth).
Budget	means the budget set out in Annexure B of the Schedule;
Business Day (in a place)	means a weekday other than a public holiday in the place specified or, if no place is specified, in the State or Territory specified in Item M of the Schedule;
Capital Works	means any part of the Activity that comprises construction and building activities and includes the Capital Works listed at item E.2.2 of the Schedule.

Commence Construction	means to begin a continuous programme of on-site construction for the Activity's Capital Works. For the purposes of this definition, only significant and continuous site preparation work such as major clearing or excavation or placement or assembly, or installation of facilities or equipment at the site constitute a programme of on-site construction.
Commonwealth	where the context permits, includes officers, delegates, employees and agents and successors of the Department of Infrastructure, Regional Development and Cities;
Commonwealth Material	means any Material: <ul style="list-style-type: none">a. provided by the Commonwealth to the Recipient for the purposes of this Agreement; orb. derived at any time from the Material referred to in paragraph a;
Completion Date	means the day after the Recipient has done all that it is required to do under clauses 2 and 6 of this Agreement to the satisfaction of the Commonwealth;
Constitution	means (depending on the context): <ul style="list-style-type: none">a. a company's constitution, which (where relevant) includes rules and any amendments that are part of the company's constitution, orb. in relation to any other kind of body:<ul style="list-style-type: none">i. the body's charter, rules or memorandum, orii. any instrument or Law constituting or defining the constitution of the body or governing the activities of the body or its members.
Cost Estimate	means the estimate for the Project which is the sum of the Funding and Other Contributions specified in Annexure B to the Schedule.
Cost Item	means an item of expenditure specified in the Budget at Annexure B to the Schedule.

Confidential Information	means: <ul style="list-style-type: none">a. the information described in Item N; andb. information that the parties agree in writing after the Date of this Agreement is confidential information for the purposes of this Agreement;
Date of this Agreement	means the date written on the execution page of this Agreement, or if no date or more than one date is written there, then the date on which the Agreement is signed by the last party to do so;
Depreciated	means the amount representing the reduction in value of an Asset calculated in accordance with Australian Accounting Standards;
Director	means any of the following: <ul style="list-style-type: none">a. a person appointed to the position of a director or alternate director and acting in that capacity for a body corporate within the meaning of the Corporations Act 2001 (Cth) regardless of the name given to their position;b. a member of the governing committee of an Aboriginal and Torres Strait Islander corporation under the Corporations (Aboriginal and Torres Strait Islander) Act 2006 (Cth);c. a member of the committee of an organisation incorporated pursuant to State or Territory laws relating to the incorporation of associations; ord. a member of the board, committee or group of persons (however described) that is responsible for managing or overseeing the affairs of the body corporate;
Dispose	means to sell, licence, lease or sublease, or otherwise transfer or give up ownership or the right to occupy or use, or to enter into an agreement to do any of the preceding acts and 'Disposal' means the method of so disposing;
Existing Material	means all Material in existence prior to the Date of this Agreement: <ul style="list-style-type: none">a. incorporated in;b. supplied with, or as part of; orc. required to be supplied with, or as part of, the Activity Material;

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

Law	<p>includes:</p> <ol style="list-style-type: none">Acts of the Commonwealth and the State(s) and Territory(s) in which the Activity will be undertaken, and any other relevant State or Territory;ordinances, regulations, by-laws, orders and proclamations or other instruments of legal effect made under those Acts referred to in paragraph (a);directions by any person exercising statutory powers regarding the Recipient or the Activity, including the Real Property; andall the requirements, standard, approvals, licences, registrations or permits of any government (including local government) department, authority, agency or regulatory body that apply to the Activity, including the Real Property;
Material	<p>means anything in relation to which Intellectual Property rights arise;</p>
Milestone	<p>means a milestone or stage of completion of the Activity as set out in Annexure A of this Agreement;</p>
Moral Rights	<p>includes the following rights of an author of copyright Material:</p> <ol style="list-style-type: none">the right of attribution of authorship;the right of integrity of authorship; andthe right not to have authorship falsely attributed;
Open Access Licence	<p>means a licence to the public on broad open access terms that allows any member of the public to perform a wide range of acts in respect of the material subject to certain restrictions. An Open Access Licence includes any Australian Government open access licence and any Creative Commons Attribution licence (see http://creativecommons.org.au/learn-more/licences);</p>
Operational	<p>means that the completed Project is operating in a way that enables it to achieve its Purpose;</p>
Operational Period	<p>means the period during which the Recipient must keep the completed Project Operational;</p>

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

Report	means Activity Material that is provided to the Commonwealth for reporting purposes as stipulated in Item D of the Schedule;
Real Property	<p>means:</p> <p>a. any land, buildings or fixtures including the Capital Works (both during and after completion) and the Works Locations; and</p> <p>b. any interest in the property specified in paragraph (a);</p> <p>that are purchased, leased, upgraded or otherwise created or brought into existence wholly or in part with the use of the Funding and includes the property listed at item E.2.1 of the Schedule.</p>
Schedule	means the schedule to this Agreement and may include Annexures and incorporate other documents by reference;
Specified Personnel	means the Recipient's Personnel specified in Item I as Personnel required to undertake all or any part of the Activity;
Term	refers to the period described in clause 1.4.1 of this Agreement;
Third Party Interest	means any legal or equitable right, interest, power or remedy in favour of any person other than the Commonwealth or the Recipient in connection with the Agreement, including any right of possession, receivership, control or power of sale, and any mortgage, charge, security or other interest;
Undepreciated	in relation to the value of an Asset, means the value of the Asset which has not been Depreciated; and
Works Location	means a location where the Capital Works are to be undertaken including any premises in, or land on, which those Capital Works are to be undertaken and includes a Works Location listed in item E.2.3 of the Schedule.

1.2. **Interpretation**

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

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

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

1.3. Guidance on construction of Agreement

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

1.4. Duration of Term

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

2. Activity, Project and Operational Period

2.1. Conduct of Activity

2.1.1. The Recipient agrees to carry out the Activity:

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

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

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

2.2. Liaison and monitoring

2.2.1. The Recipient agrees to:

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

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

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

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

2.3. **Subcontractors**

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

2.4. **Reserved**

2.5. **Responsibility of the Recipient**

2.5.1. The Recipient is fully responsible for the performance of the Activity and for ensuring compliance with the requirements of this Agreement, and will not be relieved of that responsibility because of any:

- a. involvement by the Commonwealth in the performance of the Activity;
- b. subcontracting of the Activity;
- c. acceptance by the Commonwealth of Specified Personnel; or
- d. payment of any amount of Funding to the Recipient.

2.6. **Reports**

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

2.7. **Project**

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

2.8. **Operational Period**

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

2A. Capital Works

2A.1. **Performance**

2A.1.1 The Recipient must perform the Capital Works:

- a. in accordance with the designs and plans submitted by the Recipient to the Commonwealth;
- b. in a good and workmanlike manner by qualified tradespeople; and
- c. with a minimum of delay.

2A.2. **Applicable Laws**

2A.2.1 The Recipient warrants and agrees that the Capital Works (whether undertaken before, on or after the Date of this Agreement) have been (if applicable) and will be carried out in accordance with all applicable Laws including, but not limited to, all necessary planning and regulatory approvals.

2A.2.2 The Recipient agrees to ensure that:

- a. the Works Locations comply at all times with all applicable Laws regarding their use as a site for the Capital Works; and
- b. the completed Capital Works comply with all Laws relating to their ongoing use throughout the Operational Period.

2A.3. Commence Construction

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

2A.4. Completion

2A.4.1 The Recipient must:

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

3. Funding

3.1. Payment of Funding

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

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

- 3.2.1. Without limiting the Commonwealth's rights, the Commonwealth may suspend any payment in whole or in part until the Recipient has performed its obligations under this Agreement.
- 3.2.2. Reserved.
- 3.2.3. The Commonwealth may reduce the amount of Funding payable under this Agreement where the Recipient:

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

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

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

4. Taxes, duties and government charges

- 4.1.1. Except as provided by clause 4, the Recipient agrees to pay all taxes, duties and government charges imposed or levied in Australia or overseas in connection with the performance of this Agreement.
- 4.1.2. Unless otherwise indicated, any Funding and all other consideration for any supply made under this Agreement is exclusive of any GST imposed on the supply.
- 4.1.3. If one party (the supplier) makes a taxable supply to the other party (the taxable supply recipient) under this Agreement, on receipt of a tax invoice from the supplier, the taxable supply recipient will pay without setoff an additional amount to the supplier equal to the GST imposed on the supply in question.
- 4.1.4. No party may claim or retain from the other party any amount in relation to a supply made under this Agreement for which the first party can obtain an input tax credit or decreasing adjustment.

5. Debt and Interest

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

6. Management of Funding

- 6.1.1. The Recipient agrees to spend the Funding only for the Activity in accordance with this Agreement.
- 6.2. **Budget**
- 6.2.1. The Recipient agrees to only spend the Funding for the Activity and in accordance with the Budget.
- 6.2.2. Subject to clauses 6.2.3 and 6.2.4, the Recipient may spend the Funding on any separate category of expenditure item within the Budget.
- 6.2.3. The Recipient agrees to obtain prior written approval from the Commonwealth for any transfer of Funding between categories of expenditure items within the Budget which exceed a percentage of the total Budget as specified in Item B of the Schedule.
- 6.2.4. The total amount of transfers in any Financial Year must also not exceed the percentage of the Budget specified in Item B of the Schedule.
- 6.3. **Account and financial records**
- 6.3.1. The Recipient agrees to ensure that the Funding is held in an account in the Recipient's name and which the Recipient solely controls, with an authorised deposit-taking institution authorised under the Banking Act 1959 (Cth) to carry on banking business in Australia and that is an account that complies with any other requirements specified in Item A.7 in the Schedule.
- 6.3.2. Reserved
- 6.3.3. The Recipient must, in relation to the account referred to in clause 6.3.1:
- a. notify the Commonwealth, prior to the receipt of any Funding, of details sufficient to identify the account;
 - b. on notification from the Commonwealth, provide the Commonwealth and the authorised deposit-taking institution with a written authority for the Commonwealth to obtain any details relating to any use of the account;
 - c. if the account changes, notify the Commonwealth within 10 Business Days of the change occurring and provide the Commonwealth with details of the new account;
 - d. Reserved.
- 6.3.4. The Recipient agrees to:
- a. keep financial accounts and records relating to the Funding and the Project and Activity that identify
 - i. all receipts and payments related to the Project and Activity; and
 - ii. all interest earned on the Funding.
 - b. unless otherwise notified by the Commonwealth, prepare financial statements for the Project and Activity in accordance with Australian Accounting Standards including:

- i. Reserved; and
- ii. a register of the Assets and a register of Real Property created, acquired, written-off or Disposed of during the Financial Year to date compared with the Budget; and

6.4. Use as security

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

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

6.5. Refunds of unexpended and misspent Funds

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

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

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

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

6.5.4. If the completed Project ceases to be Operational during the Operational Period, the Commonwealth may give the Recipient notice requiring the Recipient to repay all or part of the Funding to the Commonwealth within the period specified in the notice and the Recipient must comply with that notice.

6.5.5. On completion of the Project, if the cost of the completed Project is less than the Cost Estimate, the Commonwealth may give the Recipient notice requiring the

Recipient to return any unexpended Funding to the Commonwealth within the period specified in the notice and the Recipient must comply with that notice.

- 6.5.6. This clause survives termination or expiry of the Agreement.

7. Other Contributions and Cost Savings

7.1. Other Contributions

- 7.1.1. The Recipient must, within six (6) months of the date of the Agreement provide to the Commonwealth satisfactory written evidence that confirms the Other Contributions identified in Item C and detailed in Annexure B of the Schedule, including the amounts to be provided, the due dates for each of these amounts and the terms and conditions of the provision of the Other Contributions.
- 7.1.2. If, for any reason, the Recipient is not able to obtain the Other Contributions (including any part thereof) as required under this Agreement, then the Commonwealth may:
- a. suspend payment of the Funding or an instalment of the Funding until the Other Contributions are obtained (as the case may be);
 - b. reduce the total Funding payable under this Agreement by an amount that, in the Commonwealth's opinion, represents an equivalent proportion of the overall reduction in the total value of the Other Contributions (as the case may be) resulting from the failure; or
 - c. terminate this Agreement in accordance with clause 17.2.
- 7.1.3. The Recipient must notify the Commonwealth in writing as soon as possible after it becomes aware of any likely or actual failure (for any reason) to obtain the Other Contributions (including any part thereof) as required under this Agreement.
- 7.1.4. The Recipient agrees to notify the Commonwealth within 10 Business Days of entering into any arrangement under which the Recipient is entitled to receive any additional monetary or in-kind contributions in respect of the Project and Activity that are not identified as Other Contributions in Item C and Annexure B of the Schedule. Any such additional contribution that the Recipient becomes entitled to receive after the Date of this Agreement constitutes Other Contributions for the purposes of the Agreement (and Schedule 1 is deemed to be varied accordingly) on the date on which the Recipient notifies the Commonwealth of that contribution under this clause 7.1.4.
- 7.1.5. If the Recipient is provided with or obtains (and/or was required to provide or obtain) any Other Contributions and the cost of the completed Project is less than the Cost Estimate, the Commonwealth may give the Recipient notice requiring the Recipient to return to the Commonwealth, within the period specified in the notice, an amount equal to the Commonwealth's Proportion of the Cost Savings. In this subclause 7.1.5, 'the Commonwealth's Proportion of the Cost Savings' means $\text{savings} \times \%$ where:
- a. $\text{savings} = (\text{the Cost Estimate} - \text{the actual cost of the Project} - \text{any Funds previously repaid to the Commonwealth under this Agreement})$; and

- b. $\% = (\text{the Funding} \div (\text{the maximum Funding} + \text{the maximum Other Contributions excluding any in-kind Other Contributions}))$

7.1.6. If the Recipient receives a notice given by the Commonwealth under subclause 18, the Recipient must comply with the notice within the period specified within the notice.

7.2. **Cost Savings**

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

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

8. **Statutory Approvals**

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

8.1A The Recipient must also provide satisfactory written evidence that the statutory approvals obtained under subclause 8.1 are sufficient for the Recipient to Commence Construction within six months after the Date of this Agreement.

8.2 If the Recipient does not comply with the requirement in subclause 8.1, the Commonwealth may at the Commonwealth's sole discretion:

- a. suspend payment of the Funding until the evidence of the statutory approvals referred to in subclause 8.1 has been received; or
- b. terminate this Agreement in accordance with clause 17.2.

9. **Assets**

9.1. **Acquisition of Asset**

9.1.1. The Recipient agrees not to use the Funding to acquire or create any Asset, apart from those detailed in the Item E, without obtaining the Commonwealth's prior written approval. Approval may be given subject to any conditions the Commonwealth may impose.

9.1.2. Unless it is specified in Item E that the Commonwealth or a third party owns the Asset or the Commonwealth provides written consent to a third party owning the

Asset, then the Recipient must ensure that it owns any Asset acquired with the Funding.

9.2. Terms applicable to Asset

9.2.1. If the Commonwealth owns the Asset clauses 9.4 and 9.6.2 do not apply.

9.2.2. If the Asset is owned by a third party then the Recipient agrees to ensure that the terms of the lease, hire or finance arrangement are consistent with clause 9.3, and clauses 9.4, 9.5 and 9.6 do not apply.

9.3. Recipient's responsibilities for Asset

9.3.1. Throughout the Term, the Recipient agrees to:

- a. use any Asset in accordance with this Agreement and for the purposes of the Activity;
- b. not encumber or Dispose of any Asset, or deal with or use any Asset other than in accordance with this clause 9 without the Commonwealth's prior written approval;
- c. hold all Assets securely and safeguard them against theft, loss, damage, or unauthorised use;
- d. maintain all Assets in good working order;
- e. maintain all appropriate insurances for all Assets to their full replacement cost noting the Commonwealth's interest, if any, in the Asset under the Agreement;
- f. if required by law, maintain registration and licensing of all Assets;
- g. be fully responsible for, and bear all risks relating to, the use or Disposal of all Assets; and
- h. if specified in Item E, maintain an Assets register in the form and containing the details as described in Item E and as and when requested by the Commonwealth, provide copies of the Assets register to the Commonwealth.

9.4. Sale or Disposal of Asset during Term

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

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

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

9.5. Loss, damage, etc of Asset

9.5.1. If any of the Assets are lost, damaged or destroyed, the Recipient agrees to promptly reinstate the Assets including from the proceeds of the insurance, and

this clause 9 continues to apply to the reinstated Assets. The proportion of any surplus from the proceeds of the insurance, which reflects the proportion of the cost of the Asset that was funded from the Funding, must be notified to the Commonwealth and accounted for as Funding and used for the Activity.

9.6. Dealing with Asset

- 9.6.1. On expiry of the Activity Period or earlier termination of the Agreement, the Commonwealth may require the Recipient to deal with an Asset as the Commonwealth may, at the sole discretion of the Commonwealth, notify the Recipient.
- 9.6.2. Subject to clause 9.6.1, if on expiry of the Activity Period or the earlier termination of this Agreement, an Asset has not been fully Depreciated, the Commonwealth may, by written notice, require the Recipient to:
- a. pay to the Commonwealth within 20 Business Days of the expiry of the Activity Period or earlier termination of the Agreement, an amount equal to the proportion of the Undepreciated value of the Asset that is equivalent to the proportion of the cost of the Asset that was funded from the Funding;
 - b. sell the Asset for the best price reasonably obtainable and pay to the Commonwealth within 20 Business Days of the sale the proportion of the proceeds of the sale that is equivalent to the proportion of the cost of the Asset (less an amount equal to the reasonable Disposal costs incurred by the Recipient) that was funded from the Funding; or
 - c. continue to use the Asset for the purposes, and in accordance with any conditions, notified by the Commonwealth.

10. Real Property

10.1. Approval

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

10.2. Outgoings

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

10.3. Recipient's Responsibilities for Real Property

- 10.3.1 Throughout the Term of this Agreement, including the Operational Period, the Recipient agrees to:
- a. hold the Real Property securely and safeguard it against theft, loss, damage, or unauthorised use;
 - b. maintain the Real Property in good condition;
 - c. maintain all appropriate insurances for the Real Property to its full replacement cost and use that insurance to rectify any damage to or

destruction to the Real Property and this clause 10.3.1 continues to apply to the Real Property once rectified. The Recipient must notify the Commonwealth of any surplus from the proceeds of this insurance and the Recipient must use and account for that surplus as Funding under this Agreement;

- d. if required by any Law, maintain registration and licensing of the Real Property;
- e. be fully responsible for, and bear all risks relating to, the use or Disposal of all Real Property;
- f. if specified in item E.2 of the Schedule, maintain a Real Property register in the form and containing the details as described in that item of the Schedule; and
- g. as and when requested by the Commonwealth, provide copies of the Real Property register to the Commonwealth.

10.4. Recipient's Use of Real Property

10.4.1. The Recipient agrees to ensure that:

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

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

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

10.5. Third Party Interests

10.5.1. If a third party has proprietary or other rights or interests in relation to any Real Property, the Recipient agrees to:

- a. enter into legally binding written agreements under which all such third parties agree to:
 - i. the use of the Works Locations to undertake the Capital Works throughout the Activity Period;
 - ii. the use of the Works Locations, and completed Capital Works for the Purpose specified in item A.3 of the Schedule throughout the Operational Period; and

- iii. the use of any other Real Property for the Activity throughout the Activity Period and for the Purpose specified in item A.3 of the Schedule throughout the Operational Period;
- b. not do anything that would give any such third party a right to rescind its agreement to one or more of the uses specified in paragraph (a); and
- c. within 10 Business Days of a request from the Commonwealth, provide evidence to the Commonwealth that the Recipient has complied with the requirements of this subclause 10.5.

10.6. Dealing with Real Property

10.6.1. If:

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

then:

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

10.6.2. If the Recipient fails to pay the Commonwealth an amount as required by a notice given under subclause 10.6.1:

- a. the Recipient must pay the Commonwealth the Interest on the unpaid amount from the date it was due, for the period it remains unpaid; and
- b. that amount, and Interest owed under this subclause 10.6.2, will be recoverable by the Commonwealth as a debt due to the Commonwealth by the Recipient.

10.6.3. The provisions relating to this clause 10 shall survive the termination or expiration of this Agreement.

11. Records

11.1. Keeping Records

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

11.2. Retention of Records

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

12. Intellectual Property

12.1. Use of Commonwealth Material

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

12.2. Rights in Activity Material

- 12.2.1. Subject to this clause 12, Intellectual Property in Activity Material vests or will vest in the Recipient.
- 12.2.2. Clause 12.2.1 does not affect the ownership of Intellectual Property in any Commonwealth Material incorporated into the Activity Material.
- 12.2.3. The Recipient grants to (or will procure for) the Commonwealth a permanent, irrevocable, royalty-free, worldwide, non-exclusive licence (including a right of sublicense) to use, reproduce, exploit, communicate, adapt and distribute the Activity Material for any purpose.
- 12.2.4. The Recipient agrees that the licence granted in clause 12.2.3 includes a right for the Commonwealth to licence the Activity Material to the public under an Open Access Licence.
- 12.2.5. The Recipient agrees, on request by the Commonwealth, to create, sign, execute or otherwise deal with any document necessary or desirable to give effect to this clause 12.
- 12.2.6. The Recipient warrants that:
- a. it is entitled; or
 - b. it will be entitled at the relevant time,

to deal with the Intellectual Property in the Activity Material in the manner provided for in this clause 12.

12.3. **Moral Rights**

12.3.1. In this clause 12.3:

- Permitted Acts** means any of the following classes or types of acts or omissions:
- a. using, reproducing, adapting or exploiting all or any part of the Activity Material, with or without attribution or authorship;
 - b. supplementing the Activity Material with any other Material;
 - c. using the Activity Material in a different context to that originally envisaged; and
 - d. releasing the Activity Material to the public under an Open Access Licence;
- but does not include false attribution of authorship.

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

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

12.3.3. Where clause 12.3.1 does not apply, the Recipient agrees:

- a. to obtain from each author a written consent which extends directly or indirectly to the performance of the Permitted Acts by the Commonwealth or any person claiming under or through the Commonwealth (whether occurring before or after the consent is given) and, upon request, will provide the executed original of any such consent to the Commonwealth; and
- b. to ensure that each author's attention is drawn to the Commonwealth's general policies and practices regarding Moral Rights.

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

13. Confidential Information

13.1. **Confidential Information not to be disclosed**

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

13.2. Written Undertakings

- 13.2.1. The Recipient must, on request by the Commonwealth at any time, arrange for:
- a. its Personnel; or
 - b. any person with a Third Party Interest,
- to give a written undertaking in a form acceptable to the Commonwealth relating to the use and non-disclosure of the Commonwealth's Confidential Information.

13.3. Exceptions to Obligations

- 13.3.1. The obligations on the parties under this clause 13.3 will not be taken to have been breached to the extent that Confidential Information:
- a. is disclosed by a party to its Personnel solely in order to comply with obligations, or to exercise rights, under this Agreement;
 - b. is disclosed to a party's internal management Personnel, solely to enable effective management or auditing of Agreement-related activities;
 - c. is disclosed by the Commonwealth to the responsible Minister;
 - d. is disclosed by the Commonwealth, in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia;
 - e. is shared by the Commonwealth (including other agencies), where this serves the Commonwealth of Australia's legitimate interests;
 - f. is authorised or required by law to be disclosed; or
 - g. is in the public domain otherwise than due to a breach of this clause 13.3.
- 13.3.2. Where a party discloses Confidential Information to another person pursuant to clauses 13.3.1.a - 13.3.1.e, the disclosing party must notify the receiving person that the information is confidential.
- 13.3.3. In the circumstances referred to in clauses 13.3.1.a, 13.3.1.b and 13.3.1.e, the disclosing party agrees not to provide the information unless the receiving person agrees to keep the information confidential (subject to the exceptions in this clause 13.3).
- 13.3.4. The Recipient agrees to secure all of the Commonwealth's Confidential Information against loss and unauthorised access, use, modification or disclosure.
- 13.4. Period of Confidentiality**
- 13.4.1. The obligations under this clause 13.4 will continue, notwithstanding the expiry or termination of this Agreement:
- a. in relation to an item of information described in Item N – for the period set out in respect of that item; and
 - b. in relation to any item of information agreed after the Date of this Agreement to be Confidential Information – for the period agreed by the parties in writing in respect of that item, and if no such period is agreed by the parties, in perpetuity.

13.5. No reduction in Privacy Obligations

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

14. Acknowledgement and publicity

14.1. Acknowledgement of support

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

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

14.2. Right to publicise Funding

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

14.3. No restriction on advocacy activities

- 14.3.1. The Commonwealth confirms that, subject to clause 14.3.2:
- a. no right or obligation arising under this Agreement should be interpreted as limiting the Recipient's ability to enter into public debate or criticism of the Commonwealth of Australia or its agencies, employees, servants or agents;
 - b. the Commonwealth does not require the Recipient to obtain advance approval of any involvement by the Recipient in public debate or advocacy activities.
- 14.3.2. Nothing in this clause 14.3 limits or derogates from the Recipient's obligations under clauses 13 and 21.2.

15. Liability

15.1. Proportionate liability regime

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

15.2. Indemnity

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

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

arising from:

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

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

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

15.3. Meaning of 'fault'

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

16. Dispute resolution

16.1. Procedure for dispute resolution

16.1.1. The parties agree that a dispute arising under this Agreement will be dealt with as follows, and that, subject to clause 16.4, neither party will commence legal proceedings in relation to that dispute until this procedure is completed:

- a. the party claiming that there is a dispute will give the other party a notice setting out the nature of the dispute;
- b. within five (5) Business Days (or such other period as agreed by the parties in writing) each party will nominate a representative not having any prior involvement in the dispute;
- c. the representatives will try to settle the dispute by direct negotiation between them;

- d. failing settlement within a further 10 Business Days or such other period as agreed by the parties in writing (or failure of one or both parties to nominate a representative within the period set out in clause 16.1.1.b), the parties may agree to refer the dispute to an independent third person with power:
 - i. to intervene and direct some form of resolution, in which case the parties will be bound by that resolution; or
 - ii. to mediate and recommend some form of non-binding resolution;
- e. the parties will co-operate fully with any process instigated under clause 16.1.1.d in order to achieve a speedy resolution; and
- f. if the parties have been unable to agree to refer the dispute to an independent third person, or they have agreed and a resolution is not reached within a further 20 Business Days (or such other period as the parties) may agree in writing), either party may commence legal proceedings.

16.2. Costs

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

16.3. Continued performance

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

16.4. Application of clause

- 16.4.1. This clause 16 does not apply to:
- a. legal proceedings by either party for urgent interlocutory relief; or
 - b. action by the Commonwealth under or purportedly under clauses 3, 6, 17 and 21.2.

17. Termination or reduction in scope of Agreement

17.1. Termination for convenience

- 17.1.1. The Commonwealth may by notice, at any time and in its absolute discretion, terminate this Agreement or reduce the scope of the Agreement immediately.
- 17.1.2. The Recipient agrees, on receipt of a notice of termination or reduction, to:
- a. stop or reduce the performance of the Recipient's obligations as specified in the notice;
 - b. take all available steps to minimise loss resulting from that termination or reduction;
 - c. continue performing any part of the Activity not affected by the notice; and

- d. immediately return to the Commonwealth any Funding in accordance with clause 17.1.5, or deal with any such Funding as directed by the Commonwealth.

17.1.3. In the event of termination under clause 17.1.1, the Commonwealth will be liable only:

- a. to pay Funding due and owing to the Recipient under the payment provisions of the Agreement before the date of the notice of termination; and
- b. to reimburse any expenses the Recipient unavoidably incurs that relate directly and entirely to the Activity and not covered by clause 17.1.3.a.

17.1.4. The Commonwealth will not be liable to pay amounts under 17.1.3.a and 17.1.3.b which would, added to any payments already paid to the Recipient under this Agreement, together exceed the Funding set out in Item A.7 of the Schedule and Annexure A.

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

- a. is not legally committed for expenditure by the Recipient in accordance with the Agreement and due and payable by the Recipient by the date that the notice of termination is received; or
- b. has not, in the Commonwealth's opinion, been spent by the Recipient in accordance with the Agreement.

17.1.6. In the event of a reduction in the scope of the Agreement under clause 17.1.1, the Commonwealth's liability to pay any part of the Funding will, unless there is agreement in writing to the contrary, reduce in accordance with the reduction in the Activity.

17.1.7. The Commonwealth's liability to pay any compensation under or in relation to this clause 17.1 is subject to:

- a. the Recipient's compliance with this clause 17.1; and
- b. the Recipient's substantiation of any amount claimed under clause 17.1.3.b.

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

17.2. Termination for fault

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

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

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

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

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

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

17.3. **Preservation of other rights**

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

18. Notices

18.1. Format, addressing and delivery

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

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

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

18.2. When received

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

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

18.2.2. If a notice is received:

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

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

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

19.1. In this clause 19:

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

Building Contractor	has the same meaning as in the Act.
Building Industry Participant	has the same meaning as in the Act.
Building Work	has the same meaning as in subsection 3(4) of the Building Code.
Commonwealth Funded Building Work	means Building Work in items 1-8 of Schedule 1 of the Building Code.
Contractor	means a Building Contractor or Building Industry Participant who the Funding Recipient has entered, or proposes to enter, into a contract with to undertake any of the Works.
Exclusion Sanction	has the same meaning as in subsection 3(3) of the Building Code
Funding	means the funding provided by the Commonwealth to the Funding Recipient.
Funding Recipient	means the entity that the Commonwealth is providing funding or assistance to in relation to building works to which the Building Code applies.
Related Entity	has the same meaning as in subsection 3(2) of the Building Code.
Works	means Commonwealth Funded Building Work that is being indirectly funded by the Commonwealth through the provision of the Funding to the Funding Recipient.

- 19.2. The Funding Recipient must ensure that:
- tender processes and calls for expressions of interest (howsoever described) in respect of Commonwealth Funded Building Work are conducted in a manner consistent with this code of practice; and
 - respondents are only permitted to participate in tender processes where the respondent is not subject to an exclusion sanction.
- 19.3. The Funding Recipient must ensure that any request for expressions of interest or request for tender (howsoever described) for Commonwealth Funded Building Work requires a respondent:
- to confirm that the respondent and any related entity will comply with the Building Code when undertaking the Commonwealth Funded building Work; and

- b. to confirm that the respondent, and any related entities; will comply with the Building Code from the time of lodging an expression of interest or tender response (if not already obligated to do so); and
- c. to confirm that it is not subject to an exclusion sanction at the time of lodging an expression of interest or tender; and
- d. to demonstrate a positive commitment to the provision of appropriate training and skill development for their workforce. Such commitment may be evidenced by compliance with any state or territory government building training policies and supporting the delivery of nationally endorsed building and construction competencies; and
- e. to include details of the number of current apprentice and trainee employees and the number of classes of persons that hold visas under the Migration Act 1958 that are engaged by the respondent, and that are intended to be engaged by the respondent to undertake the Commonwealth Funded Building Work; and
- f. to advise whether the respondent has, within the preceding 3 year period:.
 - i. had an adverse decision, direction or order made by a court or tribunal for a breach of a designated building law, work health and safety law or the Migration Act 1958; or
 - ii. been required to pay any amount under an adjudication certificate (provided in accordance with a law relating to the security of payments that are due to persons in respect of building work) including by any related entity to a building contractor or building industry participant; or
 - iii. owed any unsatisfied judgement debts (including such debts owed by any related entity) to a building contractor or building industry participant.

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

- a. ensure the requirement to have a Workplace Relations Management Plan (WRMP) for the Works approved by ABCC is included in all expression of interest and tender documents; and
- b. on behalf of the funding entity:
 - i. apply to the ABCC to have a WRMP for the Works approved; and
 - ii. ensure that an application to the ABCC for approval of a WRMP for the Works is made in the manner and form required by the ABCC Commissioner; and
 - iii. ensure that the proposed WRMP for the Works is accompanied by any supporting evidence required by the ABCC; and

- iv. obtain and provide additional information to the ABCC when requested, to enable the ABCC to make a decision whether or not to approve the proposed WRMP for the Works.

20. Work Health and Safety

20.1. Use of Commonwealth's premises

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

20.2. Assistance to the Commonwealth

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

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

The Scheme	means the Scheme described at Section 43 of the Building and Construction Industry (Improving Productivity) Act 2016.
Builder	has the meaning given in Section 43(8) of the Building and Construction Industry (Improving Productivity) Act 2016.
Building Work	has the meaning given to it by Section 6 of the Building and Construction Industry (Improving Productivity) Act 2016.
Exclusions	means the building work is prescribed under section 26 of the Fair Work (Building Industry—Accreditation Scheme) Regulation 2016

- 20.3.1. Construction projects that utilise funds provided under this agreement are bound by the application of the Australian Government building and construction

industry Work Health and Safety Accreditation Scheme (the Scheme) and the following conditions:

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

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

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

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

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

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

21. General Provisions

21.1. Constitution

- 21.1.1. The Recipient warrants that the Recipient's Constitution is not, and will not become, inconsistent with this Agreement.
- 21.1.2. The Recipient must provide a copy of the Recipient's Constitution to the Commonwealth, upon request.
- 21.1.3. The Recipient must obtain the Commonwealth's written approval to any amendments to the Recipient's Constitution which may affect the Recipient's eligibility for the Funding or the Recipient's capacity to comply with this Agreement. If the Recipient alters the Constitution in breach of this subclause 21.1.3, the Commonwealth may terminate this Agreement in accordance with clause 17.2 of this Agreement.

21.2. Obligations of Recipient in relation to privacy

- 21.2.1. The Recipient agrees, in conducting the Activity:

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

21.2.2. The Recipient agrees to notify the Commonwealth immediately if it becomes aware of a breach or possible breach of any of its obligations under this clause 21.2.

21.2.3. The provisions of this clause 21.2 survive the termination or expiration of this Agreement.

21.3. **Audit and Access**

21.3.1. The Recipient agrees:

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

21.3.2. The rights referred to in clause 21.3.1. are subject to:

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

21.3.3. The Auditor-General and Information Officer (and their delegates) are persons authorised for the purposes of clause 21.3.1.

21.3.4. This clause 21.3 does not detract from the statutory powers of the Auditor-General or Information Officer.

21.4. **Access to Documents**

21.4.1. In this clause 21.4, 'document' and 'Commonwealth contract' have the same meaning as in the Freedom of Information Act 1982 (Cth). This clause 21.4 only applies if this Agreement is a 'Commonwealth contract', as defined in the Freedom of Information Act 1982 (Cth).

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

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

21.5. **Insurance**

21.5.1. The Recipient agrees:

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

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

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

21.6.1. In this clause 21.6:

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

21.6.2. The Recipient agrees to ensure that:

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

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

21.7. **Conflict of interest**

21.7.1. In this clause 21.7:

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

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

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

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

21.8. **Relationship of parties**

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

21.8.2. The Recipient agrees:

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

21.9. **Waiver**

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

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

21.10. **Variation of Agreement**

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

21.11. **Assignment**

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

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

21.12. **Survival**

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

- a. Intellectual Property;
- b. confidentiality;
- c. security;
- d. privacy;
- e. dealing with copies;
- f. books and records;
- g. audit and access;
- h. an indemnity;
- i. acknowledgement and publicity;
- j. rights or obligations following termination or expiry of the Agreement; or

- k. any other provision which expressly or by implication from its nature is intended to continue.

21.13. **Compliance with Legislation and Policies**

21.13.1. In this clause 21.13:

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

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

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

21.14. **Applicable law and jurisdiction**

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

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

21.15. **Child Safety**

In this Agreement:

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

Child-Related Personnel

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

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

National Principles for Child Safe Organisations

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

National Principles for Child Safe Organisations as published by the Australian Government;

Relevant Legislation

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

Working With Children Check or WWCC

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

Relevant Checks and authority

21.15.1. The Grantee must:

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

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

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

- a. implement the National Principles for Child Safe Organisations;
- b. ensure that all Child-Related Personnel implement the National Principles for Child Safe Organisations;
- c. complete and update, at least annually, a risk assessment to identify the level of responsibility for Children and the level of risk of harm or abuse to Children;
- d. put into place and update, at least annually, an appropriate risk management strategy to manage risks identified through the risk assessment required by this clause 21.15.2;
- e. provide training and establish a compliance regime to ensure that all Child-Related Personnel are aware of, and comply with:
 - i. the National Principles for Child Safe Organisations;
 - ii. the Grantee's risk management strategy required by this clause 21.15.2;
 - iii. Relevant Legislation relating to requirements for working with Children, including Working With Children Checks;

- iv. Relevant Legislation relating to mandatory reporting of suspected child abuse or neglect, however described; and
 - f. provide the Commonwealth with an annual statement of compliance with clauses 21.15.1 and 21.15.2, in such form as may be specified by the Commonwealth.
- 21.15.3. With reasonable notice to the Grantee, the Commonwealth may conduct a review of the Grantee's compliance with this clause 21.15.
- 21.15.4. The Grantee agrees to:
 - a. notify the Commonwealth of any failure to comply with this clause 21.15;
 - b. co-operate with the Commonwealth in any review conducted by the Commonwealth of the Grantee's implementation of the National Principles for Child Safe Organisations or compliance with this clause 21.15; and
 - c. promptly, and at the Grantee's cost, take such action as is necessary to rectify, to the Commonwealth's satisfaction, any failure to implement the National Principles for Child Safe Organisations or any other failure to comply with this clause 21.15.

Executed as a deed

Executed by the parties as evidence of their agreement.

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

Name of signatory *Signature*

Position *Insert Date*

In the presence of:

Name of witness *Signature of witness*

Executed on behalf of **GIANT STEPS**)
MELBOURNE LTD, CAN 606552283)
by Barry Irvin who by signing warrants)
they are authorised to bind **Giant**)
Steps Melbourne Ltd) *Signature*

Insert Date

In the presence of:

Name of witness *Signature of witness*

SCHEDULE 1 PARTICULARS

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

A.1. Programme

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

A.2. Project

The project to be undertaken by the Recipient is the Giant Steps Autism School Expansion at 11 Malmsbury Street, Kew VIC, 3101. The Project will include the Activity that the Programme will fund, defined in more detail in item A.5 of the Schedule.

The Project Completion Date is **30 June 2021**.

A.3. Purpose

The Purpose for which the completed Project is required to be used is:

To provide expanded autism services in Melbourne to help meet demand and increase student enrolments across all programs to enable the provision of individualised programs for children and young adults with Autism.

A.4. Operational Period

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

Amount of Funding	Duration of Operational Period
Over \$1,000,000	Five (5) years

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

A.5. Activity

The Activity to be undertaken by the Recipient is the Giant Steps Autism School Expansion project including:

- Planning and design;
- construction of a secondary school building of at least xm^2 , comprising:
 -
- construction of a post-school facilities building of at least Xm^2 , comprising:
 -
- upgrades to XXXXXXXXXXXX
- landscaping

- [insert deliverables]

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

A.6. Reserved

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

The total Funding for the Activity is **\$9,700,000** GST exclusive. The Funding will be paid as follows:

1. The first payment of Funding specified in the table at Annexure A will not be made until:
 - a) this Agreement has been executed by all Parties and all Milestones specified in the table at Annexure A that relate to the first payment have been achieved to the Commonwealth's satisfaction; and
 - b) all Reports identified in item D of the Schedule as being due on or before the due date for the first payment have been received and accepted by the Commonwealth; and
2. The second and each subsequent payment specified in the table at Annexure A will not be made until:
 - a) all Milestones specified in the table at Annexure A that relate to the relevant payment have been achieved to the Commonwealth's satisfaction;
 - b) all Reports identified in item D of this Schedule as being due on or before the due date for the relevant payment have been received and accepted by the Commonwealth; and
 - c) the Recipient has provided the Commonwealth with evidence that all previously paid Funds have been expended or committed.

Invoicing

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

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

**B. Budget
(clause 6.2)**

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

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

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

C. Other Contributions
(clause 7)

C.1. Other Contributions

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

D. Reporting
(clauses 1.1.1, 2.6)

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

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

D.1.2 Each Progress Report must contain:

- a. details of progress and performance against the Activity, and the Project (to the extent that it is directly related to the relevant part of the Activity which is being covered by that Progress Report) and evidence of completion of the Milestones listed in Annexure A of the Schedule that are due for completion (including but not limited to photographs to demonstrate completion of Milestones) during the period between the Recipient's previous Progress Report and the due date of this Progress Report (or in the case of the first Progress Report, the period between the Date of this Agreement and the due date of the first Progress Report);
- b. details of mitigating circumstances and remedial action undertaken in the event a Milestone is not met or completed in the manner and/or by the time specified;
- c. copies of any published reports, promotional material, media publicity, pamphlets or other documentation relevant to the Project;
- d. evidence that the Recipient has obtained and/or utilised in-kind Other Contributions specified in the table at Annexure B;
- e. a statement of receipts (which separately identifies any interest earned on the Funding) and expenditure to date in respect of the Funding; and
- f. a statement of receipts and expenditure to date in respect of Other Contributions (excluding in-kind).

D.1.3 The Activity Completion Report must contain:

- a. evidence that the Activity and the Milestones have been completed;

- b. an analysis of the planning, implementation and overall process the Recipient followed to deliver the Activity;
- c. any recommendations on improved practice, relevant to the Recipient's and the Commonwealth's practices, that may assist in the delivery of future projects;
- d. a copy of the current Assets register described in item E.1.2 of this Schedule and a copy of the Real Property register described in item E.2.4 of this Schedule;
- e. evidence that the Recipient has obtained in-kind Other Contributions for the Activity specified in the table at Annexure B;
- f. an up to date Audited Financial Report in respect of the Activity; and
- g. copies of any published reports, promotional material, media publicity, pamphlets or other documentation relevant to the Activity, not already included in the Progress Report/s.
- h. a copy of the Assets register described in item E.1 of this Schedule and a copy of the Real Property register described in item E.2 of this Schedule.

D.1.4 The Project Completion Report must contain:

- a. evidence that the Project has been completed;
- b. an analysis of the planning, implementation and overall process the Recipient followed to deliver the Project;
- c. any recommendations on improved practice, relevant to the Recipient's and the Commonwealth's practices, that may assist in the delivery of future projects;
- d. a copy of the Assets register described in item E.1 of this Schedule and a copy of the Real Property register described in item E.2 of this Schedule.
- e. evidence that the Recipient obtained in-kind contributions specified in the table at Annexure B;
- f. an Audited Financial Report; and
- g. copies of any published reports, promotional material, media publicity, pamphlets or other documentation relevant to the Project, not already included in the Progress Report/s.

In addition, the Project Completion Report must also:

- h. describe the Recipient's activities during the Term;
- i. discuss in detail the conduct, benefits and outcomes of the Activity as a whole and the Activity's results and findings; and
- j. Reserved

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

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

D.2. Audit and certification

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

- a. separate audited statements of receipts and expenditure in respect of the Funding and Other Contributions (excluding in-kind), which must:
 - i. comply with all relevant Australian Accounting Standards
 - ii. separately identify any interest earned on the Funding
 - iii. include a definitive statement made by an Approved Auditor as to whether:
 - 1. the statements of receipts and expenditure are fair and true
 - 2. Funding and Other Contributions (excluding in-kind) were held and expended in accordance with this Agreement
- b. a certificate, signed by the Recipient's Chief Executive Officer, Chief Financial Officer or a person authorised by the Recipient to execute documents and legally bind the Recipient by their execution, that:
 - i. all Funding and Other Contributions (excluding in-kind) received was expended for the purpose of the Activity and Project and expended and held in a manner in accordance with this Agreement
 - ii. salaries and allowances paid to persons involved in the Activity are in accordance with any applicable award or agreement in force under any relevant Law on industrial or workplace relations.

D.3. Other Reports

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

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

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

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

E.1. Assets

E.1.1. For the purposes of Clause 9, the Recipient may create, acquire or upgrade the following Assets:

None Specified

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

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

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

E.2. Real Property

E.2.1. The Real Property includes the Giant Steps Autism School Expansion.

E.2.2. The Capital Works includes design, construction and fit-out of the Real Property at the Works Location.

E.2.3. The Works Locations includes 11 Malmsbury Street, Kew, VIC, 3101

E.2.4. The Recipient must for the Term of this Agreement maintain a Real Property Register in the following form and containing the following information:

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

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

F. Insurance
(clause 21.5)

The Recipient must maintain:

- a. workers compensation insurance as required by law where the Recipient carries out activities under this Agreement;
- b. public liability insurance to the value of at least \$10 million for each and every claim, or occurrence giving rise to a claim, in respect to activities undertaken under this Agreement, where occurrence means either a single occurrence or a series of occurrences if these are linked or occur in connection with one another from one original cause, as the case may be; and
- c. insurance against any loss or damage to an Asset or Real Property for its full replacement cost including where relevant the costs of demolition and removal of debris and the cost of architects, engineers and other consultants.

G. Reserved

H. Acknowledgement and publicity
(clause 14)

- H.1.1 If the Recipient erects or maintains any signage in relation to the Project, the signage must be approved by the Commonwealth prior to use and contain an acknowledgement of the Funding as required under Clause 14 of this Agreement. Any signage must remain in place during the Operational Period for the Project as specified in Item A.4. Signage for the Activity may be paid from the Budget if approved by Us. Signage for any other part of the Project must be at the Recipient's own cost.
- H.1.2 If a Federal, State or Local Government election is announced, the Recipient must cover any sign that is displayed within 100 metres of a polling place with an opaque (impenetrable to sight), durable and water repellent material from a period not less than 48 hours before the commencement of polling at that polling place until the polls close.
- H.1.3 The Recipient must include the Commonwealth logo in all signage, publications and promotional activities related to the Activity.
- H.1.4 The Recipient must not use the Commonwealth's logo without the Commonwealth's approval. If the Commonwealth provides approval for the Recipient's use of the Commonwealth's logo, the Recipient must use it in accordance with the Commonwealth's Print Style Guidelines (as advised by the Commonwealth).

- H.1.5 All the Recipient's publicity, announcements and media releases relating to the Activity must be cleared through the Commonwealth's contact officer specified at item L of the Schedule with at least 10 Business Days' notice, before release.
- H.1.6 The Commonwealth reserves the right to publicise and report on the provision of Funding to the Recipient, including progress on completing the Activity and the Project. The Commonwealth may do this by including the information specified in clause 14.2 in media releases, general announcements about the Funding and in annual reports and in electronic media.
- H.1.7 The Recipient must conduct an official opening of the completed Activity and Project unless otherwise agreed by the Commonwealth.
- H.1.8 The Recipient must provide to the Commonwealth with at least 3 options for dates for the official opening, or any other milestone events that the Recipient chooses to conduct (e.g. stage completion), for the Activity and the Project. These dates must be provided at least 56 days prior to the first proposed date for each event to be conducted.
- H.1.9 The date of official openings or other official public function for the completed Activity and Project must be agreed by the Commonwealth.
- H.1.10 The Recipient must invite the Commonwealth's representative to officiate at any official opening or other official public function relating to the Activity or the Project.
- H.1.11 The Commonwealth Minister's prior agreement must be sought, to invite any other Commonwealth or State elected official or other officials to attending either function. This invitation must be provided to the Commonwealth no later than 56 days before the date of the official opening or other official public function relating to the Activity or the Project.
- H.1.12 The Recipient must coordinate requests for the Commonwealth's agreement to the date of official openings and requests for Commonwealth representation at official openings or other official functions relating to the Activity or the Project through the Commonwealth's contact officer specified at item L of the Schedule.

I. Reserved

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

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

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

- Migration Act 1958
- Work Health and Safety Act 2011.

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

Community Development Grants Programme – Grant Programme Guidelines

K. Statutory Approvals

(clause 2A.2)

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

L. Notices

(clause 18.1)

The Commonwealth's details for notices are as follows:

Name: General Manager
Regional Programs Branch

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

Email: CDG@infrastructure.gov.au

The Recipient's details for notices are as follows:

Name: s47F

Position: s47F

Address: s47F

Telephone: s47F

E-mail: s47F

M. Applicable Law

(clause 21.14)

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

N. Confidential Information

(clause 13)

Commonwealth's Confidential Information

Agreement Provisions/Schedules/Attachments

None Specified

Agreement related material

None Specified

Recipient’s Confidential Information

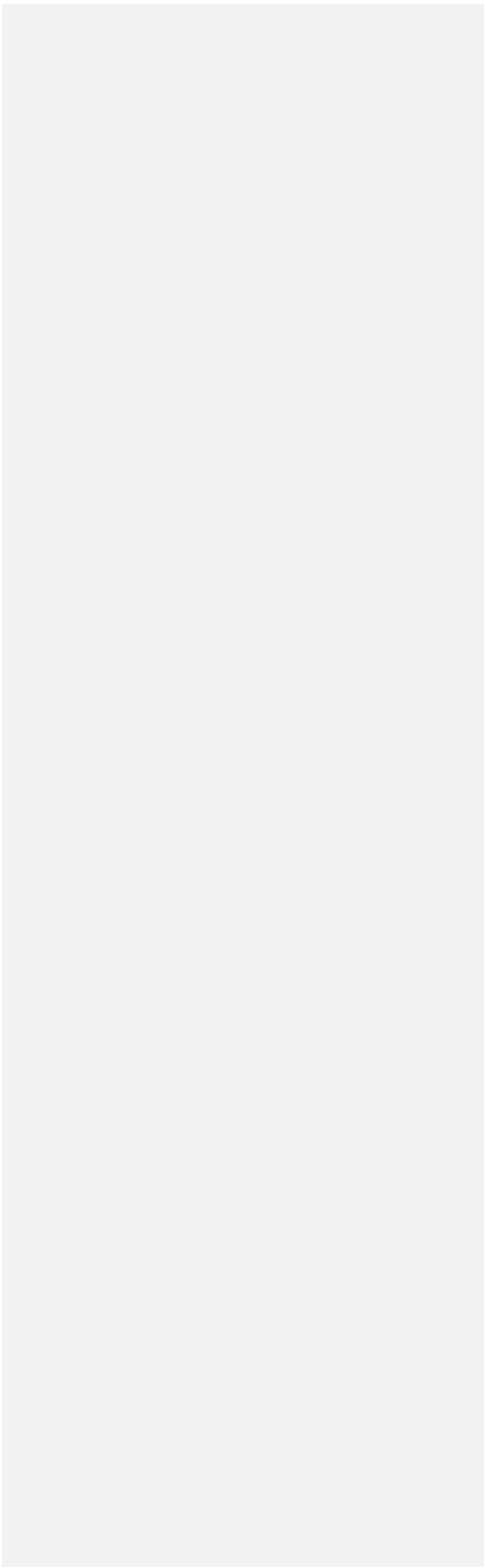
Agreement Provisions/Schedules/Attachments

None Specified

Agreement related material

None Specified

DRAFT



ANNEXURE A

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

Report	Milestone(s) / Information covered by the Report	Milestone Completion Date	Payment amount (GST Exclusive)	Due Date for Report	Due Date for Funding Payment
Progress Report 1	<p>Evidence acceptable to the Commonwealth that the following have been achieved:</p> <ul style="list-style-type: none"> confirmation of final designs; confirmation of final costs; confirmation that the construction phase has commenced; and 10 per cent of the Project is completed and certified by the Project Manager, Quantity Surveyor, or similar. 	<p>XXXX</p> <p>(Note: the number of milestones & completion dates & payment amounts are negotiable)</p>	\$970,000	<p>XXXX</p> <p>(Note: report due date is 1 month after milestone date)</p> <p>(Note – if milestone requirements are achieved earlier, reports can be submitted earlier & payments made earlier)</p>	<p>XXXX</p> <p>(Note: the payment date is approx 2 weeks after report due date)</p>

Commented [KN1]: Please note the payment amount should match the percentage completion amount

Report	Milestone(s) / Information covered by the Report	Milestone Completion Date	Payment amount (GST Exclusive)	Due Date for Report	Due Date for Funding Payment
Progress Report 2	<p>Evidence acceptable to the Commonwealth that the following have been achieved:</p> <ul style="list-style-type: none"> Confirmation that the contractor is compliant with the Code for the Tendering and Performance of Building Work 2016 and accredited under the Australian Government Building and Construction WHS Accreditation Scheme; and <> per cent of the Project is completed and certified by the Project Manager, Quantity Surveyor, or similar. 	XXXX	\$XXXX	XXXX	XXXX
Progress Report 3	<p>Evidence acceptable to the Commonwealth that the following have been achieved:</p> <p><> per cent of the Project is completed and certified by the Project Manager, Quantity Surveyor, or similar.</p>	XXXX	\$XXXX	XXXX	XXXX
Progress Report 4	<p>Evidence acceptable to the Commonwealth that the following have been achieved:</p> <p><> per cent of the Project is completed and certified by the Project Manager, Quantity Surveyor, or similar.</p>	XXXX	\$XXXX	XXXX	XXXX
Progress Report 5	<p>Evidence acceptable to the Commonwealth that the following have been achieved:</p> <p><> per cent of the Project is completed and certified by the Project Manager, Quantity Surveyor, or similar.</p>	XXXX	\$XXXX	XXXX	XXXX

Report	Milestone(s) / Information covered by the Report	Milestone Completion Date	Payment amount (GST Exclusive)	Due Date for Report	Due Date for Funding Payment
Progress Report 6	<p>Evidence acceptable to the Commonwealth that the following have been achieved:</p> <ul style="list-style-type: none"> an Event Invitation has been submitted to the Department as required at Item H of the Schedule; and < > per cent of the Project is completed and certified by the Project Manager, Quantity Surveyor, or similar. 	XXXX	\$XXXX	XXXX	XXXX
Project Completion Report	<p>Evidence acceptable to the Commonwealth that the following has been achieved:</p> <ul style="list-style-type: none"> the Activity, at Item A.5 of the Schedule, is complete; the Project, at Item A.2 of the Schedule, is complete; all approvals required to enable public access and use of the facility have been met; and the Project is fully Operational. 	30 June 2021	\$970,000	30 September 2021 Note: the project completion report due date needs to be 3 months after the milestone completion date to allow sufficient time for the Audited Financial report	13 August 2021

Commented [KN2]: Please note the final payment amount needs to be at least 10%

ANNEXURE B

BUDGET FOR THE EXPENDITURE OF CDG FUNDING		
Cost item	Description	Amount (GST exclusive)
Design, construction & fit out	Giants Steps Autism School Expansion	\$9,700,000
Funding (A)		\$9,700,000

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

TOTAL COST ESTIMATE (A + B) (GST exclusive):	
---	--

OTHER CONTRIBUTIONS (IN-KIND)	
Name of Contributor	Description of Other Contribution (In-kind)
N/A	N/A

47G



Australian Government

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

DEED OF AGREEMENT

**FUNDING AGREEMENT IN RELATION TO THE GIANT STEPS AUTISM
SCHOOL EXPANSION (CDG1085)**

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

Giant Steps Melbourne Ltd
ABN 46 606 552 283

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FUNDING AGREEMENT (LONG FORM)

**FUNDING AGREEMENT IN RELATION TO THE GIANT STEPS AUTISM
SCHOOL EXPANSION (CDG1085)**

Parties

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

1. **The Commonwealth of Australia** as represented by the Department of Infrastructure, Transport, Cities and Regional Development
ABN 86 267 354 017, 111 Alinga Street, Canberra, Australian Capital Territory
(**Commonwealth**)
2. **Giant Steps Melbourne Ltd**
ACN 606552283, 11 Malmsbury Street, Kew, VIC 3101
(**Recipient**)

Context

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

Operative provisions

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

1. Interpretation

1.1. Definitions

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

ABN	means (Australian Business Number) as set out in section 41 of the A New Tax System (Australian Business Number) Act 1999 (Cth).
Activity	means the Activity described in Item A and includes the provision to the Commonwealth of the Activity Material;
Activity Completion date	means the date that the Activity must be completed by as set out in item A.5 of the Schedule.
Activity Material	means any Material: a. created by the Recipient for the purpose of this Agreement; b. provided or required to be provided to the Commonwealth under the Agreement; or c. derived at any time from the Material referred to in paragraphs a or b, and includes d. any Existing Material incorporated in the Material referred to in paragraphs b or c; and e. any Reports;
Activity Objectives	means the objectives of the Activity described in Item A.6 of the Schedule;
Activity Period	means the period specified in Item A during which the Activity must be completed;
Agreement	means this document and includes any Schedules and Annexures;
Annexure	means any annexure to Schedule 1;

Approved Auditor	means a person who is: <ul style="list-style-type: none">a. registered as a company auditor under the Corporations Act 2001 (Cth) or an appropriately qualified member of the Institute of Chartered Accountants in Australia or of CPA Australia;b. not a principal, member, shareholder, officer, agent, subcontractor, employee or related entity of the Recipient or of a related body corporate (the terms 'related entity' and 'related body corporate' have the same meaning as in section 9 of the Corporations Act 2001 (Cth)); andc. not the Recipient's Qualified Accountant;
Asset	means any item of property, purchased, leased, hired, financed, created or otherwise brought into existence either wholly or in part with use of the Funding, which has a value of over \$5,000 exclusive of GST, but excludes any Intellectual Property Rights and Real Property (including any property once it becomes part of the structure of Real Property).
Auditor-General	means the office established under the Auditor-General Act 1997 (Cth) and includes any other entity that may, from time to time, perform the functions of that office;
Australian Accounting Standards	refers to the standards of that name maintained by the Australian Accounting Standards Board created by section 226 of the Australian Securities and Investments Commission Act 2001 (Cth);
Australian Auditing Standards	refers to the standards made by the Auditing and Assurance Standards Board created by section 227A of the Australian Securities and Investments Commission Act 2001 (Cth);
Australian Privacy Principle	has the same meaning as it has in the Privacy Act 1988 (Cth).
Budget	means the budget set out in Annexure B of the Schedule;
Business Day (in a place)	means a weekday other than a public holiday in the place specified or, if no place is specified, in the State or Territory specified in Item M of the Schedule;
Capital Works	means any part of the Activity that comprises construction and building activities and includes the Capital Works listed at item E.2.2 of the Schedule.

Commence Construction	means to begin a continuous programme of on-site construction for the Activity's Capital Works. For the purposes of this definition, only significant and continuous site preparation work such as major clearing or excavation or placement or assembly, or installation of facilities or equipment at the site constitute a programme of on-site construction.
Commonwealth	where the context permits, includes officers, delegates, employees and agents and successors of the Department of Infrastructure, Regional Development and Cities;
Commonwealth Material	means any Material: <ul style="list-style-type: none">a. provided by the Commonwealth to the Recipient for the purposes of this Agreement; orb. derived at any time from the Material referred to in paragraph a;
Completion Date	means the day after the Recipient has done all that it is required to do under clauses 2 and 6 of this Agreement to the satisfaction of the Commonwealth;
Constitution	means (depending on the context): <ul style="list-style-type: none">a. a company's constitution, which (where relevant) includes rules and any amendments that are part of the company's constitution, orb. in relation to any other kind of body:<ul style="list-style-type: none">i. the body's charter, rules or memorandum, orii. any instrument or Law constituting or defining the constitution of the body or governing the activities of the body or its members.
Cost Estimate	means the estimate for the Project which is the sum of the Funding and Other Contributions specified in Annexure B to the Schedule.
Cost Item	means an item of expenditure specified in the Budget at Annexure B to the Schedule.

Confidential Information	means: <ul style="list-style-type: none">a. the information described in Item N; andb. information that the parties agree in writing after the Date of this Agreement is confidential information for the purposes of this Agreement;
Date of this Agreement	means the date written on the execution page of this Agreement, or if no date or more than one date is written there, then the date on which the Agreement is signed by the last party to do so;
Depreciated	means the amount representing the reduction in value of an Asset calculated in accordance with Australian Accounting Standards;
Director	means any of the following: <ul style="list-style-type: none">a. a person appointed to the position of a director or alternate director and acting in that capacity for a body corporate within the meaning of the Corporations Act 2001 (Cth) regardless of the name given to their position;b. a member of the governing committee of an Aboriginal and Torres Strait Islander corporation under the Corporations (Aboriginal and Torres Strait Islander) Act 2006 (Cth);c. a member of the committee of an organisation incorporated pursuant to State or Territory laws relating to the incorporation of associations; ord. a member of the board, committee or group of persons (however described) that is responsible for managing or overseeing the affairs of the body corporate;
Dispose	means to sell, licence, lease or sublease, or otherwise transfer or give up ownership or the right to occupy or use, or to enter into an agreement to do any of the preceding acts and 'Disposal' means the method of so disposing;
Existing Material	means all Material in existence prior to the Date of this Agreement: <ul style="list-style-type: none">a. incorporated in;b. supplied with, or as part of; orc. required to be supplied with, or as part of, the Activity Material;

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

Law	<p>includes:</p> <ol style="list-style-type: none">Acts of the Commonwealth and the State(s) and Territory(s) in which the Activity will be undertaken, and any other relevant State or Territory;ordinances, regulations, by-laws, orders and proclamations or other instruments of legal effect made under those Acts referred to in paragraph (a);directions by any person exercising statutory powers regarding the Recipient or the Activity, including the Real Property; andall the requirements, standard, approvals, licences, registrations or permits of any government (including local government) department, authority, agency or regulatory body that apply to the Activity, including the Real Property;
Material	<p>means anything in relation to which Intellectual Property rights arise;</p>
Milestone	<p>means a milestone or stage of completion of the Activity as set out in Annexure A of this Agreement;</p>
Moral Rights	<p>includes the following rights of an author of copyright Material:</p> <ol style="list-style-type: none">the right of attribution of authorship;the right of integrity of authorship; andthe right not to have authorship falsely attributed;
Open Access Licence	<p>means a licence to the public on broad open access terms that allows any member of the public to perform a wide range of acts in respect of the material subject to certain restrictions. An Open Access Licence includes any Australian Government open access licence and any Creative Commons Attribution licence (see http://creativecommons.org.au/learn-more/licences);</p>
Operational	<p>means that the completed Project is operating in a way that enables it to achieve its Purpose;</p>
Operational Period	<p>means the period during which the Recipient must keep the completed Project Operational;</p>

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

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

1.2. Interpretation

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

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

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

1.3. Guidance on construction of Agreement

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

1.4. Duration of Term

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

2. Activity, Project and Operational Period

2.1. Conduct of Activity

2.1.1. The Recipient agrees to carry out the Activity:

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

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

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

2.2. Liaison and monitoring

2.2.1. The Recipient agrees to:

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

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

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

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

2.3. **Subcontractors**

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

2.4. **Reserved**

2.5. **Responsibility of the Recipient**

2.5.1. The Recipient is fully responsible for the performance of the Activity and for ensuring compliance with the requirements of this Agreement, and will not be relieved of that responsibility because of any:

- a. involvement by the Commonwealth in the performance of the Activity;
- b. subcontracting of the Activity;
- c. acceptance by the Commonwealth of Specified Personnel; or
- d. payment of any amount of Funding to the Recipient.

2.6. **Reports**

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

2.7. **Project**

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

2.8. **Operational Period**

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

2A. Capital Works

2A.1. **Performance**

2A.1.1 The Recipient must perform the Capital Works:

- a. in accordance with the designs and plans submitted by the Recipient to the Commonwealth;
- b. in a good and workmanlike manner by qualified tradespeople; and
- c. with a minimum of delay.

2A.2. **Applicable Laws**

2A.2.1 The Recipient warrants and agrees that the Capital Works (whether undertaken before, on or after the Date of this Agreement) have been (if applicable) and will be carried out in accordance with all applicable Laws including, but not limited to, all necessary planning and regulatory approvals.

2A.2.2 The Recipient agrees to ensure that:

- a. the Works Locations comply at all times with all applicable Laws regarding their use as a site for the Capital Works; and
- b. the completed Capital Works comply with all Laws relating to their ongoing use throughout the Operational Period.

2A.3. Commence Construction

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

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2A.4. Completion

2A.4.1 The Recipient must:

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

3. Funding

3.1. Payment of Funding

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

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

- 3.2.1. Without limiting the Commonwealth's rights, the Commonwealth may suspend any payment in whole or in part until the Recipient has performed its obligations under this Agreement.
- 3.2.2. Reserved.
- 3.2.3. The Commonwealth may reduce the amount of Funding payable under this Agreement where the Recipient:

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

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

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

4. Taxes, duties and government charges

- 4.1.1. Except as provided by clause 4, the Recipient agrees to pay all taxes, duties and government charges imposed or levied in Australia or overseas in connection with the performance of this Agreement.
- 4.1.2. Unless otherwise indicated, any Funding and all other consideration for any supply made under this Agreement is exclusive of any GST imposed on the supply.
- 4.1.3. If one party (the supplier) makes a taxable supply to the other party (the taxable supply recipient) under this Agreement, on receipt of a tax invoice from the supplier, the taxable supply recipient will pay without setoff an additional amount to the supplier equal to the GST imposed on the supply in question.
- 4.1.4. No party may claim or retain from the other party any amount in relation to a supply made under this Agreement for which the first party can obtain an input tax credit or decreasing adjustment.

5. Debt and Interest

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

6. Management of Funding

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

6.2. Budget

6.2.1. The Recipient agrees to only spend the Funding for the Activity and in accordance with the Budget.

6.2.2. Subject to clauses 6.2.3 and 6.2.4, the Recipient may spend the Funding on any separate category of expenditure item within the Budget.

6.2.3. The Recipient agrees to obtain prior written approval from the Commonwealth for any transfer of Funding between categories of expenditure items within the Budget which exceed a percentage of the total Budget as specified in Item B of the Schedule.

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

6.3. Account and financial records

6.3.1. The Recipient agrees to ensure that the Funding is held in an account in the Recipient's name and which the Recipient solely controls, with an authorised deposit-taking institution authorised under the Banking Act 1959 (Cth) to carry on banking business in Australia and that is an account that complies with any other requirements specified in Item A.7 in the Schedule.

6.3.2. Reserved

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

- a. notify the Commonwealth, prior to the receipt of any Funding, of details sufficient to identify the account;
- b. on notification from the Commonwealth, provide the Commonwealth and the authorised deposit-taking institution with a written authority for the Commonwealth to obtain any details relating to any use of the account;
- c. if the account changes, notify the Commonwealth within 10 Business Days of the change occurring and provide the Commonwealth with details of the new account;
- d. Reserved.

6.3.4. The Recipient agrees to:

- a. keep financial accounts and records relating to the Funding and the Project and Activity that identify
 - i. all receipts and payments related to the Project and Activity; and
 - ii. all interest earned on the Funding.
- b. unless otherwise notified by the Commonwealth, prepare financial statements for the Project and Activity in accordance with Australian Accounting Standards including:

- i. Reserved; and
- ii. a register of the Assets and a register of Real Property created, acquired, written-off or Disposed of during the Financial Year to date compared with the Budget; and

6.4. Use as security

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

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

6.5. Refunds of unexpended and misspent Funds

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

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

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

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

6.5.4. If the completed Project ceases to be Operational during the Operational Period, the Commonwealth may give the Recipient notice requiring the Recipient to repay all or part of the Funding to the Commonwealth within the period specified in the notice and the Recipient must comply with that notice.

6.5.5. On completion of the Project, if the cost of the completed Project is less than the Cost Estimate, the Commonwealth may give the Recipient notice requiring the

Recipient to return any unexpended Funding to the Commonwealth within the period specified in the notice and the Recipient must comply with that notice.

- 6.5.6. This clause survives termination or expiry of the Agreement.

7. Other Contributions and Cost Savings

7.1. Other Contributions

- 7.1.1. The Recipient must, within six (6) months of the date of the Agreement provide to the Commonwealth satisfactory written evidence that confirms the Other Contributions identified in Item C and detailed in Annexure B of the Schedule, including the amounts to be provided, the due dates for each of these amounts and the terms and conditions of the provision of the Other Contributions.
- 7.1.2. If, for any reason, the Recipient is not able to obtain the Other Contributions (including any part thereof) as required under this Agreement, then the Commonwealth may:
- a. suspend payment of the Funding or an instalment of the Funding until the Other Contributions are obtained (as the case may be);
 - b. reduce the total Funding payable under this Agreement by an amount that, in the Commonwealth's opinion, represents an equivalent proportion of the overall reduction in the total value of the Other Contributions (as the case may be) resulting from the failure; or
 - c. terminate this Agreement in accordance with clause 17.2.
- 7.1.3. The Recipient must notify the Commonwealth in writing as soon as possible after it becomes aware of any likely or actual failure (for any reason) to obtain the Other Contributions (including any part thereof) as required under this Agreement.
- 7.1.4. The Recipient agrees to notify the Commonwealth within 10 Business Days of entering into any arrangement under which the Recipient is entitled to receive any additional monetary or in-kind contributions in respect of the Project and Activity that are not identified as Other Contributions in Item C and Annexure B of the Schedule. Any such additional contribution that the Recipient becomes entitled to receive after the Date of this Agreement constitutes Other Contributions for the purposes of the Agreement (and Schedule 1 is deemed to be varied accordingly) on the date on which the Recipient notifies the Commonwealth of that contribution under this clause 7.1.4.
- 7.1.5. If the Recipient is provided with or obtains (and/or was required to provide or obtain) any Other Contributions and the cost of the completed Project is less than the Cost Estimate, the Commonwealth may give the Recipient notice requiring the Recipient to return to the Commonwealth, within the period specified in the notice, an amount equal to the Commonwealth's Proportion of the Cost Savings. In this subclause 7.1.5, 'the Commonwealth's Proportion of the Cost Savings' means $\text{savings} \times \%$ where:
- a. $\text{savings} = (\text{the Cost Estimate} - \text{the actual cost of the Project} - \text{any Funds previously repaid to the Commonwealth under this Agreement})$; and

- b. $\% = (\text{the Funding} \div (\text{the maximum Funding} + \text{the maximum Other Contributions excluding any in-kind Other Contributions}))$

7.1.6. If the Recipient receives a notice given by the Commonwealth under subclause 18, the Recipient must comply with the notice within the period specified within the notice.

7.2. **Cost Savings**

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

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

8. **Statutory Approvals**

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

8.1A The Recipient must also provide satisfactory written evidence that the statutory approvals obtained under subclause 8.1 are sufficient for the Recipient to Commence Construction within six months after the Date of this Agreement.

8.2 If the Recipient does not comply with the requirement in subclause 8.1, the Commonwealth may at the Commonwealth's sole discretion:

- a. suspend payment of the Funding until the evidence of the statutory approvals referred to in subclause 8.1 has been received; or
- b. terminate this Agreement in accordance with clause 17.2.

9. **Assets**

9.1. **Acquisition of Asset**

9.1.1. The Recipient agrees not to use the Funding to acquire or create any Asset, apart from those detailed in the Item E, without obtaining the Commonwealth's prior written approval. Approval may be given subject to any conditions the Commonwealth may impose.

9.1.2. Unless it is specified in Item E that the Commonwealth or a third party owns the Asset or the Commonwealth provides written consent to a third party owning the

Asset, then the Recipient must ensure that it owns any Asset acquired with the Funding.

9.2. Terms applicable to Asset

9.2.1. If the Commonwealth owns the Asset clauses 9.4 and 9.6.2 do not apply.

9.2.2. If the Asset is owned by a third party then the Recipient agrees to ensure that the terms of the lease, hire or finance arrangement are consistent with clause 9.3, and clauses 9.4, 9.5 and 9.6 do not apply.

9.3. Recipient's responsibilities for Asset

9.3.1. Throughout the Term, the Recipient agrees to:

- a. use any Asset in accordance with this Agreement and for the purposes of the Activity;
- b. not encumber or Dispose of any Asset, or deal with or use any Asset other than in accordance with this clause 9 without the Commonwealth's prior written approval;
- c. hold all Assets securely and safeguard them against theft, loss, damage, or unauthorised use;
- d. maintain all Assets in good working order;
- e. maintain all appropriate insurances for all Assets to their full replacement cost noting the Commonwealth's interest, if any, in the Asset under the Agreement;
- f. if required by law, maintain registration and licensing of all Assets;
- g. be fully responsible for, and bear all risks relating to, the use or Disposal of all Assets; and
- h. if specified in Item E, maintain an Assets register in the form and containing the details as described in Item E and as and when requested by the Commonwealth, provide copies of the Assets register to the Commonwealth.

9.4. Sale or Disposal of Asset during Term

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

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

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

9.5. Loss, damage, etc of Asset

9.5.1. If any of the Assets are lost, damaged or destroyed, the Recipient agrees to promptly reinstate the Assets including from the proceeds of the insurance, and

this clause 9 continues to apply to the reinstated Assets. The proportion of any surplus from the proceeds of the insurance, which reflects the proportion of the cost of the Asset that was funded from the Funding, must be notified to the Commonwealth and accounted for as Funding and used for the Activity.

9.6. Dealing with Asset

- 9.6.1. On expiry of the Activity Period or earlier termination of the Agreement, the Commonwealth may require the Recipient to deal with an Asset as the Commonwealth may, at the sole discretion of the Commonwealth, notify the Recipient.
- 9.6.2. Subject to clause 9.6.1, if on expiry of the Activity Period or the earlier termination of this Agreement, an Asset has not been fully Depreciated, the Commonwealth may, by written notice, require the Recipient to:
- a. pay to the Commonwealth within 20 Business Days of the expiry of the Activity Period or earlier termination of the Agreement, an amount equal to the proportion of the Undepreciated value of the Asset that is equivalent to the proportion of the cost of the Asset that was funded from the Funding;
 - b. sell the Asset for the best price reasonably obtainable and pay to the Commonwealth within 20 Business Days of the sale the proportion of the proceeds of the sale that is equivalent to the proportion of the cost of the Asset (less an amount equal to the reasonable Disposal costs incurred by the Recipient) that was funded from the Funding; or
 - c. continue to use the Asset for the purposes, and in accordance with any conditions, notified by the Commonwealth.

10. Real Property

10.1. Approval

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

10.2. Outgoings

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

10.3. Recipient's Responsibilities for Real Property

- 10.3.1 Throughout the Term of this Agreement, including the Operational Period, the Recipient agrees to:
- a. hold the Real Property securely and safeguard it against theft, loss, damage, or unauthorised use;
 - b. maintain the Real Property in good condition;
 - c. maintain all appropriate insurances for the Real Property to its full replacement cost and use that insurance to rectify any damage to or

destruction to the Real Property and this clause 10.3.1 continues to apply to the Real Property once rectified. The Recipient must notify the Commonwealth of any surplus from the proceeds of this insurance and the Recipient must use and account for that surplus as Funding under this Agreement;

- d. if required by any Law, maintain registration and licensing of the Real Property;
- e. be fully responsible for, and bear all risks relating to, the use or Disposal of all Real Property;
- f. if specified in item E.2 of the Schedule, maintain a Real Property register in the form and containing the details as described in that item of the Schedule; and
- g. as and when requested by the Commonwealth, provide copies of the Real Property register to the Commonwealth.

10.4. Recipient's Use of Real Property

10.4.1. The Recipient agrees to ensure that:

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

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

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

10.5. Third Party Interests

10.5.1. If a third party has proprietary or other rights or interests in relation to any Real Property, the Recipient agrees to:

- a. enter into legally binding written agreements under which all such third parties agree to:
 - i. the use of the Works Locations to undertake the Capital Works throughout the Activity Period;
 - ii. the use of the Works Locations, and completed Capital Works for the Purpose specified in item A.3 of the Schedule throughout the Operational Period; and

- iii. the use of any other Real Property for the Activity throughout the Activity Period and for the Purpose specified in item A.3 of the Schedule throughout the Operational Period;
- b. not do anything that would give any such third party a right to rescind its agreement to one or more of the uses specified in paragraph (a); and
- c. within 10 Business Days of a request from the Commonwealth, provide evidence to the Commonwealth that the Recipient has complied with the requirements of this subclause 10.5.

10.6. Dealing with Real Property

10.6.1. If:

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

then:

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

10.6.2. If the Recipient fails to pay the Commonwealth an amount as required by a notice given under subclause 10.6.1:

- a. the Recipient must pay the Commonwealth the Interest on the unpaid amount from the date it was due, for the period it remains unpaid; and
- b. that amount, and Interest owed under this subclause 10.6.2, will be recoverable by the Commonwealth as a debt due to the Commonwealth by the Recipient.

10.6.3. The provisions relating to this clause 10 shall survive the termination or expiration of this Agreement.

11. Records

11.1. Keeping Records

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

11.2. Retention of Records

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

12. Intellectual Property

12.1. Use of Commonwealth Material

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

12.2. Rights in Activity Material

- 12.2.1. Subject to this clause 12, Intellectual Property in Activity Material vests or will vest in the Recipient.
- 12.2.2. Clause 12.2.1 does not affect the ownership of Intellectual Property in any Commonwealth Material incorporated into the Activity Material.
- 12.2.3. The Recipient grants to (or will procure for) the Commonwealth a permanent, irrevocable, royalty-free, worldwide, non-exclusive licence (including a right of sublicense) to use, reproduce, exploit, communicate, adapt and distribute the Activity Material for any purpose.
- 12.2.4. The Recipient agrees that the licence granted in clause 12.2.3 includes a right for the Commonwealth to licence the Activity Material to the public under an Open Access Licence.
- 12.2.5. The Recipient agrees, on request by the Commonwealth, to create, sign, execute or otherwise deal with any document necessary or desirable to give effect to this clause 12.
- 12.2.6. The Recipient warrants that:
- a. it is entitled; or
 - b. it will be entitled at the relevant time,

to deal with the Intellectual Property in the Activity Material in the manner provided for in this clause 12.

12.3. **Moral Rights**

12.3.1. In this clause 12.3:

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

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

but does not include false attribution of authorship.

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

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

12.3.3. Where clause 12.3.1 does not apply, the Recipient agrees:

- a. to obtain from each author a written consent which extends directly or indirectly to the performance of the Permitted Acts by the Commonwealth or any person claiming under or through the Commonwealth (whether occurring before or after the consent is given) and, upon request, will provide the executed original of any such consent to the Commonwealth; and
- b. to ensure that each author's attention is drawn to the Commonwealth's general policies and practices regarding Moral Rights.

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

13. Confidential Information

13.1. **Confidential Information not to be disclosed**

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

13.2. Written Undertakings

- 13.2.1. The Recipient must, on request by the Commonwealth at any time, arrange for:
- a. its Personnel; or
 - b. any person with a Third Party Interest,
- to give a written undertaking in a form acceptable to the Commonwealth relating to the use and non-disclosure of the Commonwealth's Confidential Information.

13.3. Exceptions to Obligations

- 13.3.1. The obligations on the parties under this clause 13.3 will not be taken to have been breached to the extent that Confidential Information:
- a. is disclosed by a party to its Personnel solely in order to comply with obligations, or to exercise rights, under this Agreement;
 - b. is disclosed to a party's internal management Personnel, solely to enable effective management or auditing of Agreement-related activities;
 - c. is disclosed by the Commonwealth to the responsible Minister;
 - d. is disclosed by the Commonwealth, in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia;
 - e. is shared by the Commonwealth (including other agencies), where this serves the Commonwealth of Australia's legitimate interests;
 - f. is authorised or required by law to be disclosed; or
 - g. is in the public domain otherwise than due to a breach of this clause 13.3.
- 13.3.2. Where a party discloses Confidential Information to another person pursuant to clauses 13.3.1.a - 13.3.1.e, the disclosing party must notify the receiving person that the information is confidential.
- 13.3.3. In the circumstances referred to in clauses 13.3.1.a, 13.3.1.b and 13.3.1.e, the disclosing party agrees not to provide the information unless the receiving person agrees to keep the information confidential (subject to the exceptions in this clause 13.3).
- 13.3.4. The Recipient agrees to secure all of the Commonwealth's Confidential Information against loss and unauthorised access, use, modification or disclosure.
- 13.4. Period of Confidentiality**
- 13.4.1. The obligations under this clause 13.4 will continue, notwithstanding the expiry or termination of this Agreement:
- a. in relation to an item of information described in Item N – for the period set out in respect of that item; and
 - b. in relation to any item of information agreed after the Date of this Agreement to be Confidential Information – for the period agreed by the parties in writing in respect of that item, and if no such period is agreed by the parties, in perpetuity.

13.5. No reduction in Privacy Obligations

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

14. Acknowledgement and publicity

14.1. Acknowledgement of support

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

14.2. Right to publicise Funding

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

14.3. No restriction on advocacy activities

- 14.3.1. The Commonwealth confirms that, subject to clause 14.3.2:
- a. no right or obligation arising under this Agreement should be interpreted as limiting the Recipient's ability to enter into public debate or criticism of the Commonwealth of Australia or its agencies, employees, servants or agents;
 - b. the Commonwealth does not require the Recipient to obtain advance approval of any involvement by the Recipient in public debate or advocacy activities.
- 14.3.2. Nothing in this clause 14.3 limits or derogates from the Recipient's obligations under clauses 13 and 21.2.

15. Liability

15.1. Proportionate liability regime

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

15.2. Indemnity

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

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

arising from:

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

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

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

15.3. Meaning of 'fault'

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

16. Dispute resolution

16.1. Procedure for dispute resolution

16.1.1. The parties agree that a dispute arising under this Agreement will be dealt with as follows, and that, subject to clause 16.4, neither party will commence legal proceedings in relation to that dispute until this procedure is completed:

- a. the party claiming that there is a dispute will give the other party a notice setting out the nature of the dispute;
- b. within five (5) Business Days (or such other period as agreed by the parties in writing) each party will nominate a representative not having any prior involvement in the dispute;
- c. the representatives will try to settle the dispute by direct negotiation between them;

- d. failing settlement within a further 10 Business Days or such other period as agreed by the parties in writing (or failure of one or both parties to nominate a representative within the period set out in clause 16.1.1.b), the parties may agree to refer the dispute to an independent third person with power:
 - i. to intervene and direct some form of resolution, in which case the parties will be bound by that resolution; or
 - ii. to mediate and recommend some form of non-binding resolution;
- e. the parties will co-operate fully with any process instigated under clause 16.1.1.d in order to achieve a speedy resolution; and
- f. if the parties have been unable to agree to refer the dispute to an independent third person, or they have agreed and a resolution is not reached within a further 20 Business Days (or such other period as the parties) may agree in writing), either party may commence legal proceedings.

16.2. Costs

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

16.3. Continued performance

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

16.4. Application of clause

- 16.4.1. This clause 16 does not apply to:
- a. legal proceedings by either party for urgent interlocutory relief; or
 - b. action by the Commonwealth under or purportedly under clauses 3, 6, 17 and 21.2.

17. Termination or reduction in scope of Agreement

17.1. Termination for convenience

- 17.1.1. The Commonwealth may by notice, at any time and in its absolute discretion, terminate this Agreement or reduce the scope of the Agreement immediately.
- 17.1.2. The Recipient agrees, on receipt of a notice of termination or reduction, to:
- a. stop or reduce the performance of the Recipient's obligations as specified in the notice;
 - b. take all available steps to minimise loss resulting from that termination or reduction;
 - c. continue performing any part of the Activity not affected by the notice; and

- d. immediately return to the Commonwealth any Funding in accordance with clause 17.1.5, or deal with any such Funding as directed by the Commonwealth.

17.1.3. In the event of termination under clause 17.1.1, the Commonwealth will be liable only:

- a. to pay Funding due and owing to the Recipient under the payment provisions of the Agreement before the date of the notice of termination; and
- b. to reimburse any expenses the Recipient unavoidably incurs that relate directly and entirely to the Activity and not covered by clause 17.1.3.a.

17.1.4. The Commonwealth will not be liable to pay amounts under 17.1.3.a and 17.1.3.b which would, added to any payments already paid to the Recipient under this Agreement, together exceed the Funding set out in Item A.7 of the Schedule and Annexure A.

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

- a. is not legally committed for expenditure by the Recipient in accordance with the Agreement and due and payable by the Recipient by the date that the notice of termination is received; or
- b. has not, in the Commonwealth's opinion, been spent by the Recipient in accordance with the Agreement.

17.1.6. In the event of a reduction in the scope of the Agreement under clause 17.1.1, the Commonwealth's liability to pay any part of the Funding will, unless there is agreement in writing to the contrary, reduce in accordance with the reduction in the Activity.

17.1.7. The Commonwealth's liability to pay any compensation under or in relation to this clause 17.1 is subject to:

- a. the Recipient's compliance with this clause 17.1; and
- b. the Recipient's substantiation of any amount claimed under clause 17.1.3.b.

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

17.2. Termination for fault

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

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

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

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

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

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

17.3. **Preservation of other rights**

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

18. Notices

18.1. Format, addressing and delivery

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

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

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

18.2. When received

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

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

18.2.2. If a notice is received:

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

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

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

19.1. In this clause 19:

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

Field Code Changed

Building Contractor	has the same meaning as in the Act.
Building Industry Participant	has the same meaning as in the Act.
Building Work	has the same meaning as in subsection 3(4) of the Building Code.
Commonwealth Funded Building Work	means Building Work in items 1-8 of Schedule 1 of the Building Code.
Contractor	means a Building Contractor or Building Industry Participant who the Funding Recipient has entered, or proposes to enter, into a contract with to undertake any of the Works.
Exclusion Sanction	has the same meaning as in subsection 3(3) of the Building Code
Funding	means the funding provided by the Commonwealth to the Funding Recipient.
Funding Recipient	means the entity that the Commonwealth is providing funding or assistance to in relation to building works to which the Building Code applies.
Related Entity	has the same meaning as in subsection 3(2) of the Building Code.
Works	means Commonwealth Funded Building Work that is being indirectly funded by the Commonwealth through the provision of the Funding to the Funding Recipient.

- 19.2. The Funding Recipient must ensure that:
- tender processes and calls for expressions of interest (howsoever described) in respect of Commonwealth Funded Building Work are conducted in a manner consistent with this code of practice; and
 - respondents are only permitted to participate in tender processes where the respondent is not subject to an exclusion sanction.
- 19.3. The Funding Recipient must ensure that any request for expressions of interest or request for tender (howsoever described) for Commonwealth Funded Building Work requires a respondent:
- to confirm that the respondent and any related entity will comply with the Building Code when undertaking the Commonwealth Funded building Work; and

- b. to confirm that the respondent, and any related entities; will comply with the Building Code from the time of lodging an expression of interest or tender response (if not already obligated to do so); and
- c. to confirm that it is not subject to an exclusion sanction at the time of lodging an expression of interest or tender; and
- d. to demonstrate a positive commitment to the provision of appropriate training and skill development for their workforce. Such commitment may be evidenced by compliance with any state or territory government building training policies and supporting the delivery of nationally endorsed building and construction competencies; and
- e. to include details of the number of current apprentice and trainee employees and the number of classes of persons that hold visas under the Migration Act 1958 that are engaged by the respondent, and that are intended to be engaged by the respondent to undertake the Commonwealth Funded Building Work; and
- f. to advise whether the respondent has, within the preceding 3 year period:
 - i. had an adverse decision, direction or order made by a court or tribunal for a breach of a designated building law, work health and safety law or the Migration Act 1958; or
 - ii. been required to pay any amount under an adjudication certificate (provided in accordance with a law relating to the security of payments that are due to persons in respect of building work) including by any related entity to a building contractor or building industry participant; or
 - iii. owed any unsatisfied judgement debts (including such debts owed by any related entity) to a building contractor or building industry participant.

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

- a. ensure the requirement to have a Workplace Relations Management Plan (WRMP) for the Works approved by ABCC is included in all expression of interest and tender documents; and
- b. on behalf of the funding entity:
 - i. apply to the ABCC to have a WRMP for the Works approved; and
 - ii. ensure that an application to the ABCC for approval of a WRMP for the Works is made in the manner and form required by the ABCC Commissioner; and
 - iii. ensure that the proposed WRMP for the Works is accompanied by any supporting evidence required by the ABCC; and

- iv. obtain and provide additional information to the ABCC when requested, to enable the ABCC to make a decision whether or not to approve the proposed WRMP for the Works.

20. Work Health and Safety

20.1. Use of Commonwealth's premises

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

20.2. Assistance to the Commonwealth

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

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

The Scheme	means the Scheme described at Section 43 of the Building and Construction Industry (Improving Productivity) Act 2016.
Builder	has the meaning given in Section 43(8) of the Building and Construction Industry (Improving Productivity) Act 2016.
Building Work	has the meaning given to it by Section 6 of the Building and Construction Industry (Improving Productivity) Act 2016.
Exclusions	means the building work is prescribed under section 26 of the Fair Work (Building Industry—Accreditation Scheme) Regulation 2016

- 20.3.1. Construction projects that utilise funds provided under this agreement are bound by the application of the Australian Government building and construction

industry Work Health and Safety Accreditation Scheme (the Scheme) and the following conditions:

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

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

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

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

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

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

21. General Provisions

21.1. Constitution

- 21.1.1. The Recipient warrants that the Recipient's Constitution is not, and will not become, inconsistent with this Agreement.
- 21.1.2. The Recipient must provide a copy of the Recipient's Constitution to the Commonwealth, upon request.
- 21.1.3. The Recipient must obtain the Commonwealth's written approval to any amendments to the Recipient's Constitution which may affect the Recipient's eligibility for the Funding or the Recipient's capacity to comply with this Agreement. If the Recipient alters the Constitution in breach of this subclause 21.1.3, the Commonwealth may terminate this Agreement in accordance with clause 17.2 of this Agreement.

21.2. Obligations of Recipient in relation to privacy

- 21.2.1. The Recipient agrees, in conducting the Activity:

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

21.2.2. The Recipient agrees to notify the Commonwealth immediately if it becomes aware of a breach or possible breach of any of its obligations under this clause 21.2.

21.2.3. The provisions of this clause 21.2 survive the termination or expiration of this Agreement.

21.3. **Audit and Access**

21.3.1. The Recipient agrees:

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

21.3.2. The rights referred to in clause 21.3.1. are subject to:

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

21.3.3. The Auditor-General and Information Officer (and their delegates) are persons authorised for the purposes of clause 21.3.1.

21.3.4. This clause 21.3 does not detract from the statutory powers of the Auditor-General or Information Officer.

21.4. **Access to Documents**

21.4.1. In this clause 21.4, 'document' and 'Commonwealth contract' have the same meaning as in the Freedom of Information Act 1982 (Cth). This clause 21.4 only applies if this Agreement is a 'Commonwealth contract', as defined in the Freedom of Information Act 1982 (Cth).

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

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

21.5. **Insurance**

21.5.1. The Recipient agrees:

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

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

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

21.6.1. In this clause 21.6:

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

21.6.2. The Recipient agrees to ensure that:

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

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

21.7. **Conflict of interest**

21.7.1. In this clause 21.7:

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

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

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

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

21.8. **Relationship of parties**

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

21.8.2. The Recipient agrees:

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

21.9. **Waiver**

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

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

21.10. **Variation of Agreement**

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

21.11. **Assignment**

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

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

21.12. **Survival**

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

- a. Intellectual Property;
- b. confidentiality;
- c. security;
- d. privacy;
- e. dealing with copies;
- f. books and records;
- g. audit and access;
- h. an indemnity;
- i. acknowledgement and publicity;
- j. rights or obligations following termination or expiry of the Agreement; or

- k. any other provision which expressly or by implication from its nature is intended to continue.

21.13. **Compliance with Legislation and Policies**

21.13.1. In this clause 21.13:

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

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

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

21.14. **Applicable law and jurisdiction**

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

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

21.15. **Child Safety**

In this Agreement:

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

Child-Related Personnel

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

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

National Principles for Child Safe Organisations

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

Field Code Changed

National Principles for Child Safe Organisations as published by the Australian Government;

Relevant Legislation

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

Working With Children Check or WWCC

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

Relevant Checks and authority

21.15.1. The Grantee must:

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

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

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

- a. implement the National Principles for Child Safe Organisations;
- b. ensure that all Child-Related Personnel implement the National Principles for Child Safe Organisations;
- c. complete and update, at least annually, a risk assessment to identify the level of responsibility for Children and the level of risk of harm or abuse to Children;
- d. put into place and update, at least annually, an appropriate risk management strategy to manage risks identified through the risk assessment required by this clause 21.15.2;
- e. provide training and establish a compliance regime to ensure that all Child-Related Personnel are aware of, and comply with:
 - i. the National Principles for Child Safe Organisations;
 - ii. the Grantee's risk management strategy required by this clause 21.15.2;
 - iii. Relevant Legislation relating to requirements for working with Children, including Working With Children Checks;

- iv. Relevant Legislation relating to mandatory reporting of suspected child abuse or neglect, however described; and
 - f. provide the Commonwealth with an annual statement of compliance with clauses 21.15.1 and 21.15.2, in such form as may be specified by the Commonwealth.
- 21.15.3. With reasonable notice to the Grantee, the Commonwealth may conduct a review of the Grantee's compliance with this clause 21.15.
- 21.15.4. The Grantee agrees to:
 - a. notify the Commonwealth of any failure to comply with this clause 21.15;
 - b. co-operate with the Commonwealth in any review conducted by the Commonwealth of the Grantee's implementation of the National Principles for Child Safe Organisations or compliance with this clause 21.15; and
 - c. promptly, and at the Grantee's cost, take such action as is necessary to rectify, to the Commonwealth's satisfaction, any failure to implement the National Principles for Child Safe Organisations or any other failure to comply with this clause 21.15.

Executed as a deed

Executed by the parties as evidence of their agreement.

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

Name of signatory *Signature*

Position *Insert Date*

In the presence of:

Name of witness *Signature of witness*

Executed on behalf of **GIANT STEPS**)
MELBOURNE LTD, CAN 606552283)
by Barry Irvin who by signing warrants)
they are authorised to bind **Giant**)
Steps Melbourne Ltd) *Signature*

Insert Date

In the presence of:

Name of witness *Signature of witness*

SCHEDULE 1 PARTICULARS

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

A.1. Programme

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

A.2. Project

The project to be undertaken by the Recipient is the Giant Steps Autism School Expansion at 11 Malmsbury Street, Kew VIC, 3101. The Project will include the Activity that the Programme will fund, defined in more detail in item A.5 of the Schedule.

The Project Completion Date is 30 June 2024/31 Jan 2022.

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A.3. Purpose

The Purpose for which the completed Project is required to be used is:

To provide expanded autism services in Melbourne to help meet demand and increase student enrolments across all programs to enable the provision of individualised programs for children and young adults with Autism.

A.4. Operational Period

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

Amount of Funding	Duration of Operational Period
Over \$1,000,000	Five (5) years

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

A.5. Activity

The Activity to be undertaken by the Recipient is the Giant Steps Autism School Expansion project including:

- Planning and design;
- Construction of new buildings to cater for:
 - o Additional primary and secondary school services.
 - o Post school services.
 - o Staff amenities.
 - o Therapy spaces.
 - o Training facilities.

- o Industrial kitchen
- Upgrade to school entry and administrative & meeting spaces
- Upgrade to existing playground
- New playground
- construction of a secondary school building of at least xm^2 comprising:
- construction of a post-school facilities building of at least Xm^2 , comprising:
- upgrades to XXXXXXXXXXXX
- landscaping
- [insert deliverables]

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The Activity Period commences on the Date of this Agreement and ends on the Activity Completion Date which is **31 January 2022** [insert date which reflects when the Activity must be completed. Note that this date may occur before the Project is completed].

A.6. Reserved

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

The total Funding for the Activity is **\$9,700,000** GST exclusive. The Funding will be paid as follows:

1. The first payment of Funding specified in the table at Annexure A will not be made until:
 - a) this Agreement has been executed by all Parties and all Milestones specified in the table at Annexure A that relate to the first payment have been achieved to the Commonwealth's satisfaction; and
 - b) all Reports identified in item D of the Schedule as being due on or before the due date for the first payment have been received and accepted by the Commonwealth; and
2. The second and each subsequent payment specified in the table at Annexure A will not be made until:
 - a) all Milestones specified in the table at Annexure A that relate to the relevant payment have been achieved to the Commonwealth's satisfaction;
 - b) all Reports identified in item D of this Schedule as being due on or before the due date for the relevant payment have been received and accepted by the Commonwealth; and
 - c) the Recipient has provided the Commonwealth with evidence that all previously paid Funds have been expended or committed.

Invoicing

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

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

B. Budget
(clause 6.2)

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

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

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

C. Other Contributions
(clause 7)

C.1. Other Contributions

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

D. Reporting
(clauses 1.1.1, 2.6)

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

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

D.1.2 Each Progress Report must contain:

- a. details of progress and performance against the Activity, and the Project (to the extent that it is directly related to the relevant part of the Activity which is being covered by that Progress Report) and evidence of completion of the Milestones listed in Annexure A of the Schedule that are due for completion (including but not limited to photographs to demonstrate completion of Milestones) during the period between the Recipient's previous Progress Report and the due date of this Progress Report (or in the case of the first Progress Report, the period between the Date of this Agreement and the due date of the first Progress Report);
- b. details of mitigating circumstances and remedial action undertaken in the event a Milestone is not met or completed in the manner and/or by the time specified;
- c. copies of any published reports, promotional material, media publicity, pamphlets or other documentation relevant to the Project;
- d. evidence that the Recipient has obtained and/or utilised in-kind Other

Contributions specified in the table at Annexure B;

- e. a statement of receipts (which separately identifies any interest earned on the Funding) and expenditure to date in respect of the Funding; and
- f. a statement of receipts and expenditure to date in respect of Other Contributions (excluding in-kind).

D.1.3 The Activity Completion Report must contain:

- a. evidence that the Activity and the Milestones have been completed;
- b. an analysis of the planning, implementation and overall process the Recipient followed to deliver the Activity;
- c. any recommendations on improved practice, relevant to the Recipient's and the Commonwealth's practices, that may assist in the delivery of future projects;
- d. a copy of the current Assets register described in item E.1.2 of this Schedule and a copy of the Real Property register described in item E.2.4 of this Schedule;
- e. evidence that the Recipient has obtained in-kind Other Contributions for the Activity specified in the table at Annexure B;
- f. an up to date Audited Financial Report in respect of the Activity; and
- g. copies of any published reports, promotional material, media publicity, pamphlets or other documentation relevant to the Activity, not already included in the Progress Report/s.
- h. a copy of the Assets register described in item E.1 of this Schedule and a copy of the Real Property register described in item E.2 of this Schedule.

D.1.4 The Project Completion Report must contain:

- a. evidence that the Project has been completed;
- b. an analysis of the planning, implementation and overall process the Recipient followed to deliver the Project;
- c. any recommendations on improved practice, relevant to the Recipient's and the Commonwealth's practices, that may assist in the delivery of future projects;
- d. a copy of the Assets register described in item E.1 of this Schedule and a copy of the Real Property register described in item E.2 of this Schedule.
- e. evidence that the Recipient obtained in-kind contributions specified in the table at Annexure B;
- f. an Audited Financial Report; and
- g. copies of any published reports, promotional material, media publicity, pamphlets or other documentation relevant to the Project, not already included in the Progress Report/s.

In addition, the Project Completion Report must also:

- h. describe the Recipient's activities during the Term;
- i. discuss in detail the conduct, benefits and outcomes of the Activity as a whole and the Activity's results and findings; and

j. Reserved

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

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

D.2. Audit and certification

- D.2.1. The Activity Completion Report and Project Completion Report must be accompanied by a copy of a letter to the Recipient from the Approved Auditor, or a report from the Approved Auditor, that includes:
- a. separate audited statements of receipts and expenditure in respect of the Funding and Other Contributions (excluding in-kind), which must:
 - i. comply with all relevant Australian Accounting Standards
 - ii. separately identify any interest earned on the Funding
 - iii. include a definitive statement made by an Approved Auditor as to whether:
 1. the statements of receipts and expenditure are fair and true
 2. Funding and Other Contributions (excluding in-kind) were held and expended in accordance with this Agreement
 - b. a certificate, signed by the Recipient's Chief Executive Officer, Chief Financial Officer or a person authorised by the Recipient to execute documents and legally bind the Recipient by their execution, that:
 - i. all Funding and Other Contributions (excluding in-kind) received was expended for the purpose of the Activity and Project and expended and held in a manner in accordance with this Agreement
 - ii. salaries and allowances paid to persons involved in the Activity are in accordance with any applicable award or agreement in force under any relevant Law on industrial or workplace relations.

D.3. Other Reports

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

- a. any significant developments concerning the Activity;

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

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

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

E.1. Assets

- E.1.1. For the purposes of Clause 9, the Recipient may create, acquire or upgrade the following Assets:

None Specified

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

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

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

E.2. Real Property

- E.2.1. The Real Property includes the Giant Steps Autism School Expansion.

- E.2.2. The Capital Works includes design, construction and fit-out of the Real Property at the Works Location.

- E.2.3. The Works Locations includes 11 Malmsbury Street, Kew, VIC, 3101

- E.2.4. The Recipient must for the Term of this Agreement maintain a Real Property Register in the following form and containing the following information:

- a. Real Property description;
- b. acquisition, upgrade or creation price or total lease cost;
- c. date of acquisition, creation, upgrade or lease;
- d. if leased, type and term of lease;

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

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

F. Insurance
(clause 21.5)

The Recipient must maintain:

- a. workers compensation insurance as required by law where the Recipient carries out activities under this Agreement;
- b. public liability insurance to the value of at least \$10 million for each and every claim, or occurrence giving rise to a claim, in respect to activities undertaken under this Agreement, where occurrence means either a single occurrence or a series of occurrences if these are linked or occur in connection with one another from one original cause, as the case may be; and
- c. insurance against any loss or damage to an Asset or Real Property for its full replacement cost including where relevant the costs of demolition and removal of debris and the cost of architects, engineers and other consultants.

G. Reserved

H. Acknowledgement and publicity
(clause 14)

- H.1.1 If the Recipient erects or maintains any signage in relation to the Project, the signage must be approved by the Commonwealth prior to use and contain an acknowledgement of the Funding as required under Clause 14 of this Agreement. Any signage must remain in place during the Operational Period for the Project as specified in Item A.4. Signage for the Activity may be paid from the Budget if approved by Us. Signage for any other part of the Project must be at the Recipient's own cost.
- H.1.2 If a Federal, State or Local Government election is announced, the Recipient must cover any sign that is displayed within 100 metres of a polling place with an opaque (impenetrable to sight), durable and water repellent material from a period not less than 48 hours before the commencement of polling at that polling place until the polls close.
- H.1.3 The Recipient must include the Commonwealth logo in all signage, publications and promotional activities related to the Activity.

- H.1.4 The Recipient must not use the Commonwealth's logo without the Commonwealth's approval. If the Commonwealth provides approval for the Recipient's use of the Commonwealth's logo, the Recipient must use it in accordance with the Commonwealth's Print Style Guidelines (as advised by the Commonwealth).
- H.1.5 All the Recipient's publicity, announcements and media releases relating to the Activity must be cleared through the Commonwealth's contact officer specified at item L of the Schedule with at least 10 Business Days' notice, before release.
- H.1.6 The Commonwealth reserves the right to publicise and report on the provision of Funding to the Recipient, including progress on completing the Activity and the Project. The Commonwealth may do this by including the information specified in clause 14.2 in media releases, general announcements about the Funding and in annual reports and in electronic media.
- H.1.7 The Recipient must conduct an official opening of the completed Activity and Project unless otherwise agreed by the Commonwealth.
- H.1.8 The Recipient must provide to the Commonwealth with at least 3 options for dates for the official opening, or any other milestone events that the Recipient chooses to conduct (e.g. stage completion), for the Activity and the Project. These dates must be provided at least 56 days prior to the first proposed date for each event to be conducted.
- H.1.9 The date of official openings or other official public function for the completed Activity and Project must be agreed by the Commonwealth.
- H.1.10 The Recipient must invite the Commonwealth's representative to officiate at any official opening or other official public function relating to the Activity or the Project.
- H.1.11 The Commonwealth Minister's prior agreement must be sought, to invite any other Commonwealth or State elected official or other officials to attending either function. This invitation must be provided to the Commonwealth no later than 56 days before the date of the official opening or other official public function relating to the Activity or the Project.
- H.1.12 The Recipient must coordinate requests for the Commonwealth's agreement to the date of official openings and requests for Commonwealth representation at official openings or other official functions relating to the Activity or the Project through the Commonwealth's contact officer specified at item L of the Schedule.

I. Reserved

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

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

- Crimes Act 1914;

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

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

Community Development Grants Programme – Grant Programme Guidelines

K. Statutory Approvals

(clause 2A.2)

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

L. Notices

(clause 18.1)

The Commonwealth's details for notices are as follows:

Name: General Manager
Regional Programs Branch

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

Email: CDG@infrastructure.gov.au

The Recipient's details for notices are as follows:

Name: s47F

Position: s47F

Address: s47F

Telephone: s47F

E-mail: s47F

M. Applicable Law

(clause 21.14)

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

N. Confidential Information

(clause 13)

Commonwealth's Confidential Information

Agreement Provisions/Schedules/Attachments

None Specified

Agreement related material

None Specified

Recipient's Confidential Information

Agreement Provisions/Schedules/Attachments

None Specified

Agreement related material

None Specified

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ANNEXURE A

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

Report	Milestone(s) / Information covered by the Report	Milestone Completion Date	Payment amount (GST Exclusive)	Due Date for Report	Due Date for Funding Payment
Progress Report 1	<p>Evidence acceptable to the Commonwealth that the following have been achieved:</p> <ul style="list-style-type: none"> confirmation of schematic designs; confirmation of costs plan estimate; confirmation of engagement of Project Manager confirmation of engagement of Consultants; confirmation of preparation of Town Planning Application; confirmation of commencement of detailed design. 1% of the Project is completed and certified by the Project Manager, Quantity Surveyor, or similar. 	22nd November 2019	\$1,356,732	20th December 2019	3rd Jan 2020
Progress Report 2	<p>Evidence acceptable to the Commonwealth that the following have been achieved:</p> <ul style="list-style-type: none"> confirmation of completion of Detailed Design confirmation of commencement of Tender Phase 14% of the Project is completed and certified by the Project Manager, Quantity Surveyor, or similar. 	15th May 2020	\$71,407	12th June 2020	26th June 2020

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Report	Milestone(s) / Information covered by the Report	Milestone Completion Date	Payment amount (GST Exclusive)	Due Date for Report	Due Date for Funding Payment
Progress Report 3	<p>Evidence acceptable to the Commonwealth that the following have been achieved:</p> <ul style="list-style-type: none"> Confirmation of completion of Tender Phase Confirmation of commencement of first quarter of Construction Confirmation that the contractor is compliant with the Code for the Tendering and Performance of Building Work 2016 and accredited under the Australian Government Building and Construction WHS Accreditation Scheme; 15% of the Project is completed and certified by the Project Manager, Quantity Surveyor, or similar. 	18th September 2020	\$2,067,965	16th October 2020	30th October 2020
Progress Report 4	<p>Evidence acceptable to the Commonwealth that the following have been achieved:</p> <ul style="list-style-type: none"> Confirmation of completion of first quarter of construction; Confirmation of commencement of second quarter of construction (to a total of 50% complete); 36% of the Project is completed and certified by the Project Manager, Quantity Surveyor, or similar. 	15th January 2021	\$2,067,965	12th February 2021	26th February 2021

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Report	Milestone(s) / Information covered by the Report	Milestone Completion Date	Payment amount (GST Exclusive)	Due Date for Report	Due Date for Funding Payment
Progress Report 5	<p>Evidence acceptable to the Commonwealth that the following have been achieved:</p> <ul style="list-style-type: none"> • Confirmation of completion of second quarter of construction; • Confirmation of commencement of third quarter of construction (to a total of 75% complete); • 57% of the Project is completed and certified by the Project Manager, Quantity Surveyor, or similar. 	14th May 2021	\$2,067,965	11th June 2021	25th June 2021
Progress Report 6	<p>Evidence acceptable to the Commonwealth that the following have been achieved:</p> <ul style="list-style-type: none"> • Confirmation of completion of third quarter of construction; • Confirmation of commencement of final phase of construction (to a total of 90% complete); • an Event Invitation has been submitted to the Department as required at Item H of the Schedule; • 79% of the Project is completed and certified by the Project Manager, Quantity Surveyor, or similar. 	17th September 2021	\$1,097,965	15th October 2021	29th October 2021

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Report	Milestone(s) / Information covered by the Report	Milestone Completion Date	Payment amount (GST Exclusive)	Due Date for Report	Due Date for Funding Payment
Project Completion Report	<p>Evidence acceptable to the Commonwealth that the following has been achieved:</p> <ul style="list-style-type: none"> • Confirmation of completion of final phase of construction to a total of 100% complete; • the Activity, at Item A.5 of the Schedule, is complete; • the Project, at Item A.2 of the Schedule, is complete; • all approvals required to enable public access and use of the facility have been met; and • the Project is fully Operational. • 100% of the Project is completed and certified by the Project Manager, Quantity Surveyor, or similar. 	1st Jan 2022	\$970,000	26th March 2022	9th April 2022

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ANNEXURE B

BUDGET FOR THE EXPENDITURE OF CDG FUNDING		
Cost item	Description	Amount (GST exclusive)
Design, construction & fit out	Giants Steps Autism School Expansion	\$9,700,000
Funding (A)		\$9,700,000

OTHER CONTRIBUTIONS (FINANCIAL)			
Name of Contributor	Cost Item	Description of item	Amount (GST exclusive)
47G		Other Contributions (Financial) (B)	

TOTAL COST ESTIMATE (A + B) (GST exclusive):	
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OTHER CONTRIBUTIONS (IN-KIND)	
Name of Contributor	Description of Other Contribution (In-kind)
N/A	N/A



Australian Government

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

DEED OF AGREEMENT

**FUNDING AGREEMENT IN RELATION TO THE GIANT STEPS AUTISM
SCHOOL EXPANSION (CDG1085)**

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

Giant Steps Melbourne Ltd
ABN 46 606 552 283

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FUNDING AGREEMENT (LONG FORM)

**FUNDING AGREEMENT IN RELATION TO THE GIANT STEPS AUTISM
SCHOOL EXPANSION (CDG1085)**

Parties

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

1. **The Commonwealth of Australia** as represented by the Department of Infrastructure, Transport, Cities and Regional Development
ABN 86 267 354 017, 111 Alinga Street, Canberra, Australian Capital Territory
(**Commonwealth**)
2. **Giant Steps Melbourne Ltd**
ACN 606552283, 11 Malmsbury Street, Kew, VIC 3101
(**Recipient**)

Context

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

Operative provisions

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

1. Interpretation

1.1. Definitions

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

ABN	means (Australian Business Number) as set out in section 41 of the A New Tax System (Australian Business Number) Act 1999 (Cth).
Activity	means the Activity described in Item A and includes the provision to the Commonwealth of the Activity Material;
Activity Completion date	means the date that the Activity must be completed by as set out in item A.5 of the Schedule.
Activity Material	means any Material: a. created by the Recipient for the purpose of this Agreement; b. provided or required to be provided to the Commonwealth under the Agreement; or c. derived at any time from the Material referred to in paragraphs a or b, and includes d. any Existing Material incorporated in the Material referred to in paragraphs b or c; and e. any Reports;
Activity Objectives	means the objectives of the Activity described in Item A.6 of the Schedule;
Activity Period	means the period specified in Item A during which the Activity must be completed;
Agreement	means this document and includes any Schedules and Annexures;
Annexure	means any annexure to Schedule 1;

Approved Auditor	means a person who is: <ul style="list-style-type: none">a. registered as a company auditor under the Corporations Act 2001 (Cth) or an appropriately qualified member of the Institute of Chartered Accountants in Australia or of CPA Australia;b. not a principal, member, shareholder, officer, agent, subcontractor, employee or related entity of the Recipient or of a related body corporate (the terms 'related entity' and 'related body corporate' have the same meaning as in section 9 of the Corporations Act 2001 (Cth)); andc. not the Recipient's Qualified Accountant;
Asset	means any item of property, purchased, leased, hired, financed, created or otherwise brought into existence either wholly or in part with use of the Funding, which has a value of over \$5,000 exclusive of GST, but excludes any Intellectual Property Rights and Real Property (including any property once it becomes part of the structure of Real Property).
Auditor-General	means the office established under the Auditor-General Act 1997 (Cth) and includes any other entity that may, from time to time, perform the functions of that office;
Australian Accounting Standards	refers to the standards of that name maintained by the Australian Accounting Standards Board created by section 226 of the Australian Securities and Investments Commission Act 2001 (Cth);
Australian Auditing Standards	refers to the standards made by the Auditing and Assurance Standards Board created by section 227A of the Australian Securities and Investments Commission Act 2001 (Cth);
Australian Privacy Principle	has the same meaning as it has in the Privacy Act 1988 (Cth).
Budget	means the budget set out in Annexure B of the Schedule;
Business Day (in a place)	means a weekday other than a public holiday in the place specified or, if no place is specified, in the State or Territory specified in Item M of the Schedule;
Capital Works	means any part of the Activity that comprises construction and building activities and includes the Capital Works listed at item E.2.2 of the Schedule.

Commence Construction	means to begin a continuous programme of on-site construction for the Activity's Capital Works. For the purposes of this definition, only significant and continuous site preparation work such as major clearing or excavation or placement or assembly, or installation of facilities or equipment at the site constitute a programme of on-site construction.
Commonwealth	where the context permits, includes officers, delegates, employees and agents and successors of the Department of Infrastructure, Regional Development and Cities;
Commonwealth Material	means any Material: <ul style="list-style-type: none">a. provided by the Commonwealth to the Recipient for the purposes of this Agreement; orb. derived at any time from the Material referred to in paragraph a;
Completion Date	means the day after the Recipient has done all that it is required to do under clauses 2 and 6 of this Agreement to the satisfaction of the Commonwealth;
Constitution	means (depending on the context): <ul style="list-style-type: none">a. a company's constitution, which (where relevant) includes rules and any amendments that are part of the company's constitution, orb. in relation to any other kind of body:<ul style="list-style-type: none">i. the body's charter, rules or memorandum, orii. any instrument or Law constituting or defining the constitution of the body or governing the activities of the body or its members.
Cost Estimate	means the estimate for the Project which is the sum of the Funding and Other Contributions specified in Annexure B to the Schedule.
Cost Item	means an item of expenditure specified in the Budget at Annexure B to the Schedule.

Confidential Information	means: <ul style="list-style-type: none">a. the information described in Item N; andb. information that the parties agree in writing after the Date of this Agreement is confidential information for the purposes of this Agreement;
Date of this Agreement	means the date written on the execution page of this Agreement, or if no date or more than one date is written there, then the date on which the Agreement is signed by the last party to do so;
Depreciated	means the amount representing the reduction in value of an Asset calculated in accordance with Australian Accounting Standards;
Director	means any of the following: <ul style="list-style-type: none">a. a person appointed to the position of a director or alternate director and acting in that capacity for a body corporate within the meaning of the Corporations Act 2001 (Cth) regardless of the name given to their position;b. a member of the governing committee of an Aboriginal and Torres Strait Islander corporation under the Corporations (Aboriginal and Torres Strait Islander) Act 2006 (Cth);c. a member of the committee of an organisation incorporated pursuant to State or Territory laws relating to the incorporation of associations; ord. a member of the board, committee or group of persons (however described) that is responsible for managing or overseeing the affairs of the body corporate;
Dispose	means to sell, licence, lease or sublease, or otherwise transfer or give up ownership or the right to occupy or use, or to enter into an agreement to do any of the preceding acts and 'Disposal' means the method of so disposing;
Existing Material	means all Material in existence prior to the Date of this Agreement: <ul style="list-style-type: none">a. incorporated in;b. supplied with, or as part of; orc. required to be supplied with, or as part of, the Activity Material;

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

Law	<p>includes:</p> <ol style="list-style-type: none">Acts of the Commonwealth and the State(s) and Territory(s) in which the Activity will be undertaken, and any other relevant State or Territory;ordinances, regulations, by-laws, orders and proclamations or other instruments of legal effect made under those Acts referred to in paragraph (a);directions by any person exercising statutory powers regarding the Recipient or the Activity, including the Real Property; andall the requirements, standard, approvals, licences, registrations or permits of any government (including local government) department, authority, agency or regulatory body that apply to the Activity, including the Real Property;
Material	<p>means anything in relation to which Intellectual Property rights arise;</p>
Milestone	<p>means a milestone or stage of completion of the Activity as set out in Annexure A of this Agreement;</p>
Moral Rights	<p>includes the following rights of an author of copyright Material:</p> <ol style="list-style-type: none">the right of attribution of authorship;the right of integrity of authorship; andthe right not to have authorship falsely attributed;
Open Access Licence	<p>means a licence to the public on broad open access terms that allows any member of the public to perform a wide range of acts in respect of the material subject to certain restrictions. An Open Access Licence includes any Australian Government open access licence and any Creative Commons Attribution licence (see http://creativecommons.org.au/learn-more/licences);</p>
Operational	<p>means that the completed Project is operating in a way that enables it to achieve its Purpose;</p>
Operational Period	<p>means the period during which the Recipient must keep the completed Project Operational;</p>

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

Report	means Activity Material that is provided to the Commonwealth for reporting purposes as stipulated in Item D of the Schedule;
Real Property	<p>means:</p> <p>a. any land, buildings or fixtures including the Capital Works (both during and after completion) and the Works Locations; and</p> <p>b. any interest in the property specified in paragraph (a);</p> <p>that are purchased, leased, upgraded or otherwise created or brought into existence wholly or in part with the use of the Funding and includes the property listed at item E.2.1 of the Schedule.</p>
Schedule	means the schedule to this Agreement and may include Annexures and incorporate other documents by reference;
Specified Personnel	means the Recipient's Personnel specified in Item I as Personnel required to undertake all or any part of the Activity;
Term	refers to the period described in clause 1.4.1 of this Agreement;
Third Party Interest	means any legal or equitable right, interest, power or remedy in favour of any person other than the Commonwealth or the Recipient in connection with the Agreement, including any right of possession, receivership, control or power of sale, and any mortgage, charge, security or other interest;
Undepreciated	in relation to the value of an Asset, means the value of the Asset which has not been Depreciated; and
Works Location	means a location where the Capital Works are to be undertaken including any premises in, or land on, which those Capital Works are to be undertaken and includes a Works Location listed in item E.2.3 of the Schedule.

1.2. **Interpretation**

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

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

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

1.3. Guidance on construction of Agreement

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

1.4. Duration of Term

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

2. Activity, Project and Operational Period

2.1. Conduct of Activity

2.1.1. The Recipient agrees to carry out the Activity:

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

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

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

2.2. Liaison and monitoring

2.2.1. The Recipient agrees to:

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

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

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

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

2.3. **Subcontractors**

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

2.4. **Reserved**

2.5. **Responsibility of the Recipient**

2.5.1. The Recipient is fully responsible for the performance of the Activity and for ensuring compliance with the requirements of this Agreement, and will not be relieved of that responsibility because of any:

- a. involvement by the Commonwealth in the performance of the Activity;
- b. subcontracting of the Activity;
- c. acceptance by the Commonwealth of Specified Personnel; or
- d. payment of any amount of Funding to the Recipient.

2.6. **Reports**

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

2.7. **Project**

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

2.8. **Operational Period**

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

2A. Capital Works

2A.1. **Performance**

2A.1.1 The Recipient must perform the Capital Works:

- a. in accordance with the designs and plans submitted by the Recipient to the Commonwealth;
- b. in a good and workmanlike manner by qualified tradespeople; and
- c. with a minimum of delay.

2A.2. **Applicable Laws**

2A.2.1 The Recipient warrants and agrees that the Capital Works (whether undertaken before, on or after the Date of this Agreement) have been (if applicable) and will be carried out in accordance with all applicable Laws including, but not limited to, all necessary planning and regulatory approvals.

2A.2.2 The Recipient agrees to ensure that:

- a. the Works Locations comply at all times with all applicable Laws regarding their use as a site for the Capital Works; and
- b. the completed Capital Works comply with all Laws relating to their ongoing use throughout the Operational Period.

2A.3. Commence Construction

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

2A.4. Completion

2A.4.1 The Recipient must:

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

3. Funding

3.1. Payment of Funding

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

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

- 3.2.1. Without limiting the Commonwealth's rights, the Commonwealth may suspend any payment in whole or in part until the Recipient has performed its obligations under this Agreement.
- 3.2.2. Reserved.
- 3.2.3. The Commonwealth may reduce the amount of Funding payable under this Agreement where the Recipient:

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

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

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

4. Taxes, duties and government charges

- 4.1.1. Except as provided by clause 4, the Recipient agrees to pay all taxes, duties and government charges imposed or levied in Australia or overseas in connection with the performance of this Agreement.
- 4.1.2. Unless otherwise indicated, any Funding and all other consideration for any supply made under this Agreement is exclusive of any GST imposed on the supply.
- 4.1.3. If one party (the supplier) makes a taxable supply to the other party (the taxable supply recipient) under this Agreement, on receipt of a tax invoice from the supplier, the taxable supply recipient will pay without setoff an additional amount to the supplier equal to the GST imposed on the supply in question.
- 4.1.4. No party may claim or retain from the other party any amount in relation to a supply made under this Agreement for which the first party can obtain an input tax credit or decreasing adjustment.

5. Debt and Interest

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

6. Management of Funding

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

6.2. Budget

6.2.1. The Recipient agrees to only spend the Funding for the Activity and in accordance with the Budget.

6.2.2. Subject to clauses 6.2.3 and 6.2.4, the Recipient may spend the Funding on any separate category of expenditure item within the Budget.

6.2.3. The Recipient agrees to obtain prior written approval from the Commonwealth for any transfer of Funding between categories of expenditure items within the Budget which exceed a percentage of the total Budget as specified in Item B of the Schedule.

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

6.3. Account and financial records

6.3.1. The Recipient agrees to ensure that the Funding is held in an account in the Recipient's name and which the Recipient solely controls, with an authorised deposit-taking institution authorised under the Banking Act 1959 (Cth) to carry on banking business in Australia and that is an account that complies with any other requirements specified in Item A.7 in the Schedule.

6.3.2. Reserved

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

- a. notify the Commonwealth, prior to the receipt of any Funding, of details sufficient to identify the account;
- b. on notification from the Commonwealth, provide the Commonwealth and the authorised deposit-taking institution with a written authority for the Commonwealth to obtain any details relating to any use of the account;
- c. if the account changes, notify the Commonwealth within 10 Business Days of the change occurring and provide the Commonwealth with details of the new account;
- d. Reserved.

6.3.4. The Recipient agrees to:

- a. keep financial accounts and records relating to the Funding and the Project and Activity that identify
 - i. all receipts and payments related to the Project and Activity; and
 - ii. all interest earned on the Funding.
- b. unless otherwise notified by the Commonwealth, prepare financial statements for the Project and Activity in accordance with Australian Accounting Standards including:

- i. Reserved; and
- ii. a register of the Assets and a register of Real Property created, acquired, written-off or Disposed of during the Financial Year to date compared with the Budget; and

6.4. **Use as security**

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

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

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

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

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

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

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

6.5.4. If the completed Project ceases to be Operational during the Operational Period, the Commonwealth may give the Recipient notice requiring the Recipient to repay all or part of the Funding to the Commonwealth within the period specified in the notice and the Recipient must comply with that notice.

6.5.5. On completion of the Project, if the cost of the completed Project is less than the Cost Estimate, the Commonwealth may give the Recipient notice requiring the

Recipient to return any unexpended Funding to the Commonwealth within the period specified in the notice and the Recipient must comply with that notice.

- 6.5.6. This clause survives termination or expiry of the Agreement.

7. Other Contributions and Cost Savings

7.1. Other Contributions

- 7.1.1. The Recipient must, within six (6) months of the date of the Agreement provide to the Commonwealth satisfactory written evidence that confirms the Other Contributions identified in Item C and detailed in Annexure B of the Schedule, including the amounts to be provided, the due dates for each of these amounts and the terms and conditions of the provision of the Other Contributions.

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

- a. suspend payment of the Funding or an instalment of the Funding until the Other Contributions are obtained (as the case may be);
- b. reduce the total Funding payable under this Agreement by an amount that, in the Commonwealth's opinion, represents an equivalent proportion of the overall reduction in the total value of the Other Contributions (as the case may be) resulting from the failure; or
- c. terminate this Agreement in accordance with clause 17.2.

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

- 7.1.4. The Recipient agrees to notify the Commonwealth within 10 Business Days of entering into any arrangement under which the Recipient is entitled to receive any additional monetary or in-kind contributions in respect of the Project and Activity that are not identified as Other Contributions in Item C and Annexure B of the Schedule. Any such additional contribution that the Recipient becomes entitled to receive after the Date of this Agreement constitutes Other Contributions for the purposes of the Agreement (and Schedule 1 is deemed to be varied accordingly) on the date on which the Recipient notifies the Commonwealth of that contribution under this clause 7.1.4.

- 7.1.5. If the Recipient is provided with or obtains (and/or was required to provide or obtain) any Other Contributions and the cost of the completed Project is less than the Cost Estimate, the Commonwealth may give the Recipient notice requiring the Recipient to return to the Commonwealth, within the period specified in the notice, an amount equal to the Commonwealth's Proportion of the Cost Savings. In this subclause 7.1.5, 'the Commonwealth's Proportion of the Cost Savings' means $\text{savings} \times \%$ where:

- a. $\text{savings} = (\text{the Cost Estimate} - \text{the actual cost of the Project} - \text{any Funds previously repaid to the Commonwealth under this Agreement})$; and

- b. $\% = (\text{the Funding} \div (\text{the maximum Funding} + \text{the maximum Other Contributions excluding any in-kind Other Contributions}))$

7.1.6. If the Recipient receives a notice given by the Commonwealth under subclause 18, the Recipient must comply with the notice within the period specified within the notice.

7.2. **Cost Savings**

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

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

8. **Statutory Approvals**

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

8.1A The Recipient must also provide satisfactory written evidence that the statutory approvals obtained under subclause 8.1 are sufficient for the Recipient to Commence Construction within six months after the Date of this Agreement.

8.2 If the Recipient does not comply with the requirement in subclause 8.1, the Commonwealth may at the Commonwealth's sole discretion:

- a. suspend payment of the Funding until the evidence of the statutory approvals referred to in subclause 8.1 has been received; or
- b. terminate this Agreement in accordance with clause 17.2.

9. **Assets**

9.1. **Acquisition of Asset**

9.1.1. The Recipient agrees not to use the Funding to acquire or create any Asset, apart from those detailed in the Item E, without obtaining the Commonwealth's prior written approval. Approval may be given subject to any conditions the Commonwealth may impose.

9.1.2. Unless it is specified in Item E that the Commonwealth or a third party owns the Asset or the Commonwealth provides written consent to a third party owning the

Asset, then the Recipient must ensure that it owns any Asset acquired with the Funding.

9.2. Terms applicable to Asset

9.2.1. If the Commonwealth owns the Asset clauses 9.4 and 9.6.2 do not apply.

9.2.2. If the Asset is owned by a third party then the Recipient agrees to ensure that the terms of the lease, hire or finance arrangement are consistent with clause 9.3, and clauses 9.4, 9.5 and 9.6 do not apply.

9.3. Recipient's responsibilities for Asset

9.3.1. Throughout the Term, the Recipient agrees to:

- a. use any Asset in accordance with this Agreement and for the purposes of the Activity;
- b. not encumber or Dispose of any Asset, or deal with or use any Asset other than in accordance with this clause 9 without the Commonwealth's prior written approval;
- c. hold all Assets securely and safeguard them against theft, loss, damage, or unauthorised use;
- d. maintain all Assets in good working order;
- e. maintain all appropriate insurances for all Assets to their full replacement cost noting the Commonwealth's interest, if any, in the Asset under the Agreement;
- f. if required by law, maintain registration and licensing of all Assets;
- g. be fully responsible for, and bear all risks relating to, the use or Disposal of all Assets; and
- h. if specified in Item E, maintain an Assets register in the form and containing the details as described in Item E and as and when requested by the Commonwealth, provide copies of the Assets register to the Commonwealth.

9.4. Sale or Disposal of Asset during Term

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

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

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

9.5. Loss, damage, etc of Asset

9.5.1. If any of the Assets are lost, damaged or destroyed, the Recipient agrees to promptly reinstate the Assets including from the proceeds of the insurance, and

this clause 9 continues to apply to the reinstated Assets. The proportion of any surplus from the proceeds of the insurance, which reflects the proportion of the cost of the Asset that was funded from the Funding, must be notified to the Commonwealth and accounted for as Funding and used for the Activity.

9.6. Dealing with Asset

- 9.6.1. On expiry of the Activity Period or earlier termination of the Agreement, the Commonwealth may require the Recipient to deal with an Asset as the Commonwealth may, at the sole discretion of the Commonwealth, notify the Recipient.
- 9.6.2. Subject to clause 9.6.1, if on expiry of the Activity Period or the earlier termination of this Agreement, an Asset has not been fully Depreciated, the Commonwealth may, by written notice, require the Recipient to:
- a. pay to the Commonwealth within 20 Business Days of the expiry of the Activity Period or earlier termination of the Agreement, an amount equal to the proportion of the Undepreciated value of the Asset that is equivalent to the proportion of the cost of the Asset that was funded from the Funding;
 - b. sell the Asset for the best price reasonably obtainable and pay to the Commonwealth within 20 Business Days of the sale the proportion of the proceeds of the sale that is equivalent to the proportion of the cost of the Asset (less an amount equal to the reasonable Disposal costs incurred by the Recipient) that was funded from the Funding; or
 - c. continue to use the Asset for the purposes, and in accordance with any conditions, notified by the Commonwealth.

10. Real Property

10.1. Approval

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

10.2. Outgoings

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

10.3. Recipient's Responsibilities for Real Property

- 10.3.1 Throughout the Term of this Agreement, including the Operational Period, the Recipient agrees to:
- a. hold the Real Property securely and safeguard it against theft, loss, damage, or unauthorised use;
 - b. maintain the Real Property in good condition;
 - c. maintain all appropriate insurances for the Real Property to its full replacement cost and use that insurance to rectify any damage to or

destruction to the Real Property and this clause 10.3.1 continues to apply to the Real Property once rectified. The Recipient must notify the Commonwealth of any surplus from the proceeds of this insurance and the Recipient must use and account for that surplus as Funding under this Agreement;

- d. if required by any Law, maintain registration and licensing of the Real Property;
- e. be fully responsible for, and bear all risks relating to, the use or Disposal of all Real Property;
- f. if specified in item E.2 of the Schedule, maintain a Real Property register in the form and containing the details as described in that item of the Schedule; and
- g. as and when requested by the Commonwealth, provide copies of the Real Property register to the Commonwealth.

10.4. **Recipient's Use of Real Property**

10.4.1. The Recipient agrees to ensure that:

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

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

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

10.5. **Third Party Interests**

10.5.1. If a third party has proprietary or other rights or interests in relation to any Real Property, the Recipient agrees to:

- a. enter into legally binding written agreements under which all such third parties agree to:
 - i. the use of the Works Locations to undertake the Capital Works throughout the Activity Period;
 - ii. the use of the Works Locations, and completed Capital Works for the Purpose specified in item A.3 of the Schedule throughout the Operational Period; and

- iii. the use of any other Real Property for the Activity throughout the Activity Period and for the Purpose specified in item A.3 of the Schedule throughout the Operational Period;
- b. not do anything that would give any such third party a right to rescind its agreement to one or more of the uses specified in paragraph (a); and
- c. within 10 Business Days of a request from the Commonwealth, provide evidence to the Commonwealth that the Recipient has complied with the requirements of this subclause 10.5.

10.6. Dealing with Real Property

10.6.1. If:

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

then:

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

10.6.2. If the Recipient fails to pay the Commonwealth an amount as required by a notice given under subclause 10.6.1:

- a. the Recipient must pay the Commonwealth the Interest on the unpaid amount from the date it was due, for the period it remains unpaid; and
- b. that amount, and Interest owed under this subclause 10.6.2, will be recoverable by the Commonwealth as a debt due to the Commonwealth by the Recipient.

10.6.3. The provisions relating to this clause 10 shall survive the termination or expiration of this Agreement.

11. Records

11.1. Keeping Records

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

11.2. Retention of Records

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

12. Intellectual Property

12.1. Use of Commonwealth Material

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

12.2. Rights in Activity Material

- 12.2.1. Subject to this clause 12, Intellectual Property in Activity Material vests or will vest in the Recipient.
- 12.2.2. Clause 12.2.1 does not affect the ownership of Intellectual Property in any Commonwealth Material incorporated into the Activity Material.
- 12.2.3. The Recipient grants to (or will procure for) the Commonwealth a permanent, irrevocable, royalty-free, worldwide, non-exclusive licence (including a right of sublicense) to use, reproduce, exploit, communicate, adapt and distribute the Activity Material for any purpose.
- 12.2.4. The Recipient agrees that the licence granted in clause 12.2.3 includes a right for the Commonwealth to licence the Activity Material to the public under an Open Access Licence.
- 12.2.5. The Recipient agrees, on request by the Commonwealth, to create, sign, execute or otherwise deal with any document necessary or desirable to give effect to this clause 12.
- 12.2.6. The Recipient warrants that:
- a. it is entitled; or
 - b. it will be entitled at the relevant time,

to deal with the Intellectual Property in the Activity Material in the manner provided for in this clause 12.

12.3. **Moral Rights**

12.3.1. In this clause 12.3:

- Permitted Acts** means any of the following classes or types of acts or omissions:
- a. using, reproducing, adapting or exploiting all or any part of the Activity Material, with or without attribution or authorship;
 - b. supplementing the Activity Material with any other Material;
 - c. using the Activity Material in a different context to that originally envisaged; and
 - d. releasing the Activity Material to the public under an Open Access Licence;
- but does not include false attribution of authorship.

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

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

12.3.3. Where clause 12.3.1 does not apply, the Recipient agrees:

- a. to obtain from each author a written consent which extends directly or indirectly to the performance of the Permitted Acts by the Commonwealth or any person claiming under or through the Commonwealth (whether occurring before or after the consent is given) and, upon request, will provide the executed original of any such consent to the Commonwealth; and
- b. to ensure that each author's attention is drawn to the Commonwealth's general policies and practices regarding Moral Rights.

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

13. Confidential Information

13.1. **Confidential Information not to be disclosed**

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

13.2. Written Undertakings

- 13.2.1. The Recipient must, on request by the Commonwealth at any time, arrange for:
- a. its Personnel; or
 - b. any person with a Third Party Interest,
- to give a written undertaking in a form acceptable to the Commonwealth relating to the use and non-disclosure of the Commonwealth's Confidential Information.

13.3. Exceptions to Obligations

- 13.3.1. The obligations on the parties under this clause 13.3 will not be taken to have been breached to the extent that Confidential Information:
- a. is disclosed by a party to its Personnel solely in order to comply with obligations, or to exercise rights, under this Agreement;
 - b. is disclosed to a party's internal management Personnel, solely to enable effective management or auditing of Agreement-related activities;
 - c. is disclosed by the Commonwealth to the responsible Minister;
 - d. is disclosed by the Commonwealth, in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia;
 - e. is shared by the Commonwealth (including other agencies), where this serves the Commonwealth of Australia's legitimate interests;
 - f. is authorised or required by law to be disclosed; or
 - g. is in the public domain otherwise than due to a breach of this clause 13.3.
- 13.3.2. Where a party discloses Confidential Information to another person pursuant to clauses 13.3.1.a - 13.3.1.e, the disclosing party must notify the receiving person that the information is confidential.
- 13.3.3. In the circumstances referred to in clauses 13.3.1.a, 13.3.1.b and 13.3.1.e, the disclosing party agrees not to provide the information unless the receiving person agrees to keep the information confidential (subject to the exceptions in this clause 13.3).
- 13.3.4. The Recipient agrees to secure all of the Commonwealth's Confidential Information against loss and unauthorised access, use, modification or disclosure.
- 13.4. Period of Confidentiality**
- 13.4.1. The obligations under this clause 13.4 will continue, notwithstanding the expiry or termination of this Agreement:
- a. in relation to an item of information described in Item N – for the period set out in respect of that item; and
 - b. in relation to any item of information agreed after the Date of this Agreement to be Confidential Information – for the period agreed by the parties in writing in respect of that item, and if no such period is agreed by the parties, in perpetuity.

13.5. No reduction in Privacy Obligations

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

14. Acknowledgement and publicity

14.1. Acknowledgement of support

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

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

14.2. Right to publicise Funding

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

14.3. No restriction on advocacy activities

- 14.3.1. The Commonwealth confirms that, subject to clause 14.3.2:
- a. no right or obligation arising under this Agreement should be interpreted as limiting the Recipient's ability to enter into public debate or criticism of the Commonwealth of Australia or its agencies, employees, servants or agents;
 - b. the Commonwealth does not require the Recipient to obtain advance approval of any involvement by the Recipient in public debate or advocacy activities.
- 14.3.2. Nothing in this clause 14.3 limits or derogates from the Recipient's obligations under clauses 13 and 21.2.

15. Liability

15.1. Proportionate liability regime

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

15.2. Indemnity

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

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

arising from:

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

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

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

15.3. Meaning of 'fault'

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

16. Dispute resolution

16.1. Procedure for dispute resolution

16.1.1. The parties agree that a dispute arising under this Agreement will be dealt with as follows, and that, subject to clause 16.4, neither party will commence legal proceedings in relation to that dispute until this procedure is completed:

- a. the party claiming that there is a dispute will give the other party a notice setting out the nature of the dispute;
- b. within five (5) Business Days (or such other period as agreed by the parties in writing) each party will nominate a representative not having any prior involvement in the dispute;
- c. the representatives will try to settle the dispute by direct negotiation between them;

- d. failing settlement within a further 10 Business Days or such other period as agreed by the parties in writing (or failure of one or both parties to nominate a representative within the period set out in clause 16.1.1.b), the parties may agree to refer the dispute to an independent third person with power:
 - i. to intervene and direct some form of resolution, in which case the parties will be bound by that resolution; or
 - ii. to mediate and recommend some form of non-binding resolution;
- e. the parties will co-operate fully with any process instigated under clause 16.1.1.d in order to achieve a speedy resolution; and
- f. if the parties have been unable to agree to refer the dispute to an independent third person, or they have agreed and a resolution is not reached within a further 20 Business Days (or such other period as the parties) may agree in writing), either party may commence legal proceedings.

16.2. Costs

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

16.3. Continued performance

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

16.4. Application of clause

- 16.4.1. This clause 16 does not apply to:
- a. legal proceedings by either party for urgent interlocutory relief; or
 - b. action by the Commonwealth under or purportedly under clauses 3, 6, 17 and 21.2.

17. Termination or reduction in scope of Agreement

17.1. Termination for convenience

- 17.1.1. The Commonwealth may by notice, at any time and in its absolute discretion, terminate this Agreement or reduce the scope of the Agreement immediately.
- 17.1.2. The Recipient agrees, on receipt of a notice of termination or reduction, to:
- a. stop or reduce the performance of the Recipient's obligations as specified in the notice;
 - b. take all available steps to minimise loss resulting from that termination or reduction;
 - c. continue performing any part of the Activity not affected by the notice; and

- d. immediately return to the Commonwealth any Funding in accordance with clause 17.1.5, or deal with any such Funding as directed by the Commonwealth.

17.1.3. In the event of termination under clause 17.1.1, the Commonwealth will be liable only:

- a. to pay Funding due and owing to the Recipient under the payment provisions of the Agreement before the date of the notice of termination; and
- b. to reimburse any expenses the Recipient unavoidably incurs that relate directly and entirely to the Activity and not covered by clause 17.1.3.a.

17.1.4. The Commonwealth will not be liable to pay amounts under 17.1.3.a and 17.1.3.b which would, added to any payments already paid to the Recipient under this Agreement, together exceed the Funding set out in Item A.7 of the Schedule and Annexure A.

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

- a. is not legally committed for expenditure by the Recipient in accordance with the Agreement and due and payable by the Recipient by the date that the notice of termination is received; or
- b. has not, in the Commonwealth's opinion, been spent by the Recipient in accordance with the Agreement.

17.1.6. In the event of a reduction in the scope of the Agreement under clause 17.1.1, the Commonwealth's liability to pay any part of the Funding will, unless there is agreement in writing to the contrary, reduce in accordance with the reduction in the Activity.

17.1.7. The Commonwealth's liability to pay any compensation under or in relation to this clause 17.1 is subject to:

- a. the Recipient's compliance with this clause 17.1; and
- b. the Recipient's substantiation of any amount claimed under clause 17.1.3.b.

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

17.2. Termination for fault

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

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

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

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

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

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

17.3. **Preservation of other rights**

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

18. Notices

18.1. Format, addressing and delivery

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

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

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

18.2. When received

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

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

18.2.2. If a notice is received:

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

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

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

19.1. In this clause 19:

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

Building Contractor	has the same meaning as in the Act.
Building Industry Participant	has the same meaning as in the Act.
Building Work	has the same meaning as in subsection 3(4) of the Building Code.
Commonwealth Funded Building Work	means Building Work in items 1-8 of Schedule 1 of the Building Code.
Contractor	means a Building Contractor or Building Industry Participant who the Funding Recipient has entered, or proposes to enter, into a contract with to undertake any of the Works.
Exclusion Sanction	has the same meaning as in subsection 3(3) of the Building Code
Funding	means the funding provided by the Commonwealth to the Funding Recipient.
Funding Recipient	means the entity that the Commonwealth is providing funding or assistance to in relation to building works to which the Building Code applies.
Related Entity	has the same meaning as in subsection 3(2) of the Building Code.
Works	means Commonwealth Funded Building Work that is being indirectly funded by the Commonwealth through the provision of the Funding to the Funding Recipient.

- 19.2. The Funding Recipient must ensure that:
- tender processes and calls for expressions of interest (howsoever described) in respect of Commonwealth Funded Building Work are conducted in a manner consistent with this code of practice; and
 - respondents are only permitted to participate in tender processes where the respondent is not subject to an exclusion sanction.
- 19.3. The Funding Recipient must ensure that any request for expressions of interest or request for tender (howsoever described) for Commonwealth Funded Building Work requires a respondent:
- to confirm that the respondent and any related entity will comply with the Building Code when undertaking the Commonwealth Funded building Work; and

- b. to confirm that the respondent, and any related entities; will comply with the Building Code from the time of lodging an expression of interest or tender response (if not already obligated to do so); and
- c. to confirm that it is not subject to an exclusion sanction at the time of lodging an expression of interest or tender; and
- d. to demonstrate a positive commitment to the provision of appropriate training and skill development for their workforce. Such commitment may be evidenced by compliance with any state or territory government building training policies and supporting the delivery of nationally endorsed building and construction competencies; and
- e. to include details of the number of current apprentice and trainee employees and the number of classes of persons that hold visas under the Migration Act 1958 that are engaged by the respondent, and that are intended to be engaged by the respondent to undertake the Commonwealth Funded Building Work; and
- f. to advise whether the respondent has, within the preceding 3 year period:.
 - i. had an adverse decision, direction or order made by a court or tribunal for a breach of a designated building law, work health and safety law or the Migration Act 1958; or
 - ii. been required to pay any amount under an adjudication certificate (provided in accordance with a law relating to the security of payments that are due to persons in respect of building work) including by any related entity to a building contractor or building industry participant; or
 - iii. owed any unsatisfied judgement debts (including such debts owed by any related entity) to a building contractor or building industry participant.

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

- a. ensure the requirement to have a Workplace Relations Management Plan (WRMP) for the Works approved by ABCC is included in all expression of interest and tender documents; and
- b. on behalf of the funding entity:
 - i. apply to the ABCC to have a WRMP for the Works approved; and
 - ii. ensure that an application to the ABCC for approval of a WRMP for the Works is made in the manner and form required by the ABCC Commissioner; and
 - iii. ensure that the proposed WRMP for the Works is accompanied by any supporting evidence required by the ABCC; and

- iv. obtain and provide additional information to the ABCC when requested, to enable the ABCC to make a decision whether or not to approve the proposed WRMP for the Works.

20. Work Health and Safety

20.1. Use of Commonwealth's premises

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

20.2. Assistance to the Commonwealth

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

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

The Scheme	means the Scheme described at Section 43 of the Building and Construction Industry (Improving Productivity) Act 2016.
Builder	has the meaning given in Section 43(8) of the Building and Construction Industry (Improving Productivity) Act 2016.
Building Work	has the meaning given to it by Section 6 of the Building and Construction Industry (Improving Productivity) Act 2016.
Exclusions	means the building work is prescribed under section 26 of the Fair Work (Building Industry—Accreditation Scheme) Regulation 2016

- 20.3.1. Construction projects that utilise funds provided under this agreement are bound by the application of the Australian Government building and construction

industry Work Health and Safety Accreditation Scheme (the Scheme) and the following conditions:

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

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

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

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

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

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

21. General Provisions

21.1. Constitution

- 21.1.1. The Recipient warrants that the Recipient's Constitution is not, and will not become, inconsistent with this Agreement.
- 21.1.2. The Recipient must provide a copy of the Recipient's Constitution to the Commonwealth, upon request.
- 21.1.3. The Recipient must obtain the Commonwealth's written approval to any amendments to the Recipient's Constitution which may affect the Recipient's eligibility for the Funding or the Recipient's capacity to comply with this Agreement. If the Recipient alters the Constitution in breach of this subclause 21.1.3, the Commonwealth may terminate this Agreement in accordance with clause 17.2 of this Agreement.

21.2. Obligations of Recipient in relation to privacy

- 21.2.1. The Recipient agrees, in conducting the Activity:

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

21.2.2. The Recipient agrees to notify the Commonwealth immediately if it becomes aware of a breach or possible breach of any of its obligations under this clause 21.2.

21.2.3. The provisions of this clause 21.2 survive the termination or expiration of this Agreement.

21.3. **Audit and Access**

21.3.1. The Recipient agrees:

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

21.3.2. The rights referred to in clause 21.3.1. are subject to:

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

21.3.3. The Auditor-General and Information Officer (and their delegates) are persons authorised for the purposes of clause 21.3.1.

21.3.4. This clause 21.3 does not detract from the statutory powers of the Auditor-General or Information Officer.

21.4. **Access to Documents**

21.4.1. In this clause 21.4, 'document' and 'Commonwealth contract' have the same meaning as in the Freedom of Information Act 1982 (Cth). This clause 21.4 only applies if this Agreement is a 'Commonwealth contract', as defined in the Freedom of Information Act 1982 (Cth).

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

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

21.5. **Insurance**

21.5.1. The Recipient agrees:

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

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

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

21.6.1. In this clause 21.6:

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

21.6.2. The Recipient agrees to ensure that:

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

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

21.7. **Conflict of interest**

21.7.1. In this clause 21.7:

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

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

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

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

21.8. **Relationship of parties**

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

21.8.2. The Recipient agrees:

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

21.9. **Waiver**

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

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

21.10. **Variation of Agreement**

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

21.11. **Assignment**

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

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

21.12. **Survival**

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

- a. Intellectual Property;
- b. confidentiality;
- c. security;
- d. privacy;
- e. dealing with copies;
- f. books and records;
- g. audit and access;
- h. an indemnity;
- i. acknowledgement and publicity;
- j. rights or obligations following termination or expiry of the Agreement; or

- k. any other provision which expressly or by implication from its nature is intended to continue.

21.13. **Compliance with Legislation and Policies**

21.13.1. In this clause 21.13:

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

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

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

21.14. **Applicable law and jurisdiction**

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

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

21.15. **Child Safety**

In this Agreement:

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

Child-Related Personnel

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

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

National Principles for Child Safe Organisations

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

National Principles for Child Safe Organisations as published by the Australian Government;

Relevant Legislation

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

Working With Children Check or WWCC

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

Relevant Checks and authority

21.15.1. The Grantee must:

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

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

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

- a. implement the National Principles for Child Safe Organisations;
- b. ensure that all Child-Related Personnel implement the National Principles for Child Safe Organisations;
- c. complete and update, at least annually, a risk assessment to identify the level of responsibility for Children and the level of risk of harm or abuse to Children;
- d. put into place and update, at least annually, an appropriate risk management strategy to manage risks identified through the risk assessment required by this clause 21.15.2;
- e. provide training and establish a compliance regime to ensure that all Child-Related Personnel are aware of, and comply with:
 - i. the National Principles for Child Safe Organisations;
 - ii. the Grantee's risk management strategy required by this clause 21.15.2;
 - iii. Relevant Legislation relating to requirements for working with Children, including Working With Children Checks;

- iv. Relevant Legislation relating to mandatory reporting of suspected child abuse or neglect, however described; and
 - f. provide the Commonwealth with an annual statement of compliance with clauses 21.15.1 and 21.15.2, in such form as may be specified by the Commonwealth.
- 21.15.3. With reasonable notice to the Grantee, the Commonwealth may conduct a review of the Grantee's compliance with this clause 21.15.
- 21.15.4. The Grantee agrees to:
 - a. notify the Commonwealth of any failure to comply with this clause 21.15;
 - b. co-operate with the Commonwealth in any review conducted by the Commonwealth of the Grantee's implementation of the National Principles for Child Safe Organisations or compliance with this clause 21.15; and
 - c. promptly, and at the Grantee's cost, take such action as is necessary to rectify, to the Commonwealth's satisfaction, any failure to implement the National Principles for Child Safe Organisations or any other failure to comply with this clause 21.15.

Executed as a deed

Executed by the parties as evidence of their agreement.

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

Name of signatory *Signature*

Position *Insert Date*

In the presence of:

Name of witness *Signature of witness*

Executed on behalf of **GIANT STEPS**)
MELBOURNE LTD, ACN 606 552)
283 by Barry Irvin who by signing)
warrants they are authorised to bind)
Giant Steps Melbourne Ltd *Signature*

Insert Date

In the presence of:

Name of witness *Signature of witness*

SCHEDULE 1 PARTICULARS

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

A.1. Programme

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

A.2. Project

The project to be undertaken by the Recipient is the Giant Steps Autism School Expansion at 11 Malmsbury Street, Kew VIC, 3101. The Project will include the Activity that the Programme will fund, defined in more detail in item A.5 of the Schedule.

The Project Completion Date is **28 February 2022**.

A.3. Purpose

The Purpose for which the completed Project is required to be used is:

To provide expanded autism services in Melbourne to help meet demand and increase student enrolments across all programs to enable the provision of individualised programs for children and young adults with Autism.

A.4. Operational Period

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

Amount of Funding	Duration of Operational Period
Over \$1,000,000	Five (5) years

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

A.5. Activity

The Activity to be undertaken by the Recipient is the Giant Steps Autism School Expansion project including:

- Planning and design;
- construction of new buildings to facilitate:
 - additional primary and secondary school services;
 - post school services;
 - staff amenities;
 - therapy spaces;
 - training facilities; and

- industrial kitchen
- upgrade school entry portal, administrative areas, and meeting spaces; and
- upgrade existing primary school playground and construct new secondary school playground.

The Activity Period commences on the Date of this Agreement and ends on the Activity Completion Date which is **28 February 2022**.

A.6. Reserved

A.7. Funding and Payment

(clauses 1.1.1, 3.1, 6)

The total Funding for the Activity is **\$9,700,000** GST exclusive. The Funding will be paid as follows:

1. The first payment of Funding specified in the table at Annexure A will not be made until:
 - a) this Agreement has been executed by all Parties and all Milestones specified in the table at Annexure A that relate to the first payment have been achieved to the Commonwealth's satisfaction; and
 - b) all Reports identified in item D of the Schedule as being due on or before the due date for the first payment have been received and accepted by the Commonwealth; and
2. The second and each subsequent payment specified in the table at Annexure A will not be made until:
 - a) all Milestones specified in the table at Annexure A that relate to the relevant payment have been achieved to the Commonwealth's satisfaction;
 - b) all Reports identified in item D of this Schedule as being due on or before the due date for the relevant payment have been received and accepted by the Commonwealth; and
 - c) the Recipient has provided the Commonwealth with evidence that all previously paid Funds have been expended or committed.

Invoicing

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

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

B. Budget

(clause 6.2)

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

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

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

C. Other Contributions
(clause 7)

C.1. Other Contributions

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

D. Reporting
(clauses 1.1.1, 2.6)

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

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

D.1.2 Each Progress Report must contain:

- a. details of progress and performance against the Activity, and the Project (to the extent that it is directly related to the relevant part of the Activity which is being covered by that Progress Report) and evidence of completion of the Milestones listed in Annexure A of the Schedule that are due for completion (including but not limited to photographs to demonstrate completion of Milestones) during the period between the Recipient's previous Progress Report and the due date of this Progress Report (or in the case of the first Progress Report, the period between the Date of this Agreement and the due date of the first Progress Report);
- b. details of mitigating circumstances and remedial action undertaken in the event a Milestone is not met or completed in the manner and/or by the time specified;
- c. copies of any published reports, promotional material, media publicity, pamphlets or other documentation relevant to the Project;
- d. evidence that the Recipient has obtained and/or utilised in-kind Other Contributions specified in the table at Annexure B;
- e. a statement of receipts (which separately identifies any interest earned on the Funding) and expenditure to date in respect of the Funding; and
- f. a statement of receipts and expenditure to date in respect of Other Contributions (excluding in-kind).

D.1.3 The Activity Completion Report must contain:

- a. evidence that the Activity and the Milestones have been completed;
- b. an analysis of the planning, implementation and overall process the Recipient followed to deliver the Activity;
- c. any recommendations on improved practice, relevant to the Recipient's and the Commonwealth's practices, that may assist in the delivery of future projects;
- d. a copy of the current Assets register described in item E.1.2 of this Schedule and a copy of the Real Property register described in item E.2.4 of this Schedule;
- e. evidence that the Recipient has obtained in-kind Other Contributions for the Activity specified in the table at Annexure B;
- f. an up to date Audited Financial Report in respect of the Activity; and
- g. copies of any published reports, promotional material, media publicity, pamphlets or other documentation relevant to the Activity, not already included in the Progress Report/s.
- h. a copy of the Assets register described in item E.1 of this Schedule and a copy of the Real Property register described in item E.2 of this Schedule.

D.1.4 The Project Completion Report must contain:

- a. evidence that the Project has been completed;
- b. an analysis of the planning, implementation and overall process the Recipient followed to deliver the Project;
- c. any recommendations on improved practice, relevant to the Recipient's and the Commonwealth's practices, that may assist in the delivery of future projects;
- d. a copy of the Assets register described in item E.1 of this Schedule and a copy of the Real Property register described in item E.2 of this Schedule.
- e. evidence that the Recipient obtained in-kind contributions specified in the table at Annexure B;
- f. an Audited Financial Report; and
- g. copies of any published reports, promotional material, media publicity, pamphlets or other documentation relevant to the Project, not already included in the Progress Report/s.

In addition, the Project Completion Report must also:

- h. describe the Recipient's activities during the Term;
- i. discuss in detail the conduct, benefits and outcomes of the Activity as a whole and the Activity's results and findings; and
- j. Reserved

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

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

D.2. Audit and certification

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

- a. separate audited statements of receipts and expenditure in respect of the Funding and Other Contributions (excluding in-kind), which must:
 - i. comply with all relevant Australian Accounting Standards
 - ii. separately identify any interest earned on the Funding
 - iii. include a definitive statement made by an Approved Auditor as to whether:
 1. the statements of receipts and expenditure are fair and true
 2. Funding and Other Contributions (excluding in-kind) were held and expended in accordance with this Agreement
- b. a certificate, signed by the Recipient's Chief Executive Officer, Chief Financial Officer or a person authorised by the Recipient to execute documents and legally bind the Recipient by their execution, that:
 - i. all Funding and Other Contributions (excluding in-kind) received was expended for the purpose of the Activity and Project and expended and held in a manner in accordance with this Agreement
 - ii. salaries and allowances paid to persons involved in the Activity are in accordance with any applicable award or agreement in force under any relevant Law on industrial or workplace relations.

D.3. Other Reports

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

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

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

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

E.1. Assets

E.1.1. For the purposes of Clause 9, the Recipient may create, acquire or upgrade the following Assets:

None Specified

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

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

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

E.2. Real Property

E.2.1. The Real Property includes the Giant Steps Autism School Expansion.

E.2.2. The Capital Works includes design, construction and fit-out of the Real Property at the Works Location.

E.2.3. The Works Locations includes 11 Malmsbury Street, Kew, VIC, 3101

E.2.4. The Recipient must for the Term of this Agreement maintain a Real Property Register in the following form and containing the following information:

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

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

F. Insurance
(clause 21.5)

The Recipient must maintain:

- a. workers compensation insurance as required by law where the Recipient carries out activities under this Agreement;
- b. public liability insurance to the value of at least \$10 million for each and every claim, or occurrence giving rise to a claim, in respect to activities undertaken under this Agreement, where occurrence means either a single occurrence or a series of occurrences if these are linked or occur in connection with one another from one original cause, as the case may be; and
- c. insurance against any loss or damage to an Asset or Real Property for its full replacement cost including where relevant the costs of demolition and removal of debris and the cost of architects, engineers and other consultants.

G. Reserved

H. Acknowledgement and publicity
(clause 14)

- H.1.1 If the Recipient erects or maintains any signage in relation to the Project, the signage must be approved by the Commonwealth prior to use and contain an acknowledgement of the Funding as required under Clause 14 of this Agreement. Any signage must remain in place during the Operational Period for the Project as specified in Item A.4. Signage for the Activity may be paid from the Budget if approved by Us. Signage for any other part of the Project must be at the Recipient's own cost.
- H.1.2 If a Federal, State or Local Government election is announced, the Recipient must cover any sign that is displayed within 100 metres of a polling place with an opaque (impenetrable to sight), durable and water repellent material from a period not less than 48 hours before the commencement of polling at that polling place until the polls close.
- H.1.3 The Recipient must include the Commonwealth logo in all signage, publications and promotional activities related to the Activity.
- H.1.4 The Recipient must not use the Commonwealth's logo without the Commonwealth's approval. If the Commonwealth provides approval for the Recipient's use of the Commonwealth's logo, the Recipient must use it in accordance with the Commonwealth's Print Style Guidelines (as advised by the Commonwealth).

- H.1.5 All the Recipient's publicity, announcements and media releases relating to the Activity must be cleared through the Commonwealth's contact officer specified at item L of the Schedule with at least 10 Business Days' notice, before release.
- H.1.6 The Commonwealth reserves the right to publicise and report on the provision of Funding to the Recipient, including progress on completing the Activity and the Project. The Commonwealth may do this by including the information specified in clause 14.2 in media releases, general announcements about the Funding and in annual reports and in electronic media.
- H.1.7 The Recipient must conduct an official opening of the completed Activity and Project unless otherwise agreed by the Commonwealth.
- H.1.8 The Recipient must provide to the Commonwealth with at least 3 options for dates for the official opening, or any other milestone events that the Recipient chooses to conduct (e.g. stage completion), for the Activity and the Project. These dates must be provided at least 56 days prior to the first proposed date for each event to be conducted.
- H.1.9 The date of official openings or other official public function for the completed Activity and Project must be agreed by the Commonwealth.
- H.1.10 The Recipient must invite the Commonwealth's representative to officiate at any official opening or other official public function relating to the Activity or the Project.
- H.1.11 The Commonwealth Minister's prior agreement must be sought, to invite any other Commonwealth or State elected official or other officials to attending either function. This invitation must be provided to the Commonwealth no later than 56 days before the date of the official opening or other official public function relating to the Activity or the Project.
- H.1.12 The Recipient must coordinate requests for the Commonwealth's agreement to the date of official openings and requests for Commonwealth representation at official openings or other official functions relating to the Activity or the Project through the Commonwealth's contact officer specified at item L of the Schedule.

I. Reserved

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

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

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

- Migration Act 1958
- Work Health and Safety Act 2011.

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

Community Development Grants Programme – Grant Programme Guidelines

K. Statutory Approvals

(clause 2A.2)

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

L. Notices

(clause 18.1)

The Commonwealth's details for notices are as follows:

Name: General Manager
Regional Programs Branch

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

Email: CDG@infrastructure.gov.au

The Recipient's details for notices are as follows:

Name: s47F

Position: s47F

Address: s47F

Telephone: s47F

E-mail: s47F

M. Applicable Law

(clause 21.14)

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

N. Confidential Information

(clause 13)

Commonwealth's Confidential Information

Agreement Provisions/Schedules/Attachments

None Specified

Agreement related material

None Specified

Recipient’s Confidential Information

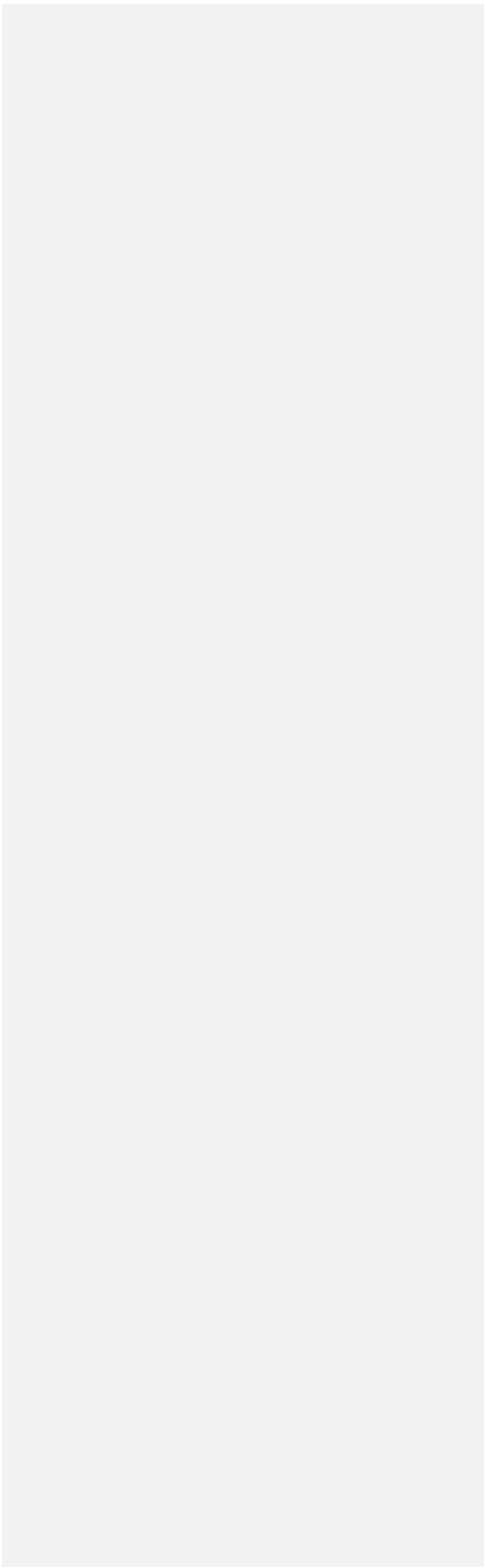
Agreement Provisions/Schedules/Attachments

None Specified

Agreement related material

None Specified

DRAFT



ANNEXURE A

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

Report	Milestone(s) / Information covered by the Report	Milestone Completion Date	Payment amount (GST Exclusive)	Due Date for Report	Due Date for Funding Payment
Progress Report 1	<p>Evidence acceptable to the Commonwealth that the following have been achieved:</p> <ul style="list-style-type: none"> confirmation of final designs; confirmation of final costs; confirmation that the construction phase has commenced; and 10 per cent of the Project is completed and certified by the Project Manager, Quantity Surveyor, or similar. 	<p>XXXX</p> <p>(Note: the number of milestones & completion dates & payment amounts are negotiable)</p>	\$970,000	<p>XXXX</p> <p>(Note: report due date is 1 month after milestone date)</p> <p>(Note – if milestone requirements are achieved earlier, reports can be submitted earlier & payments made earlier)</p>	<p>XXXX</p> <p>(Note: the payment date is approx 2 weeks after report due date)</p>

Commented [KN1]: Please note the payment amount should match the percentage completion amount

Report	Milestone(s) / Information covered by the Report	Milestone Completion Date	Payment amount (GST Exclusive)	Due Date for Report	Due Date for Funding Payment
Progress Report 2	<p>Evidence acceptable to the Commonwealth that the following have been achieved:</p> <ul style="list-style-type: none"> Confirmation that the contractor is compliant with the Code for the Tendering and Performance of Building Work 2016 and accredited under the Australian Government Building and Construction WHS Accreditation Scheme; and <> per cent of the Project is completed and certified by the Project Manager, Quantity Surveyor, or similar. 	XXXX	\$XXXX	XXXX	XXXX
Progress Report 3	<p>Evidence acceptable to the Commonwealth that the following have been achieved:</p> <p><> per cent of the Project is completed and certified by the Project Manager, Quantity Surveyor, or similar.</p>	XXXX	\$XXXX	XXXX	XXXX
Progress Report 4	<p>Evidence acceptable to the Commonwealth that the following have been achieved:</p> <p><> per cent of the Project is completed and certified by the Project Manager, Quantity Surveyor, or similar.</p>	XXXX	\$XXXX	XXXX	XXXX
Progress Report 5	<p>Evidence acceptable to the Commonwealth that the following have been achieved:</p> <p><> per cent of the Project is completed and certified by the Project Manager, Quantity Surveyor, or similar.</p>	XXXX	\$XXXX	XXXX	XXXX

Report	Milestone(s) / Information covered by the Report	Milestone Completion Date	Payment amount (GST Exclusive)	Due Date for Report	Due Date for Funding Payment
Progress Report 6	<p>Evidence acceptable to the Commonwealth that the following have been achieved:</p> <ul style="list-style-type: none"> an Event Invitation has been submitted to the Department as required at Item H of the Schedule; and < > per cent of the Project is completed and certified by the Project Manager, Quantity Surveyor, or similar. 	XXXX	\$XXXX	XXXX	XXXX
Project Completion Report	<p>Evidence acceptable to the Commonwealth that the following has been achieved:</p> <ul style="list-style-type: none"> the Activity, at Item A.5 of the Schedule, is complete; the Project, at Item A.2 of the Schedule, is complete; all approvals required to enable public access and use of the facility have been met; and the Project is fully Operational. 	30 June 2021	\$970,000	30 September 2021	13 August 2021

Note: the project completion report due date needs to be 3 months after the milestone completion date to allow sufficient time for the Audited Financial report

Commented [KN2]: Please note the final payment amount needs to be at least 10%

ANNEXURE B

BUDGET FOR THE EXPENDITURE OF CDG FUNDING		
Cost item	Description	Amount (GST exclusive)
Design, construction & fit out	Giants Steps Autism School Expansion	\$9,700,000
Funding (A)		\$9,700,000

OTHER CONTRIBUTIONS (FINANCIAL)			
Name of Contributor	Cost Item	Description of item	Amount (GST exclusive)
Gi			
47G		Other Contributions (Financial) (B)	

TOTAL COST ESTIMATE (A + B) (GST exclusive):	
---	--

OTHER CONTRIBUTIONS (IN-KIND)	
Name of Contributor	Description of Other Contribution (In-kind)
N/A	N/A



Australian Government

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

DEED OF AGREEMENT

**FUNDING AGREEMENT IN RELATION TO THE GIANT STEPS AUTISM
SCHOOL EXPANSION**

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

Giant Steps Melbourne Ltd
ABN 46 606 552 283

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FUNDING AGREEMENT (LONG FORM)

FUNDING AGREEMENT IN RELATION TO THE GIANT STEPS AUTISM SCHOOL EXPANSION (CDG1085)

Parties

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

1. **The Commonwealth of Australia** as represented by the Department of Infrastructure, Transport, Regional Development and Communications
ABN 86 267 354 017, 111 Alinga Street, Canberra, Australian Capital Territory
(**Commonwealth**)
2. **Giant Steps Melbourne Ltd**
ABN 46 606 552 283, 11 Malmsbury Street, Kew, VIC 3101
(**Recipient**)

Context

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

Operative provisions

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

1. Interpretation

1.1. Definitions

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

ABN	means (Australian Business Number) as set out in section 41 of the A New Tax System (Australian Business Number) Act 1999 (Cth).
Activity	means the Activity described in Item A and includes the provision to the Commonwealth of the Activity Material;
Activity Completion date	means the date that the Activity must be completed by as set out in item A.5 of the Schedule.
Activity Material	means any Material: a. created by the Recipient for the purpose of this Agreement; b. provided or required to be provided to the Commonwealth under the Agreement; or c. derived at any time from the Material referred to in paragraphs a or b, and includes d. any Existing Material incorporated in the Material referred to in paragraphs b or c; and e. any Reports;
Activity Objectives	means the objectives of the Activity described in Item A.6 of the Schedule;
Activity Period	means the period specified in Item A during which the Activity must be completed;
Agreement	means this document and includes any Schedules and Annexures;
Annexure	means any annexure to Schedule 1;

Approved Auditor	means a person who is: <ul style="list-style-type: none">a. registered as a company auditor under the Corporations Act 2001 (Cth) or an appropriately qualified member of the Institute of Chartered Accountants in Australia or of CPA Australia;b. not a principal, member, shareholder, officer, agent, subcontractor, employee or related entity of the Recipient or of a related body corporate (the terms 'related entity' and 'related body corporate' have the same meaning as in section 9 of the Corporations Act 2001 (Cth)); andc. not the Recipient's Qualified Accountant;
Asset	means any item of property, purchased, leased, hired, financed, created or otherwise brought into existence either wholly or in part with use of the Funding, which has a value of over \$5,000 exclusive of GST, but excludes any Intellectual Property Rights and Real Property (including any property once it becomes part of the structure of Real Property).
Auditor-General	means the office established under the Auditor-General Act 1997 (Cth) and includes any other entity that may, from time to time, perform the functions of that office;
Australian Accounting Standards	refers to the standards of that name maintained by the Australian Accounting Standards Board created by section 226 of the Australian Securities and Investments Commission Act 2001 (Cth);
Australian Auditing Standards	refers to the standards made by the Auditing and Assurance Standards Board created by section 227A of the Australian Securities and Investments Commission Act 2001 (Cth);
Australian Privacy Principle	has the same meaning as it has in the Privacy Act 1988 (Cth).
Budget	means the budget set out in Annexure B of the Schedule;
Business Day (in a place)	means a weekday other than a public holiday in the place specified or, if no place is specified, in the State or Territory specified in Item M of the Schedule;
Capital Works	means any part of the Activity that comprises construction and building activities and includes the Capital Works listed at item E.2.2 of the Schedule.

Commence Construction	means to begin a continuous programme of on-site construction for the Activity's Capital Works. For the purposes of this definition, only significant and continuous site preparation work such as major clearing or excavation or placement or assembly, or installation of facilities or equipment at the site constitute a programme of on-site construction.
Commonwealth	where the context permits, includes officers, delegates, employees and agents and successors of the Department of Infrastructure, Transport, Regional Development and Communications;
Commonwealth Material	means any Material: <ul style="list-style-type: none">a. provided by the Commonwealth to the Recipient for the purposes of this Agreement; orb. derived at any time from the Material referred to in paragraph a;
Completion Date	means the day after the Recipient has done all that it is required to do under clauses 2 and 6 of this Agreement to the satisfaction of the Commonwealth;
Constitution	means (depending on the context): <ul style="list-style-type: none">a. a company's constitution, which (where relevant) includes rules and any amendments that are part of the company's constitution, orb. in relation to any other kind of body:<ul style="list-style-type: none">i. the body's charter, rules or memorandum, orii. any instrument or Law constituting or defining the constitution of the body or governing the activities of the body or its members.
Cost Estimate	means the estimate for the Project which is the sum of the Funding and Other Contributions specified in Annexure B to the Schedule.
Cost Item	means an item of expenditure specified in the Budget at Annexure B to the Schedule.

Confidential Information	means: <ul style="list-style-type: none">a. the information described in Item N; andb. information that the parties agree in writing after the Date of this Agreement is confidential information for the purposes of this Agreement;
Date of this Agreement	means the date written on the execution page of this Agreement, or if no date or more than one date is written there, then the date on which the Agreement is signed by the last party to do so;
Depreciated	means the amount representing the reduction in value of an Asset calculated in accordance with Australian Accounting Standards;
Director	means any of the following: <ul style="list-style-type: none">a. a person appointed to the position of a director or alternate director and acting in that capacity for a body corporate within the meaning of the Corporations Act 2001 (Cth) regardless of the name given to their position;b. a member of the governing committee of an Aboriginal and Torres Strait Islander corporation under the Corporations (Aboriginal and Torres Strait Islander) Act 2006 (Cth);c. a member of the committee of an organisation incorporated pursuant to State or Territory laws relating to the incorporation of associations; ord. a member of the board, committee or group of persons (however described) that is responsible for managing or overseeing the affairs of the body corporate;
Dispose	means to sell, licence, lease or sublease, or otherwise transfer or give up ownership or the right to occupy or use, or to enter into an agreement to do any of the preceding acts and 'Disposal' means the method of so disposing;
Existing Material	means all Material in existence prior to the Date of this Agreement: <ul style="list-style-type: none">a. incorporated in;b. supplied with, or as part of; orc. required to be supplied with, or as part of, the Activity Material;

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

Law	<p>includes:</p> <ol style="list-style-type: none">Acts of the Commonwealth and the State(s) and Territory(s) in which the Activity will be undertaken, and any other relevant State or Territory;ordinances, regulations, by-laws, orders and proclamations or other instruments of legal effect made under those Acts referred to in paragraph (a);directions by any person exercising statutory powers regarding the Recipient or the Activity, including the Real Property; andall the requirements, standard, approvals, licences, registrations or permits of any government (including local government) department, authority, agency or regulatory body that apply to the Activity, including the Real Property;
Material	<p>means anything in relation to which Intellectual Property rights arise;</p>
Milestone	<p>means a milestone or stage of completion of the Activity as set out in Annexure A of this Agreement;</p>
Moral Rights	<p>includes the following rights of an author of copyright Material:</p> <ol style="list-style-type: none">the right of attribution of authorship;the right of integrity of authorship; andthe right not to have authorship falsely attributed;
Open Access Licence	<p>means a licence to the public on broad open access terms that allows any member of the public to perform a wide range of acts in respect of the material subject to certain restrictions. An Open Access Licence includes any Australian Government open access licence and any Creative Commons Attribution licence (see http://creativecommons.org.au/learn-more/licences);</p>
Operational	<p>means that the completed Project is operating in a way that enables it to achieve its Purpose;</p>
Operational Period	<p>means the period during which the Recipient must keep the completed Project Operational;</p>

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

Report	means Activity Material that is provided to the Commonwealth for reporting purposes as stipulated in Item D of the Schedule;
Real Property	<p>means:</p> <p>a. any land, buildings or fixtures including the Capital Works (both during and after completion) and the Works Locations; and</p> <p>b. any interest in the property specified in paragraph (a);</p> <p>that are purchased, leased, upgraded or otherwise created or brought into existence wholly or in part with the use of the Funding and includes the property listed at item E.2.1 of the Schedule.</p>
Schedule	means the schedule to this Agreement and may include Annexures and incorporate other documents by reference;
Specified Personnel	means the Recipient's Personnel specified in Item I as Personnel required to undertake all or any part of the Activity;
Term	refers to the period described in clause 1.4.1 of this Agreement;
Third Party Interest	means any legal or equitable right, interest, power or remedy in favour of any person other than the Commonwealth or the Recipient in connection with the Agreement, including any right of possession, receivership, control or power of sale, and any mortgage, charge, security or other interest;
Undepreciated	in relation to the value of an Asset, means the value of the Asset which has not been Depreciated; and
Works Location	means a location where the Capital Works are to be undertaken including any premises in, or land on, which those Capital Works are to be undertaken and includes a Works Location listed in item E.2.3 of the Schedule.

1.2. **Interpretation**

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

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

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

1.3. Guidance on construction of Agreement

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

1.4. Duration of Term

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

2. Activity, Project and Operational Period

2.1. Conduct of Activity

2.1.1. The Recipient agrees to carry out the Activity:

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

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

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

2.2. Liaison and monitoring

2.2.1. The Recipient agrees to:

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

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

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

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

2.3. **Subcontractors**

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

2.4. **Reserved**

2.5. **Responsibility of the Recipient**

2.5.1. The Recipient is fully responsible for the performance of the Activity and for ensuring compliance with the requirements of this Agreement, and will not be relieved of that responsibility because of any:

- a. involvement by the Commonwealth in the performance of the Activity;
- b. subcontracting of the Activity;
- c. acceptance by the Commonwealth of Specified Personnel; or
- d. payment of any amount of Funding to the Recipient.

2.6. **Reports**

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

2.7. **Project**

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

2.8. **Operational Period**

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

2A. Capital Works

2A.1. **Performance**

2A.1.1 The Recipient must perform the Capital Works:

- a. in accordance with the designs and plans submitted by the Recipient to the Commonwealth;
- b. in a good and workmanlike manner by qualified tradespeople; and
- c. with a minimum of delay.

2A.2. **Applicable Laws**

2A.2.1 The Recipient warrants and agrees that the Capital Works (whether undertaken before, on or after the Date of this Agreement) have been (if applicable) and will be carried out in accordance with all applicable Laws including, but not limited to, all necessary planning and regulatory approvals.

2A.2.2 The Recipient agrees to ensure that:

- a. the Works Locations comply at all times with all applicable Laws regarding their use as a site for the Capital Works; and
- b. the completed Capital Works comply with all Laws relating to their ongoing use throughout the Operational Period.

2A.3. Commence Construction

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

2A.4. Completion

2A.4.1 The Recipient must:

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

3. Funding

3.1. Payment of Funding

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

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

- 3.2.1. Without limiting the Commonwealth's rights, the Commonwealth may suspend any payment in whole or in part until the Recipient has performed its obligations under this Agreement.
- 3.2.2. Reserved.
- 3.2.3. The Commonwealth may reduce the amount of Funding payable under this Agreement where the Recipient:

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

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

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

4. Taxes, duties and government charges

- 4.1.1. Except as provided by clause 4, the Recipient agrees to pay all taxes, duties and government charges imposed or levied in Australia or overseas in connection with the performance of this Agreement.
- 4.1.2. Unless otherwise indicated, any Funding and all other consideration for any supply made under this Agreement is exclusive of any GST imposed on the supply.
- 4.1.3. If one party (the supplier) makes a taxable supply to the other party (the taxable supply recipient) under this Agreement, on receipt of a tax invoice from the supplier, the taxable supply recipient will pay without setoff an additional amount to the supplier equal to the GST imposed on the supply in question.
- 4.1.4. No party may claim or retain from the other party any amount in relation to a supply made under this Agreement for which the first party can obtain an input tax credit or decreasing adjustment.

5. Debt and Interest

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

6. Management of Funding

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

6.2. Budget

6.2.1. The Recipient agrees to only spend the Funding for the Activity and in accordance with the Budget.

6.2.2. Subject to clauses 6.2.3 and 6.2.4, the Recipient may spend the Funding on any separate category of expenditure item within the Budget.

6.2.3. The Recipient agrees to obtain prior written approval from the Commonwealth for any transfer of Funding between categories of expenditure items within the Budget which exceed a percentage of the total Budget as specified in Item B of the Schedule.

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

6.3. Account and financial records

6.3.1. The Recipient agrees to ensure that the Funding is held in an account in the Recipient's name and which the Recipient solely controls, with an authorised deposit-taking institution authorised under the Banking Act 1959 (Cth) to carry on banking business in Australia and that is an account that complies with any other requirements specified in Item A.7 in the Schedule.

6.3.2. Reserved

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

- a. notify the Commonwealth, prior to the receipt of any Funding, of details sufficient to identify the account;
- b. on notification from the Commonwealth, provide the Commonwealth and the authorised deposit-taking institution with a written authority for the Commonwealth to obtain any details relating to any use of the account;
- c. if the account changes, notify the Commonwealth within 10 Business Days of the change occurring and provide the Commonwealth with details of the new account;
- d. Reserved.

6.3.4. The Recipient agrees to:

- a. keep financial accounts and records relating to the Funding and the Project and Activity that identify
 - i. all receipts and payments related to the Project and Activity; and
 - ii. all interest earned on the Funding.
- b. unless otherwise notified by the Commonwealth, prepare financial statements for the Project and Activity in accordance with Australian Accounting Standards including:

- i. Reserved; and
- ii. a register of the Assets and a register of Real Property created, acquired, written-off or Disposed of during the Financial Year to date compared with the Budget; and

6.4. **Use as security**

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

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

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

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

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

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

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

6.5.4. If the completed Project ceases to be Operational during the Operational Period, the Commonwealth may give the Recipient notice requiring the Recipient to repay all or part of the Funding to the Commonwealth within the period specified in the notice and the Recipient must comply with that notice.

6.5.5. On completion of the Project, if the cost of the completed Project is less than the Cost Estimate, the Commonwealth may give the Recipient notice requiring the

Recipient to return any unexpended Funding to the Commonwealth within the period specified in the notice and the Recipient must comply with that notice.

- 6.5.6. This clause survives termination or expiry of the Agreement.

7. Other Contributions and Cost Savings

7.1. Other Contributions

- 7.1.1. The Recipient must, within six (6) months of the date of the Agreement provide to the Commonwealth satisfactory written evidence that confirms the Other Contributions identified in Item C and detailed in Annexure B of the Schedule, including the amounts to be provided, the due dates for each of these amounts and the terms and conditions of the provision of the Other Contributions.

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

- a. suspend payment of the Funding or an instalment of the Funding until the Other Contributions are obtained (as the case may be);
- b. reduce the total Funding payable under this Agreement by an amount that, in the Commonwealth's opinion, represents an equivalent proportion of the overall reduction in the total value of the Other Contributions (as the case may be) resulting from the failure; or
- c. terminate this Agreement in accordance with clause 17.2.

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

- 7.1.4. The Recipient agrees to notify the Commonwealth within 10 Business Days of entering into any arrangement under which the Recipient is entitled to receive any additional monetary or in-kind contributions in respect of the Project and Activity that are not identified as Other Contributions in Item C and Annexure B of the Schedule. Any such additional contribution that the Recipient becomes entitled to receive after the Date of this Agreement constitutes Other Contributions for the purposes of the Agreement (and Schedule 1 is deemed to be varied accordingly) on the date on which the Recipient notifies the Commonwealth of that contribution under this clause 7.1.4.

- 7.1.5. If the Recipient is provided with or obtains (and/or was required to provide or obtain) any Other Contributions and the cost of the completed Project is less than the Cost Estimate, the Commonwealth may give the Recipient notice requiring the Recipient to return to the Commonwealth, within the period specified in the notice, an amount equal to the Commonwealth's Proportion of the Cost Savings. In this subclause 7.1.5, 'the Commonwealth's Proportion of the Cost Savings' means $\text{savings} \times \% \text{ where:}$

- a. $\text{savings} = (\text{the Cost Estimate} - \text{the actual cost of the Project} - \text{any Funds previously repaid to the Commonwealth under this Agreement}); \text{ and}$

- b. $\% = (\text{the Funding} \div (\text{the maximum Funding} + \text{the maximum Other Contributions excluding any in-kind Other Contributions}))$

7.1.6. If the Recipient receives a notice given by the Commonwealth under subclause 18, the Recipient must comply with the notice within the period specified within the notice.

7.2. **Cost Savings**

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

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

8. **Statutory Approvals**

- 8.1 The Recipient must obtain all necessary statutory approvals in relation to the Project, including those specified in item K of the Schedule, and the Recipient must give the Commonwealth, within six (6) months after the Date of this Agreement, satisfactory written evidence that these statutory approvals have been obtained.
- 8.1A The Recipient must also provide satisfactory written evidence that the statutory approvals obtained under subclause 8.1 are sufficient for the Recipient to Commence Construction within six months after the Date of this Agreement.
- 8.2 If the Recipient does not comply with the requirement in subclause 8.1, the Commonwealth may at the Commonwealth's sole discretion:
 - a. suspend payment of the Funding until the evidence of the statutory approvals referred to in subclause 8.1 has been received; or
 - b. terminate this Agreement in accordance with clause 17.2.

9. **Assets**

9.1. **Acquisition of Asset**

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

Asset, then the Recipient must ensure that it owns any Asset acquired with the Funding.

9.2. Terms applicable to Asset

9.2.1. If the Commonwealth owns the Asset clauses 9.4 and 9.6.2 do not apply.

9.2.2. If the Asset is owned by a third party then the Recipient agrees to ensure that the terms of the lease, hire or finance arrangement are consistent with clause 9.3, and clauses 9.4, 9.5 and 9.6 do not apply.

9.3. Recipient's responsibilities for Asset

9.3.1. Throughout the Term, the Recipient agrees to:

- a. use any Asset in accordance with this Agreement and for the purposes of the Activity;
- b. not encumber or Dispose of any Asset, or deal with or use any Asset other than in accordance with this clause 9 without the Commonwealth's prior written approval;
- c. hold all Assets securely and safeguard them against theft, loss, damage, or unauthorised use;
- d. maintain all Assets in good working order;
- e. maintain all appropriate insurances for all Assets to their full replacement cost noting the Commonwealth's interest, if any, in the Asset under the Agreement;
- f. if required by law, maintain registration and licensing of all Assets;
- g. be fully responsible for, and bear all risks relating to, the use or Disposal of all Assets; and
- h. if specified in Item E, maintain an Assets register in the form and containing the details as described in Item E and as and when requested by the Commonwealth, provide copies of the Assets register to the Commonwealth.

9.4. Sale or Disposal of Asset during Term

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

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

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

9.5. Loss, damage, etc of Asset

9.5.1. If any of the Assets are lost, damaged or destroyed, the Recipient agrees to promptly reinstate the Assets including from the proceeds of the insurance, and

this clause 9 continues to apply to the reinstated Assets. The proportion of any surplus from the proceeds of the insurance, which reflects the proportion of the cost of the Asset that was funded from the Funding, must be notified to the Commonwealth and accounted for as Funding and used for the Activity.

9.6. Dealing with Asset

- 9.6.1. On expiry of the Activity Period or earlier termination of the Agreement, the Commonwealth may require the Recipient to deal with an Asset as the Commonwealth may, at the sole discretion of the Commonwealth, notify the Recipient.
- 9.6.2. Subject to clause 9.6.1, if on expiry of the Activity Period or the earlier termination of this Agreement, an Asset has not been fully Depreciated, the Commonwealth may, by written notice, require the Recipient to:
- a. pay to the Commonwealth within 20 Business Days of the expiry of the Activity Period or earlier termination of the Agreement, an amount equal to the proportion of the Undepreciated value of the Asset that is equivalent to the proportion of the cost of the Asset that was funded from the Funding;
 - b. sell the Asset for the best price reasonably obtainable and pay to the Commonwealth within 20 Business Days of the sale the proportion of the proceeds of the sale that is equivalent to the proportion of the cost of the Asset (less an amount equal to the reasonable Disposal costs incurred by the Recipient) that was funded from the Funding; or
 - c. continue to use the Asset for the purposes, and in accordance with any conditions, notified by the Commonwealth.

10. Real Property

10.1. Approval

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

10.2. Outgoings

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

10.3. Recipient's Responsibilities for Real Property

- 10.3.1 Throughout the Term of this Agreement, including the Operational Period, the Recipient agrees to:
- a. hold the Real Property securely and safeguard it against theft, loss, damage, or unauthorised use;
 - b. maintain the Real Property in good condition;
 - c. maintain all appropriate insurances for the Real Property to its full replacement cost and use that insurance to rectify any damage to or

destruction to the Real Property and this clause 10.3.1 continues to apply to the Real Property once rectified. The Recipient must notify the Commonwealth of any surplus from the proceeds of this insurance and the Recipient must use and account for that surplus as Funding under this Agreement;

- d. if required by any Law, maintain registration and licensing of the Real Property;
- e. be fully responsible for, and bear all risks relating to, the use or Disposal of all Real Property;
- f. if specified in item E.2 of the Schedule, maintain a Real Property register in the form and containing the details as described in that item of the Schedule; and
- g. as and when requested by the Commonwealth, provide copies of the Real Property register to the Commonwealth.

10.4. Recipient's Use of Real Property

10.4.1. The Recipient agrees to ensure that:

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

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

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

10.5. Third Party Interests

10.5.1. If a third party has proprietary or other rights or interests in relation to any Real Property, the Recipient agrees to:

- a. enter into legally binding written agreements under which all such third parties agree to:
 - i. the use of the Works Locations to undertake the Capital Works throughout the Activity Period;
 - ii. the use of the Works Locations, and completed Capital Works for the Purpose specified in item A.3 of the Schedule throughout the Operational Period; and

- iii. the use of any other Real Property for the Activity throughout the Activity Period and for the Purpose specified in item A.3 of the Schedule throughout the Operational Period;
- b. not do anything that would give any such third party a right to rescind its agreement to one or more of the uses specified in paragraph (a); and
- c. within 10 Business Days of a request from the Commonwealth, provide evidence to the Commonwealth that the Recipient has complied with the requirements of this subclause 10.5.

10.6. Dealing with Real Property

10.6.1. If:

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

then:

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

10.6.2. If the Recipient fails to pay the Commonwealth an amount as required by a notice given under subclause 10.6.1:

- a. the Recipient must pay the Commonwealth the Interest on the unpaid amount from the date it was due, for the period it remains unpaid; and
- b. that amount, and Interest owed under this subclause 10.6.2, will be recoverable by the Commonwealth as a debt due to the Commonwealth by the Recipient.

10.6.3. The provisions relating to this clause 10 shall survive the termination or expiration of this Agreement.

11. Records

11.1. Keeping Records

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

11.2. Retention of Records

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

12. Intellectual Property

12.1. Use of Commonwealth Material

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

12.2. Rights in Activity Material

- 12.2.1. Subject to this clause 12, Intellectual Property in Activity Material vests or will vest in the Recipient.
- 12.2.2. Clause 12.2.1 does not affect the ownership of Intellectual Property in any Commonwealth Material incorporated into the Activity Material.
- 12.2.3. The Recipient grants to (or will procure for) the Commonwealth a permanent, irrevocable, royalty-free, worldwide, non-exclusive licence (including a right of sublicense) to use, reproduce, exploit, communicate, adapt and distribute the Activity Material for any purpose.
- 12.2.4. The Recipient agrees that the licence granted in clause 12.2.3 includes a right for the Commonwealth to licence the Activity Material to the public under an Open Access Licence.
- 12.2.5. The Recipient agrees, on request by the Commonwealth, to create, sign, execute or otherwise deal with any document necessary or desirable to give effect to this clause 12.
- 12.2.6. The Recipient warrants that:
- a. it is entitled; or
 - b. it will be entitled at the relevant time,

to deal with the Intellectual Property in the Activity Material in the manner provided for in this clause 12.

12.3. **Moral Rights**

12.3.1. In this clause 12.3:

- Permitted Acts** means any of the following classes or types of acts or omissions:
- a. using, reproducing, adapting or exploiting all or any part of the Activity Material, with or without attribution or authorship;
 - b. supplementing the Activity Material with any other Material;
 - c. using the Activity Material in a different context to that originally envisaged; and
 - d. releasing the Activity Material to the public under an Open Access Licence;
- but does not include false attribution of authorship.

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

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

12.3.3. Where clause 12.3.1 does not apply, the Recipient agrees:

- a. to obtain from each author a written consent which extends directly or indirectly to the performance of the Permitted Acts by the Commonwealth or any person claiming under or through the Commonwealth (whether occurring before or after the consent is given) and, upon request, will provide the executed original of any such consent to the Commonwealth; and
- b. to ensure that each author's attention is drawn to the Commonwealth's general policies and practices regarding Moral Rights.

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

13. Confidential Information

13.1. **Confidential Information not to be disclosed**

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

13.2. **Written Undertakings**

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

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

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

13.3. **Exceptions to Obligations**

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

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

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

13.3.3. In the circumstances referred to in clauses 13.3.1.a, 13.3.1.b and 13.3.1.e, the disclosing party agrees not to provide the information unless the receiving person agrees to keep the information confidential (subject to the exceptions in this clause 13.3).

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

13.4. **Period of Confidentiality**

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

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

13.5. No reduction in Privacy Obligations

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

14. Acknowledgement and publicity

14.1. Acknowledgement of support

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

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

14.2. Right to publicise Funding

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

14.3. No restriction on advocacy activities

- 14.3.1. The Commonwealth confirms that, subject to clause 14.3.2:
- a. no right or obligation arising under this Agreement should be interpreted as limiting the Recipient's ability to enter into public debate or criticism of the Commonwealth of Australia or its agencies, employees, servants or agents;
 - b. the Commonwealth does not require the Recipient to obtain advance approval of any involvement by the Recipient in public debate or advocacy activities.
- 14.3.2. Nothing in this clause 14.3 limits or derogates from the Recipient's obligations under clauses 13 and 21.2.

15. Liability

15.1. Proportionate liability regime

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

15.2. Indemnity

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

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

arising from:

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

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

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

15.3. Meaning of 'fault'

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

16. Dispute resolution

16.1. Procedure for dispute resolution

16.1.1. The parties agree that a dispute arising under this Agreement will be dealt with as follows, and that, subject to clause 16.4, neither party will commence legal proceedings in relation to that dispute until this procedure is completed:

- a. the party claiming that there is a dispute will give the other party a notice setting out the nature of the dispute;
- b. within five (5) Business Days (or such other period as agreed by the parties in writing) each party will nominate a representative not having any prior involvement in the dispute;
- c. the representatives will try to settle the dispute by direct negotiation between them;

- d. failing settlement within a further 10 Business Days or such other period as agreed by the parties in writing (or failure of one or both parties to nominate a representative within the period set out in clause 16.1.1.b), the parties may agree to refer the dispute to an independent third person with power:
 - i. to intervene and direct some form of resolution, in which case the parties will be bound by that resolution; or
 - ii. to mediate and recommend some form of non-binding resolution;
- e. the parties will co-operate fully with any process instigated under clause 16.1.1.d in order to achieve a speedy resolution; and
- f. if the parties have been unable to agree to refer the dispute to an independent third person, or they have agreed and a resolution is not reached within a further 20 Business Days (or such other period as the parties) may agree in writing), either party may commence legal proceedings.

16.2. Costs

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

16.3. Continued performance

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

16.4. Application of clause

- 16.4.1. This clause 16 does not apply to:
- a. legal proceedings by either party for urgent interlocutory relief; or
 - b. action by the Commonwealth under or purportedly under clauses 3, 6, 17 and 21.2.

17. Termination or reduction in scope of Agreement

17.1. Termination for convenience

- 17.1.1. The Commonwealth may by notice, at any time and in its absolute discretion, terminate this Agreement or reduce the scope of the Agreement immediately.
- 17.1.2. The Recipient agrees, on receipt of a notice of termination or reduction, to:
- a. stop or reduce the performance of the Recipient's obligations as specified in the notice;
 - b. take all available steps to minimise loss resulting from that termination or reduction;
 - c. continue performing any part of the Activity not affected by the notice; and

- d. immediately return to the Commonwealth any Funding in accordance with clause 17.1.5, or deal with any such Funding as directed by the Commonwealth.

17.1.3. In the event of termination under clause 17.1.1, the Commonwealth will be liable only:

- a. to pay Funding due and owing to the Recipient under the payment provisions of the Agreement before the date of the notice of termination; and
- b. to reimburse any expenses the Recipient unavoidably incurs that relate directly and entirely to the Activity and not covered by clause 17.1.3.a.

17.1.4. The Commonwealth will not be liable to pay amounts under 17.1.3.a and 17.1.3.b which would, added to any payments already paid to the Recipient under this Agreement, together exceed the Funding set out in Item A.7 of the Schedule and Annexure A.

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

- a. is not legally committed for expenditure by the Recipient in accordance with the Agreement and due and payable by the Recipient by the date that the notice of termination is received; or
- b. has not, in the Commonwealth's opinion, been spent by the Recipient in accordance with the Agreement.

17.1.6. In the event of a reduction in the scope of the Agreement under clause 17.1.1, the Commonwealth's liability to pay any part of the Funding will, unless there is agreement in writing to the contrary, reduce in accordance with the reduction in the Activity.

17.1.7. The Commonwealth's liability to pay any compensation under or in relation to this clause 17.1 is subject to:

- a. the Recipient's compliance with this clause 17.1; and
- b. the Recipient's substantiation of any amount claimed under clause 17.1.3.b.

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

17.2. Termination for fault

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

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

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

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

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

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

17.3. **Preservation of other rights**

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

18. Notices

18.1. Format, addressing and delivery

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

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

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

18.2. When received

18.2.1. Subject to clause 18.2.2, a notice is deemed to be received:

- a. *if delivered by hand* - upon delivery to the relevant address;
- b. *if sent by prepaid post* - upon delivery to the relevant address; or
- c. *if transmitted electronically* - upon receipt by the sender of either an electronic receipt notification (generated by the system transmitting the notice) or an acknowledgement from the other party that it has received the notice (whichever is earlier).

18.2.2. If a notice is received:

- a. after 5.00 pm on any Business Day; or
- b. on a day that is not a Business Day,

it is deemed to be received at 9:00am on the next Business Day for the purposes of this clause 18.

19. Compliance with the Code for the Tendering and Performance of Building Work 2016

19.1. In this clause 19:

ABCC	means the body referred to in subsection 29(2) of the Act.
Act	means the Building and Construction Industry (Improving Productivity) Act 2016.
Building Code	means the Code for the Tendering and Performance of Building Work 2016, which is available at https://www.legislation.gov.au/Details/F2017C00125

Building Contractor	has the same meaning as in the Act.
Building Industry Participant	has the same meaning as in the Act.
Building Work	has the same meaning as in subsection 3(4) of the Building Code.
Commonwealth Funded Building Work	means Building Work in items 1-8 of Schedule 1 of the Building Code.
Contractor	means a Building Contractor or Building Industry Participant who the Funding Recipient has entered, or proposes to enter, into a contract with to undertake any of the Works.
Exclusion Sanction	has the same meaning as in subsection 3(3) of the Building Code
Funding	means the funding provided by the Commonwealth to the Funding Recipient.
Funding Recipient	means the entity that the Commonwealth is providing funding or assistance to in relation to building works to which the Building Code applies.
Related Entity	has the same meaning as in subsection 3(2) of the Building Code.
Works	means Commonwealth Funded Building Work that is being indirectly funded by the Commonwealth through the provision of the Funding to the Funding Recipient.

- 19.2. The Funding Recipient must ensure that:
- a. tender processes and calls for expressions of interest (howsoever described) in respect of Commonwealth Funded Building Work are conducted in a manner consistent with this code of practice; and
 - b. respondents are only permitted to participate in tender processes where the respondent is not subject to an exclusion sanction.
- 19.3. The Funding Recipient must ensure that any request for expressions of interest or request for tender (howsoever described) for Commonwealth Funded Building Work requires a respondent:
- a. to confirm that the respondent and any related entity will comply with the Building Code when undertaking the Commonwealth Funded building Work; and

- b. to confirm that the respondent, and any related entities; will comply with the Building Code from the time of lodging an expression of interest or tender response (if not already obligated to do so); and
- c. to confirm that it is not subject to an exclusion sanction at the time of lodging an expression of interest or tender; and
- d. to demonstrate a positive commitment to the provision of appropriate training and skill development for their workforce. Such commitment may be evidenced by compliance with any state or territory government building training policies and supporting the delivery of nationally endorsed building and construction competencies; and
- e. to include details of the number of current apprentice and trainee employees and the number of classes of persons that hold visas under the Migration Act 1958 that are engaged by the respondent, and that are intended to be engaged by the respondent to undertake the Commonwealth Funded Building Work; and
- f. to advise whether the respondent has, within the preceding 3 year period:.
 - i. had an adverse decision, direction or order made by a court or tribunal for a breach of a designated building law, work health and safety law or the Migration Act 1958; or
 - ii. been required to pay any amount under an adjudication certificate (provided in accordance with a law relating to the security of payments that are due to persons in respect of building work) including by any related entity to a building contractor or building industry participant; or
 - iii. owed any unsatisfied judgement debts (including such debts owed by any related entity) to a building contractor or building industry participant.

19.4. Where the value of the Commonwealth's contribution to the project that includes the Works meets the financial thresholds set out in Item 1, Schedule 2 to the Building Code, the Funding Recipient must:

- a. ensure the requirement to have a Workplace Relations Management Plan (WRMP) for the Works approved by ABCC is included in all expression of interest and tender documents; and
- b. on behalf of the funding entity:
 - i. apply to the ABCC to have a WRMP for the Works approved; and
 - ii. ensure that an application to the ABCC for approval of a WRMP for the Works is made in the manner and form required by the ABCC Commissioner; and
 - iii. ensure that the proposed WRMP for the Works is accompanied by any supporting evidence required by the ABCC; and

- iv. obtain and provide additional information to the ABCC when requested, to enable the ABCC to make a decision whether or not to approve the proposed WRMP for the Works.

20. Work Health and Safety

20.1. Use of Commonwealth's premises

- 20.1.1. The Recipient agrees, when using the Commonwealth's premises or facilities, to comply with all reasonable directions and procedures relating to work health and safety and security in effect at those premises or in regard to those facilities, as notified by the Commonwealth or as might reasonably be inferred from the use to which the premises or facilities are being put.

20.2. Assistance to the Commonwealth

- 20.2.1. Without limiting clause 2.2 of this Agreement, the Recipient agrees to, on request, give all reasonable assistance to the Commonwealth, by way of provision of information and documents, to assist the Commonwealth and its officers (as defined in the Work Health and Safety Act 2011 (WHS Act)) to comply with the duties imposed on them under the WHS Act.
- 20.2.2. The Recipient acknowledges that the Commonwealth may direct the Recipient to take specified measures in connection with the Recipient's work under this Agreement or otherwise in connection with the Activity that the Commonwealth considers reasonably necessary to deal with an event or circumstance that has, or is likely to have, an adverse effect on the health or safety of persons. The Recipient must comply with the direction. The Recipient agrees that it is not entitled to an adjustment to the Funding merely because of compliance with the direction.

20.3. Australian Government building and construction industry Work Health and Safety Accreditation Scheme

The Scheme	means the Scheme described at Section 43 of the Building and Construction Industry (Improving Productivity) Act 2016.
Builder	has the meaning given in Section 43(8) of the Building and Construction Industry (Improving Productivity) Act 2016.
Building Work	has the meaning given to it by Section 6 of the Building and Construction Industry (Improving Productivity) Act 2016.
Exclusions	means the building work is prescribed under section 26 of the Fair Work (Building Industry—Accreditation Scheme) Regulation 2016

- 20.3.1. Construction projects that utilise funds provided under this agreement are bound by the application of the Australian Government building and construction

industry Work Health and Safety Accreditation Scheme (the Scheme) and the following conditions:

All head contracts for building work under the project that are valued at \$4 million (GST inclusive) or more must:

- a. be notified to the Office of the Federal Safety Commissioner at the earliest possible opportunity (that is, when approaching the market).
- b. contain a requirement that the builder:
 - i. is accredited under the Scheme*;
 - ii. maintains Scheme accreditation for the life of the contract;
 - iii. must comply with all conditions of the Scheme accreditation; and
 - iv. must comply with the National Construction Code performance requirements in relation to building materials.

20.3.2. If conduct of the Activity requires You to carry out any Building Work, You must:

- a. maintain accreditation under the Scheme, and
- b. comply with all conditions of Scheme accreditation.

* Section 26(1)(f) of the Fair Work (Building Industry – Accreditation Scheme) Regulation 2016[#] outlines provisions applying to joint venture arrangements that include accredited and unaccredited builders.

[#] The Fair Work (Building Industry – Accreditation Scheme) Regulation 2016, made under section 35 of the Fair Work (Building Industry) Act 2012 (FWBI Act), was continued in force after the repeal of the FWBI Act as rules made for the purposes of section 43 of the Building and Construction Industry (Improving Productivity) Act 2016 (see item 11 of Schedule 2 to the Building and Construction Industry (Consequential and Transitional Provisions) Act 2016).

21. General Provisions

21.1. Constitution

- 21.1.1. The Recipient warrants that the Recipient's Constitution is not, and will not become, inconsistent with this Agreement.
- 21.1.2. The Recipient must provide a copy of the Recipient's Constitution to the Commonwealth, upon request.
- 21.1.3. The Recipient must obtain the Commonwealth's written approval to any amendments to the Recipient's Constitution which may affect the Recipient's eligibility for the Funding or the Recipient's capacity to comply with this Agreement. If the Recipient alters the Constitution in breach of this subclause 21.1.3, the Commonwealth may terminate this Agreement in accordance with clause 17.2 of this Agreement.

21.2. Obligations of Recipient in relation to privacy

- 21.2.1. The Recipient agrees, in conducting the Activity:

- a. not to do any act or engage in any practice which, if done or engaged in by the Commonwealth, would be a breach of an Australian Privacy Principle; and
- b. to comply with any directions, guidelines, determinations or recommendations of the Commonwealth, to the extent that they are consistent with the Australian Privacy Principles.

21.2.2. The Recipient agrees to notify the Commonwealth immediately if it becomes aware of a breach or possible breach of any of its obligations under this clause 21.2.

21.2.3. The provisions of this clause 21.2 survive the termination or expiration of this Agreement.

21.3. **Audit and Access**

21.3.1. The Recipient agrees:

- a. to give the Commonwealth, or any persons authorised in writing by the Commonwealth, access to premises where obligations under this Agreement are being carried out; and
- b. to permit those persons to inspect and take copies of any Material relevant to this Agreement.

21.3.2. The rights referred to in clause 21.3.1. are subject to:

- a. the Commonwealth providing reasonable prior notice; and
- b. the reasonable security procedures in place at the premises.

21.3.3. The Auditor-General and Information Officer (and their delegates) are persons authorised for the purposes of clause 21.3.1.

21.3.4. This clause 21.3 does not detract from the statutory powers of the Auditor-General or Information Officer.

21.4. **Access to Documents**

21.4.1. In this clause 21.4, 'document' and 'Commonwealth contract' have the same meaning as in the Freedom of Information Act 1982 (Cth). This clause 21.4 only applies if this Agreement is a 'Commonwealth contract', as defined in the Freedom of Information Act 1982 (Cth).

21.4.2. Where the Commonwealth has received a request for access to a document created by, or in the possession of, the Recipient or any subcontractor that relates to the performance of this Funding Agreement (and not to the entry into the Funding Agreement), the Commonwealth may at any time by written notice require the Recipient to provide the document to the Commonwealth and the Recipient must, at no additional cost to the Commonwealth, promptly comply with the notice.

21.4.3. The Recipient must include in any subcontract relating to the performance of this Agreement provisions that will enable the Recipient to comply with its obligations under this clause 21.4.

21.5. **Insurance**

21.5.1. The Recipient agrees:

- a. to effect and maintain the insurance specified in Item F and
- b. on request, to provide proof of insurance acceptable to the Commonwealth.

21.5.2. This clause 21.5 continues in operation for so long as any obligations remain in connection with this Agreement.

21.6. **Extension of provisions to subcontractors and Personnel**

21.6.1. In this clause 21.6:

Requirement means an obligation, condition, restriction or prohibition binding on the Recipient under this Agreement.

21.6.2. The Recipient agrees to ensure that:

- a. its subcontractors and Personnel comply with all relevant Requirements; and
- b. any contract entered into in connection with this Agreement imposes all relevant Requirements on the other party.

21.6.3. The Recipient agrees to exercise any rights it may have against any of its subcontractors, Personnel or third parties in connection with a Requirement in accordance with any direction by the Commonwealth.

21.7. **Conflict of interest**

21.7.1. In this clause 21.7:

Conflict means any matter, circumstance, interest or activity involving or affecting the Recipient, its Personnel or subcontractors which may or may appear to impair the ability of the Recipient to perform the Activity diligently and independently.

21.7.2. The Recipient warrants that, to the best of its knowledge after making diligent inquiry, at the Date of this Agreement no Conflict exists or is likely to arise in the performance of the Recipient's obligations under the Agreement.

21.7.3. If during the Term a Conflict arises, the Recipient agrees to:

- a. notify the Commonwealth immediately;
- b. make full disclosure of all relevant information relating to the Conflict; and
- c. take any steps the Commonwealth reasonably requires to resolve or otherwise deal with that Conflict.

21.8. **Relationship of parties**

21.8.1. The Recipient is not by virtue of this Agreement an officer, employee, partner or agent of the Commonwealth, nor does the Recipient have any power or authority to bind or represent the Commonwealth.

21.8.2. The Recipient agrees:

- a. not to misrepresent its relationship with the Commonwealth; and
- b. not to engage in any misleading or deceptive conduct in relation to the Activity.

21.9. **Waiver**

21.9.1. A failure or delay by a party to exercise any right or remedy it holds under this Agreement or at law does not operate as a waiver of that right.

21.9.2. A single or partial exercise by a party of any right or remedy it holds under this Agreement or at law does not prevent the party from exercising the right again or to the extent it has not fully exercised the right.

21.10. **Variation of Agreement**

21.10.1. No variation of this Agreement is binding unless it is agreed in writing and signed by both parties.

21.11. **Assignment**

21.11.1. The Recipient cannot assign its obligations, and agrees not to assign its rights, under this Agreement without the Commonwealth's prior written approval.

21.11.2. The Recipient agrees not to enter into negotiations with any other person for the purposes of entering into an arrangement that will require novation of this Agreement without first consulting the Commonwealth.

21.12. **Survival**

21.12.1. Unless the contrary intention appears, the expiry or earlier termination of this Agreement will not affect the continued operation of any provision relating to:

- a. Intellectual Property;
- b. confidentiality;
- c. security;
- d. privacy;
- e. dealing with copies;
- f. books and records;
- g. audit and access;
- h. an indemnity;
- i. acknowledgement and publicity;
- j. rights or obligations following termination or expiry of the Agreement; or

- k. any other provision which expressly or by implication from its nature is intended to continue.

21.13. **Compliance with Legislation and Policies**

21.13.1. In this clause 21.13:

Legislation means a provision of a statute or subordinate legislation of the Commonwealth of Australia, or of a State, Territory or local authority.

21.13.2. The Recipient agrees to comply with any Legislation applicable to its performance of this Agreement.

21.13.3. The Recipient agrees, in carrying out its obligations under this Agreement, to comply with any of the Commonwealth's policies as notified, referred or made available by the Commonwealth to the Recipient (including by reference to an internet site), including those listed in Item J.

21.14. **Applicable law and jurisdiction**

21.14.1. This Agreement is to be construed in accordance with, and any matter related to it is to be governed by, the law of the Australian Capital Territory specified in Item M.

21.14.2. The parties submit to the jurisdiction of the courts of the Australian Capital Territory.

21.15. **Child Safety**

In this Agreement:

Child means an individual(s) under the age of 18 years and Children has a similar meaning;

Child-Related Personnel

means officers, employees, contractors (including subcontractors), agents and volunteers of the Grantee involved with the Activity who as part of that involvement may interact with Children;

Legislation means a provision of a statute or subordinate legislation of the Commonwealth, or of a State, Territory or local authority;

National Principles for Child Safe Organisations

means the National Principles for Child Safe Organisations, which have been endorsed in draft form by the Commonwealth Government (available at: <https://www.humanrights.gov.au/national-principles-child-safe-organisations>) and subsequently, from the time of their endorsement by the Council of Australian Governments, the final

Australian Government Department of Infrastructure, Transport, Regional Development and Communications

National Principles for Child Safe Organisations as published by the Australian Government;

Relevant Legislation

means Legislation in force in any jurisdiction where any part of the Activity may be carried out;

Working With Children Check or WWCC

means the process in place pursuant to Relevant Legislation to screen an individual for fitness to work with Children.

Relevant Checks and authority

21.15.1. The Grantee must:

- a. comply with all Relevant Legislation relating to the employment or engagement of Child-Related Personnel in relation to the Activity, including all necessary Working With Children Checks however described; and
- b. ensure that Working With Children Checks obtained in accordance with this clause 21.15.1 remain current and that all Child-Related Personnel continue to comply with all Relevant Legislation for the duration of their involvement in the Activity.

National Principles for Child Safe Organisations and other action for the safety of Children

21.15.2. The Grantee agrees in relation to the Activity to:

- a. implement the National Principles for Child Safe Organisations;
- b. ensure that all Child-Related Personnel implement the National Principles for Child Safe Organisations;
- c. complete and update, at least annually, a risk assessment to identify the level of responsibility for Children and the level of risk of harm or abuse to Children;
- d. put into place and update, at least annually, an appropriate risk management strategy to manage risks identified through the risk assessment required by this clause 21.15.2;
- e. provide training and establish a compliance regime to ensure that all Child-Related Personnel are aware of, and comply with:
 - i. the National Principles for Child Safe Organisations;
 - ii. the Grantee's risk management strategy required by this clause 21.15.2;
 - iii. Relevant Legislation relating to requirements for working with Children, including Working With Children Checks;

- iv. Relevant Legislation relating to mandatory reporting of suspected child abuse or neglect, however described; and
 - f. provide the Commonwealth with an annual statement of compliance with clauses 21.15.1 and 21.15.2, in such form as may be specified by the Commonwealth.
- 21.15.3. With reasonable notice to the Grantee, the Commonwealth may conduct a review of the Grantee's compliance with this clause 21.15.
- 21.15.4. The Grantee agrees to:
 - a. notify the Commonwealth of any failure to comply with this clause 21.15;
 - b. co-operate with the Commonwealth in any review conducted by the Commonwealth of the Grantee's implementation of the National Principles for Child Safe Organisations or compliance with this clause 21.15; and
 - c. promptly, and at the Grantee's cost, take such action as is necessary to rectify, to the Commonwealth's satisfaction, any failure to implement the National Principles for Child Safe Organisations or any other failure to comply with this clause 21.15.

Executed as a deed

Executed by the parties as evidence of their agreement.

SIGNED for and on behalf of the
COMMONWEALTH OF AUSTRALIA,)
as represented by and acting through)
the **Department of Infrastructure,**)
Transport, Regional Development)
and Communications:
ABN 86 267 354 017

Name of signatory

Signature

Position

Insert Date

In the presence of:

Name of witness

Signature of witness

Executed on behalf of **GIANT STEPS**
MELBOURNE LTD,)
ABN 46 606 552 283 by Barry Irvin)
who by signing warrants they are)
authorised to bind **Giant Steps**)
Melbourne Ltd

Signature

Insert Date

In the presence of:

Name of witness

Signature of witness

SCHEDULE 1 PARTICULARS

A. Programme, Project, Purpose, Activity and Funding and Payment (Recital A, clauses 1.1.1 and 2.1.1)

A.1. Programme

The Commonwealth is undertaking the Community Development Grants programme, which was to support needed infrastructure that promotes stable, secure and viable local and regional economies.

A.2. Project

The project to be undertaken by the Recipient is the Giant Steps Autism School Expansion at 11 Malmsbury Street, Kew VIC, 3101. The Project will include the Activity that the Programme will fund, defined in more detail in item A.5 of the Schedule.

The Project Completion Date is **31 January 2022**.

A.3. Purpose

The Purpose for which the completed Project is required to be used is:

To provide expanded autism services in Melbourne to help meet demand and increase student enrolments across all programs to enable the provision of individualised programs for children and young adults with Autism.

A.4. Operational Period

The Operational Period commences on the date the Commonwealth accepts the Project Completion Report, to the Commonwealth's satisfaction. The duration of the Operational Period is dependent on the amount of Funding provided by the Commonwealth under this Agreement. The thresholds are set out in the table below:

Amount of Funding	Duration of Operational Period
Over \$1,000,000	Five (5) years

During the Operational Period, the Recipient must, if requested by the Commonwealth to do so, promptly provide evidence satisfactory to the Commonwealth that the Project is Operational.

A.5. Activity

The Activity to be undertaken by the Recipient is the Giant Steps Autism School Expansion project including:

- Planning and design;
- Construction of new buildings to cater for:
 - Additional primary and secondary school services
 - Post school services
 - Staff amenities
 - Therapy spaces
 - Training facilities

- Industrial kitchen
- Upgrade to school entry and administrative & meeting spaces
- Upgrade to existing playground
- New playground

The Activity Period commences on the Date of this Agreement and ends on the Activity Completion Date which is **31 January 2022**

A.6. Reserved

A.7. Funding and Payment

(clauses 1.1.1, 3.1, 6)

The total Funding for the Activity is **\$9,700,000** GST exclusive. The Funding will be paid as follows:

1. The first payment of Funding specified in the table at Annexure A will not be made until:
 - a) this Agreement has been executed by all Parties and all Milestones specified in the table at Annexure A that relate to the first payment have been achieved to the Commonwealth's satisfaction; and
 - b) all Reports identified in item D of the Schedule as being due on or before the due date for the first payment have been received and accepted by the Commonwealth; and
2. The second and each subsequent payment specified in the table at Annexure A will not be made until:
 - a) all Milestones specified in the table at Annexure A that relate to the relevant payment have been achieved to the Commonwealth's satisfaction;
 - b) all Reports identified in item D of this Schedule as being due on or before the due date for the relevant payment have been received and accepted by the Commonwealth; and
 - c) the Recipient has provided the Commonwealth with evidence that all previously paid Funds have been expended or committed.

Invoicing

The Commonwealth must receive a properly rendered invoice or, if required a tax invoice which meets the requirements of the Australian Taxation Office for the amount of the payment and;

The Recipient must provide the Commonwealth with evidence that all previous paid Funding has been expended or committed.

B. Budget
(clause 6.2)

The Budget for the Activity, identifying the Funding and Other Contributions, is at Annexure B.

The percentage of the Budget (Total Cost) below which Funding may be transferred between Cost items without the Commonwealth's approval is 10%.

The percentage of the Budget (Total Cost) which must not be exceeded in total transfers between expenditure items per Financial Year is 20%.

C. Other Contributions
(clause 7)

C.1. Other Contributions

Other Contributions are specified at the table titled "Other Contributions" in Annexure B. Any financial or in-kind assistance that the Recipient has received from the Commonwealth of Australia or a State, Territory or local government and which the Recipient intends to, or is required to, use to perform the Activity must be identified in Other Contributions.

D. Reporting
(clauses 1.1.1, 2.6)

D.1. Progress Reports, Activity Completion Report and Project Completion Report

D.1.1 The Recipient must give the Commonwealth the Progress Reports, the Activity Completion Report and Project Completion Report by the times specified in the Table of Milestones, Reports and Payments relating to the Activity at Annexure A.

D.1.2 Each Progress Report must contain:

- a. details of progress and performance against the Activity, and the Project (to the extent that it is directly related to the relevant part of the Activity which is being covered by that Progress Report) and evidence of completion of the Milestones listed in Annexure A of the Schedule that are due for completion (including but not limited to photographs to demonstrate completion of Milestones) during the period between the Recipient's previous Progress Report and the due date of this Progress Report (or in the case of the first Progress Report, the period between the Date of this Agreement and the due date of the first Progress Report);
- b. details of mitigating circumstances and remedial action undertaken in the event a Milestone is not met or completed in the manner and/or by the time specified;
- c. copies of any published reports, promotional material, media publicity, pamphlets or other documentation relevant to the Project;
- d. evidence that the Recipient has obtained and/or utilised in-kind Other Contributions specified in the table at Annexure B;
- e. a statement of receipts (which separately identifies any interest earned on the Funding) and expenditure to date in respect of the Funding; and
- f. a statement of receipts and expenditure to date in respect of Other Contributions (excluding in-kind).

D.1.3 The Activity Completion Report must contain:

- a. evidence that the Activity and the Milestones have been completed;
- b. an analysis of the planning, implementation and overall process the Recipient followed to deliver the Activity;
- c. any recommendations on improved practice, relevant to the Recipient's and the Commonwealth's practices, that may assist in the delivery of future projects;
- d. a copy of the current Assets register described in item E.1.2 of this Schedule and a copy of the Real Property register described in item E.2.4 of this Schedule;
- e. evidence that the Recipient has obtained in-kind Other Contributions for the Activity specified in the table at Annexure B;
- f. an up to date Audited Financial Report in respect of the Activity; and
- g. copies of any published reports, promotional material, media publicity, pamphlets or other documentation relevant to the Activity, not already included in the Progress Report/s.
- h. a copy of the Assets register described in item E.1 of this Schedule and a copy of the Real Property register described in item E.2 of this Schedule.

D.1.4 The Project Completion Report must contain:

- a. evidence that the Project has been completed;
- b. an analysis of the planning, implementation and overall process the Recipient followed to deliver the Project;
- c. any recommendations on improved practice, relevant to the Recipient's and the Commonwealth's practices, that may assist in the delivery of future projects;
- d. a copy of the Assets register described in item E.1 of this Schedule and a copy of the Real Property register described in item E.2 of this Schedule.
- e. evidence that the Recipient obtained in-kind contributions specified in the table at Annexure B;
- f. an Audited Financial Report; and
- g. copies of any published reports, promotional material, media publicity, pamphlets or other documentation relevant to the Project, not already included in the Progress Report/s.

In addition, the Project Completion Report must also:

- h. describe the Recipient's activities during the Term;
- i. discuss in detail the conduct, benefits and outcomes of the Activity as a whole and the Activity's results and findings; and
- j. Reserved

The Recipient must also include in the Project Completion Report a discussion of any other matters relating to the performance of the Project and Activity, which the Commonwealth notifies the Recipient is required to be included in the Project Completion Report. Any such requirement will be notified to the Recipient at least 20 Business Days before the Project Completion Report is due.

- D.1.5. Unless otherwise agreed by the Commonwealth in writing, all Reports must be:
- a. supplied in hard copy or electronic form;
 - b. supplied in a format that is acceptable to the Commonwealth; and
 - c. signed by the Recipient's Chief Executive Officer, Chief Financial Officer or other person authorised by the Recipient to execute documents and legally bind the Recipient by their execution.

D.2. Audit and certification

- D.2.1. The Activity Completion Report and Project Completion Report must be accompanied by a copy of a letter to the Recipient from the Approved Auditor, or a report from the Approved Auditor, that includes:

- a. separate audited statements of receipts and expenditure in respect of the Funding and Other Contributions (excluding in-kind), which must:
 - i. comply with all relevant Australian Accounting Standards
 - ii. separately identify any interest earned on the Funding
 - iii. include a definitive statement made by an Approved Auditor as to whether:
 1. the statements of receipts and expenditure are fair and true
 2. Funding and Other Contributions (excluding in-kind) were held and expended in accordance with this Agreement
- b. a certificate, signed by the Recipient's Chief Executive Officer, Chief Financial Officer or a person authorised by the Recipient to execute documents and legally bind the Recipient by their execution, that:
 - i. all Funding and Other Contributions (excluding in-kind) received was expended for the purpose of the Activity and Project and expended and held in a manner in accordance with this Agreement
 - ii. salaries and allowances paid to persons involved in the Activity are in accordance with any applicable award or agreement in force under any relevant Law on industrial or workplace relations.

D.3. Other Reports

Throughout the Term, the Commonwealth may require the Recipient to provide ad-hoc Reports concerning:

- a. any significant developments concerning the Activity;
- b. any significant delays or difficulties encountered in performing the Activity in accordance with the Agreement; and
- c. the outcomes and outputs of the project as listed in the application.

The Recipient must provide any such ad-hoc Reports within the timeframe notified by the Commonwealth.

E. Assets and Real Property
(clauses 1.1.1 and 9)

E.1. Assets

E.1.1. For the purposes of Clause 9, the Recipient may create, acquire or upgrade the following Assets:

None Specified

E.1.2. The Recipient must for the Term of this Agreement maintain an Asset Register in the following form and containing the following information:

- a. Asset description;
- b. acquisition, upgrade or creation price or total lease cost;
- c. date of acquisition, creation, upgrade or lease;
- d. if leased, type and term of lease;
- e. location of Asset;
- f. date of Disposal;
- g. disposal method; and
- h. if the Asset was partly created, acquired or upgraded using the Funding, the proportion of that creation, acquisition or upgrade that was paid for with the Funding.

E.1.3. The Recipient must use the Assets created, acquired, or upgraded under this Agreement for the Purpose set out in item A.3 of the Schedule for the duration of the Operational Period.

E.2. Real Property

E.2.1. The Real Property includes the Giant Steps Autism School Expansion.

E.2.2. The Capital Works includes design, construction and fit-out of the Real Property at the Works Location.

E.2.3. The Works Locations includes 11 Malmsbury Street, Kew, VIC, 3101

E.2.4. The Recipient must for the Term of this Agreement maintain a Real Property Register in the following form and containing the following information:

- a. Real Property description;
- b. acquisition, upgrade or creation price or total lease cost;
- c. date of acquisition, creation, upgrade or lease;
- d. if leased, type and term of lease;
- e. location of Real Property;
- f. date of Disposal;
- g. disposal method; and
- h. if the Real Property was partly created, acquired or upgraded using the Funding, the proportion of that creation, acquisition or upgrade that was paid for with the Funding.

- E.2.5. The Recipient must use the Real Property created, acquired, or upgraded under this Agreement for the Purpose set out in item A.3 of the Schedule for the duration of the Operational Period.

F. Insurance
(clause 21.5)

The Recipient must maintain:

- a. workers compensation insurance as required by law where the Recipient carries out activities under this Agreement;
- b. public liability insurance to the value of at least \$10 million for each and every claim, or occurrence giving rise to a claim, in respect to activities undertaken under this Agreement, where occurrence means either a single occurrence or a series of occurrences if these are linked or occur in connection with one another from one original cause, as the case may be; and
- c. insurance against any loss or damage to an Asset or Real Property for its full replacement cost including where relevant the costs of demolition and removal of debris and the cost of architects, engineers and other consultants.

G. Reserved

H. Acknowledgement and publicity
(clause 14)

- H.1.1 If the Recipient erects or maintains any signage in relation to the Project, the signage must be approved by the Commonwealth prior to use and contain an acknowledgement of the Funding as required under Clause 14 of this Agreement. Any signage must remain in place during the Operational Period for the Project as specified in Item A.4. Signage for the Activity may be paid from the Budget if approved by Us. Signage for any other part of the Project must be at the Recipient's own cost.
- H.1.2 If a Federal, State or Local Government election is announced, the Recipient must cover any sign that is displayed within 100 metres of a polling place with an opaque (impenetrable to sight), durable and water repellent material from a period not less than 48 hours before the commencement of polling at that polling place until the polls close.
- H.1.3 The Recipient must include the Commonwealth logo in all signage, publications and promotional activities related to the Activity.
- H.1.4 The Recipient must not use the Commonwealth's logo without the Commonwealth's approval. If the Commonwealth provides approval for the Recipient's use of the Commonwealth's logo, the Recipient must use it in accordance with the Commonwealth's Print Style Guidelines (as advised by the Commonwealth).

- H.1.5 All the Recipient's publicity, announcements and media releases relating to the Activity must be cleared through the Commonwealth's contact officer specified at item L of the Schedule with at least 10 Business Days' notice, before release.
- H.1.6 The Commonwealth reserves the right to publicise and report on the provision of Funding to the Recipient, including progress on completing the Activity and the Project. The Commonwealth may do this by including the information specified in clause 14.2 in media releases, general announcements about the Funding and in annual reports and in electronic media.
- H.1.7 The Recipient must conduct an official opening of the completed Activity and Project unless otherwise agreed by the Commonwealth.
- H.1.8 The Recipient must provide to the Commonwealth with at least 3 options for dates for the official opening, or any other milestone events that the Recipient chooses to conduct (e.g. stage completion), for the Activity and the Project. These dates must be provided at least 56 days prior to the first proposed date for each event to be conducted.
- H.1.9 The date of official openings or other official public function for the completed Activity and Project must be agreed by the Commonwealth.
- H.1.10 The Recipient must invite the Commonwealth's representative to officiate at any official opening or other official public function relating to the Activity or the Project.
- H.1.11 The Commonwealth Minister's prior agreement must be sought, to invite any other Commonwealth or State elected official or other officials to attending either function. This invitation must be provided to the Commonwealth no later than 56 days before the date of the official opening or other official public function relating to the Activity or the Project.
- H.1.12 The Recipient must coordinate requests for the Commonwealth's agreement to the date of official openings and requests for Commonwealth representation at official openings or other official functions relating to the Activity or the Project through the Commonwealth's contact officer specified at item L of the Schedule.

I. Reserved

**J. Compliance with laws and policies
(clause 21.13)**

The Recipient must comply with the following laws and policies in carrying out the Activity:

- Crimes Act 1914;
- Criminal Code of Conduct 1995;
- Disability Discrimination Act 1992;
- Workplace Gender Equality Act 2012;
- Building and Construction Industry (Improving Productivity) Act 2016;
- Racial Discrimination Act 1975;
- Sex Discrimination Act 1984;

- Migration Act 1958
- Work Health and Safety Act 2011.

For the purposes of clause 21.13, the following policies are identified:

Community Development Grants Programme – Grant Programme Guidelines

K. Statutory Approvals

(clause 2A.2)

For the purposes of subclause clause 2A.2, the Recipient must obtain statutory approvals for the Project.

L. Notices

(clause 18.1)

The Commonwealth's details for notices are as follows:

Name: General Manager
Regional Programs Branch

Address: Department of Infrastructure, Transport, Cities and Regional
Development
GPO Box 594
CANBERRA ACT 2601

Email: CDG@infrastructure.gov.au

The Recipient's details for notices are as follows:

Name: s47F

Position: s47F

Address: s47F

Telephone: s47F

E-mail: s47F

M. Applicable Law

(clause 21.14)

The Laws of the Australian Capital Territory apply to this Agreement.

N. Confidential Information

(clause 13)

Commonwealth's Confidential Information

Agreement Provisions/Schedules/Attachments

None Specified

Agreement related material

None Specified

Australian Government Department of Infrastructure, Transport, Regional Development and Communications

Recipient's Confidential Information

Agreement Provisions/Schedules/Attachments

None Specified

Agreement related material

None Specified

ANNEXURE A

Table of Milestones, Reports and Funding payments relating to the Activity

Report	Milestone(s) / Information covered by the Report	Milestone Completion Date	Payment amount (GST Exclusive)	Due Date for Report	Due Date for Funding Payment
Progress Report 1	<p>Evidence acceptable to the Commonwealth that the following have been achieved:</p> <ul style="list-style-type: none"> Consultants appointed, schematic designs completed, Town Planning Application submitted for Approval, commencement of detailed design. 15% of the Project is completed and certified by the Project Manager, Quantity Surveyor, or similar. 	01/06/2020	\$1,455,000	01/07/2020	14/07/2020
Progress Report 2	<p>Evidence acceptable to the Commonwealth that the following have been achieved:</p> <ul style="list-style-type: none"> Town Planning Application approved, final designs completed, tender process completed, Contractors appointed, final costs confirmed. 35% of the Project is completed and certified by the Project Manager, Quantity Surveyor, or similar. 	01/10/2020	\$1,940,000	01/11/2020	14/11/2020

Report	Milestone(s) / Information covered by the Report	Milestone Completion Date	Payment amount (GST Exclusive)	Due Date for Report	Due Date for Funding Payment
Progress Report 3	<p>Evidence acceptable to the Commonwealth that the following have been achieved:</p> <ul style="list-style-type: none"> • Confirmation of completion of first quarter of construction; • Confirmation of commencement of second quarter of construction (to a total of 30% complete); • 60% of the Project is completed and certified by the Project Manager, Quantity Surveyor, or similar. 	01/02/2021	\$2,425,000	01/03/2021	14/03/2021
Progress Report 4	<p>Evidence acceptable to the Commonwealth that the following have been achieved:</p> <ul style="list-style-type: none"> • Confirmation of completion of second quarter of construction; • Confirmation of commencement of third quarter of construction (to a total of 50% complete); • 80% of the Project is completed and certified by the Project Manager, Quantity Surveyor, or similar. 	01/06/2021	\$1,940,000	01/07/2021	14/07/2021

Report	Milestone(s) / Information covered by the Report	Milestone Completion Date	Payment amount (GST Exclusive)	Due Date for Report	Due Date for Funding Payment
Progress Report 5	<p>Evidence acceptable to the Commonwealth that the following have been achieved:</p> <ul style="list-style-type: none"> • Confirmation of completion of third quarter of construction; • Confirmation of commencement of final phase of construction (to a total of 90% complete); • an Event Invitation has been submitted to the Department as required at Item H of the Schedule; • 90% of the Project is completed and certified by the Project Manager, Quantity Surveyor, or similar. 	01/10/2021	\$970,000	01/11/2021	14/11/2021
Project Completion Report	<p>Evidence acceptable to the Commonwealth that the following has been achieved:</p> <ul style="list-style-type: none"> • Confirmation of completion of final phase of construction to a total of 100% complete; • the Activity, at Item A.5 of the Schedule, is complete; • the Project, at Item A.2 of the Schedule, is complete; • all approvals required to enable public access and use of the facility have been met; and • the Project is fully Operational. • 100% of the Project is completed and certified by the Project Manager, Quantity Surveyor, or similar. 	31/01/2022	\$970,000	01/04/2022	14/04/2022

ANNEXURE B

BUDGET FOR THE EXPENDITURE OF CDG FUNDING		
Cost item	Description	Amount (GST exclusive)
Design, construction & fit out	Giants Steps Autism School Expansion	\$9,700,000
Funding (A)		\$9,700,000

OTHER CONTRIBUTIONS (FINANCIAL)			
Name of Contributor	Cost Item	Description of item	Amount (GST exclusive)
47G Other Contributions (Financial) (B)			

TOTAL COST ESTIMATE (A + B) (GST exclusive):	
---	--

OTHER CONTRIBUTIONS (IN-KIND)	
Name of Contributor	Description of Other Contribution (In-kind)
N/A	N/A



Australian Government

**Department of Infrastructure, Transport,
Regional Development and Communications**

DEED OF AGREEMENT

**FUNDING AGREEMENT IN RELATION TO THE GIANT STEPS AUTISM
SCHOOL EXPANSION**

The Commonwealth of Australia as represented by the Department of
Infrastructure, Transport, Regional Development and Communications
ABN 86 267 354 017

Giant Steps Melbourne Ltd
ABN 46 606 552 283

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FUNDING AGREEMENT (LONG FORM)

FUNDING AGREEMENT IN RELATION TO THE GIANT STEPS AUTISM SCHOOL EXPANSION (CDG1085)

Parties

This Funding Agreement is made between and binds the following parties:

1. **The Commonwealth of Australia** as represented by the Department of Infrastructure, Transport, Regional Development and Communications
ABN 86 267 354 017, 111 Alinga Street, Canberra, Australian Capital Territory
(**Commonwealth**)
2. **Giant Steps Melbourne Ltd**
ABN 46 606 552 283, 11 Malmsbury Street, Kew, VIC 3101
(**Recipient**)

Context

- A. The Commonwealth is undertaking the Community Development Grants Programme, which was to support needed infrastructure that promotes stable, secure and viable local and regional economies.
- B. The Recipient submitted an application to obtain funding under the Programme to conduct the Activity. The Activity will contribute to the completion of the Project, and will help achieve the objectives of the Programme.
- C. The Commonwealth has agreed to provide Funding to the Recipient to support the carrying out of the Activity.
- D. The Recipient agrees to accept the Funding for the purposes, and subject to the terms and conditions, set out in this Agreement.
- E. The Recipient agrees that it is a precondition of entitlement to the Funding that the Recipient must:
 - a. provide to the Commonwealth with satisfactory evidence that the Recipient is registered with a Commonwealth, State or Territory Regulatory Body or satisfactory evidence of the Recipient's correct statutory authority name;
 - b. correctly use the Recipient's name on all documentation provided to the Commonwealth;
 - c. have an Australian Business Number (ABN);
 - d. immediately notify the Commonwealth if the Recipient ceases to hold an ABN;
 - e. correctly quote the Recipient's ABN on all documentation provided to the Commonwealth;
 - f. supply proof of the Recipient's GST status, if requested by the Commonwealth; and
 - g. immediately notify the Commonwealth of changes to the Recipient's GST status.

Operative provisions

In consideration of the mutual promises contained in this Agreement, the parties to this Funding Agreement agree as follows:

1. Interpretation

1.1. Definitions

1.1.1. In this Agreement, unless the context indicates otherwise:

ABN	means (Australian Business Number) as set out in section 41 of the A New Tax System (Australian Business Number) Act 1999 (Cth).
Activity	means the Activity described in Item A and includes the provision to the Commonwealth of the Activity Material;
Activity Completion date	means the date that the Activity must be completed by as set out in item A.5 of the Schedule.
Activity Material	means any Material: <ul style="list-style-type: none">a. created by the Recipient for the purpose of this Agreement;b. provided or required to be provided to the Commonwealth under the Agreement; orc. derived at any time from the Material referred to in paragraphs a or b, and includes <ul style="list-style-type: none">d. any Existing Material incorporated in the Material referred to in paragraphs b or c; ande. any Reports;
Activity Objectives	means the objectives of the Activity described in Item A.6 of the Schedule;
Activity Period	means the period specified in Item A during which the Activity must be completed;
Agreement	means this document and includes any Schedules and Annexures;
Annexure	means any annexure to Schedule 1;

Approved Auditor	means a person who is: <ul style="list-style-type: none">a. registered as a company auditor under the Corporations Act 2001 (Cth) or an appropriately qualified member of the Institute of Chartered Accountants in Australia or of CPA Australia;b. not a principal, member, shareholder, officer, agent, subcontractor, employee or related entity of the Recipient or of a related body corporate (the terms 'related entity' and 'related body corporate' have the same meaning as in section 9 of the Corporations Act 2001 (Cth)); andc. not the Recipient's Qualified Accountant;
Asset	means any item of property, purchased, leased, hired, financed, created or otherwise brought into existence either wholly or in part with use of the Funding, which has a value of over \$5,000 exclusive of GST, but excludes any Intellectual Property Rights and Real Property (including any property once it becomes part of the structure of Real Property).
Auditor-General	means the office established under the Auditor-General Act 1997 (Cth) and includes any other entity that may, from time to time, perform the functions of that office;
Australian Accounting Standards	refers to the standards of that name maintained by the Australian Accounting Standards Board created by section 226 of the Australian Securities and Investments Commission Act 2001 (Cth);
Australian Auditing Standards	refers to the standards made by the Auditing and Assurance Standards Board created by section 227A of the Australian Securities and Investments Commission Act 2001 (Cth);
Australian Privacy Principle	has the same meaning as it has in the Privacy Act 1988 (Cth).
Budget	means the budget set out in Annexure B of the Schedule;
Business Day (in a place)	means a weekday other than a public holiday in the place specified or, if no place is specified, in the State or Territory specified in Item M of the Schedule;
Capital Works	means any part of the Activity that comprises construction and building activities and includes the Capital Works listed at item E.2.2 of the Schedule.

Commence Construction	means to begin a continuous programme of on-site construction for the Activity's Capital Works. For the purposes of this definition, only significant and continuous site preparation work such as major clearing or excavation or placement or assembly, or installation of facilities or equipment at the site constitute a programme of on-site construction.
Commonwealth	where the context permits, includes officers, delegates, employees and agents and successors of the Department of Infrastructure, Transport, Regional Development and Communications;
Commonwealth Material	means any Material: <ul style="list-style-type: none">a. provided by the Commonwealth to the Recipient for the purposes of this Agreement; orb. derived at any time from the Material referred to in paragraph a;
Completion Date	means the day after the Recipient has done all that it is required to do under clauses 2 and 6 of this Agreement to the satisfaction of the Commonwealth;
Constitution	means (depending on the context): <ul style="list-style-type: none">a. a company's constitution, which (where relevant) includes rules and any amendments that are part of the company's constitution, orb. in relation to any other kind of body:<ul style="list-style-type: none">i. the body's charter, rules or memorandum, orii. any instrument or Law constituting or defining the constitution of the body or governing the activities of the body or its members.
Cost Estimate	means the estimate for the Project which is the sum of the Funding and Other Contributions specified in Annexure B to the Schedule.
Cost Item	means an item of expenditure specified in the Budget at Annexure B to the Schedule.

Confidential Information	<p>means:</p> <ul style="list-style-type: none">a. the information described in Item N; andb. information that the parties agree in writing after the Date of this Agreement is confidential information for the purposes of this Agreement;
Date of this Agreement	<p>means the date written on the execution page of this Agreement, or if no date or more than one date is written there, then the date on which the Agreement is signed by the last party to do so;</p>
Depreciated	<p>means the amount representing the reduction in value of an Asset calculated in accordance with Australian Accounting Standards;</p>
Director	<p>means any of the following:</p> <ul style="list-style-type: none">a. a person appointed to the position of a director or alternate director and acting in that capacity for a body corporate within the meaning of the Corporations Act 2001 (Cth) regardless of the name given to their position;b. a member of the governing committee of an Aboriginal and Torres Strait Islander corporation under the Corporations (Aboriginal and Torres Strait Islander) Act 2006 (Cth);c. a member of the committee of an organisation incorporated pursuant to State or Territory laws relating to the incorporation of associations; ord. a member of the board, committee or group of persons (however described) that is responsible for managing or overseeing the affairs of the body corporate;
Dispose	<p>means to sell, licence, lease or sublease, or otherwise transfer or give up ownership or the right to occupy or use, or to enter into an agreement to do any of the preceding acts and 'Disposal' means the method of so disposing;</p>
Existing Material	<p>means all Material in existence prior to the Date of this Agreement:</p> <ul style="list-style-type: none">a. incorporated in;b. supplied with, or as part of; orc. required to be supplied with, or as part of, <p>the Activity Material;</p>

Financial Year	means each period from 1 July to the following 30 June occurring during the Term, or any part of such a period occurring at the beginning or end of the Term;
Funding	<p>means:</p> <ul style="list-style-type: none">a. the amount or amounts (in cash or kind) payable by the Commonwealth under this Agreement as specified in Item A.7 and Annexure A of this Agreement, andb. any interest earned on the Funding once paid by the Commonwealth to the Recipient;
GST	has the meaning that it has in the A New Tax System (Goods and Services Tax) Act 1999 (Cth);
Information Officer	means any of the information officers appointed under the Australian Information Commissioner Act 2010 (Cth) when performing privacy functions as defined in that Act;
Intellectual Property	<p>includes:</p> <ul style="list-style-type: none">a. all copyright (including rights in relation to phonograms and broadcasts);b. all rights in relation to inventions, plant varieties, trademarks (including service marks), designs, circuit layouts; andc. all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields; <p>but does not include:</p> <ul style="list-style-type: none">d. Moral Rights;e. the non-proprietary rights of performers; orf. rights in relation to confidential information;

Law	<p>includes:</p> <ol style="list-style-type: none">Acts of the Commonwealth and the State(s) and Territory(s) in which the Activity will be undertaken, and any other relevant State or Territory;ordinances, regulations, by-laws, orders and proclamations or other instruments of legal effect made under those Acts referred to in paragraph (a);directions by any person exercising statutory powers regarding the Recipient or the Activity, including the Real Property; andall the requirements, standard, approvals, licences, registrations or permits of any government (including local government) department, authority, agency or regulatory body that apply to the Activity, including the Real Property;
Material	<p>means anything in relation to which Intellectual Property rights arise;</p>
Milestone	<p>means a milestone or stage of completion of the Activity as set out in Annexure A of this Agreement;</p>
Moral Rights	<p>includes the following rights of an author of copyright Material:</p> <ol style="list-style-type: none">the right of attribution of authorship;the right of integrity of authorship; andthe right not to have authorship falsely attributed;
Open Access Licence	<p>means a licence to the public on broad open access terms that allows any member of the public to perform a wide range of acts in respect of the material subject to certain restrictions. An Open Access Licence includes any Australian Government open access licence and any Creative Commons Attribution licence (see http://creativecommons.org.au/learn-more/licences);</p>
Operational	<p>means that the completed Project is operating in a way that enables it to achieve its Purpose;</p>
Operational Period	<p>means the period during which the Recipient must keep the completed Project Operational;</p>

Other Contributions	means financial or in-kind resources (with in-kind resources valued at cost other than the Funding, which are specified in Item C and Annexure B of the Schedule and are to be used by the Recipient to perform the Activity;
Personnel	means: <ul style="list-style-type: none">a. in relation to the Recipient - any natural person who is an officer, employee, agent, or professional advisor of the Recipient or its subcontractors; andb. in relation to the Commonwealth - any natural person, other than a person referred to in paragraph a, who is an officer, employee, agent or professional advisor of the Commonwealth;
Privacy Act	refers to the Privacy Act 1988 (Cth);
Programme	means the Community Development Grants programme under which the Commonwealth is able to provide Funding to the Recipient.
Programme Guidelines	refers to the guidelines for the Programme, if any, as described in Item A of the Schedule;
Programme Objectives	means the objectives of the Programme, as set out in the Programme Guidelines or otherwise in Item A of the Schedule;
Project	has the meaning given in Item A.2 of the Schedule and includes the Activity;
Project Completion Date	means the date specified in item A.2 of the Schedule, which is the date by which the Recipient must complete the Project;
Purpose	means the purpose of the Project as set out at item A.3 of the Schedule;
Qualified Accountant	means a person who is a member of the Institute of Chartered Accountants in Australia or of CPA Australia;
Recipient	includes, where the context permits, the officers, employees, agents, volunteers and subcontractors, and successors of the Recipient;
Records	includes documents, information and data stored by any means and all copies and extracts of the same;

Report	means Activity Material that is provided to the Commonwealth for reporting purposes as stipulated in Item D of the Schedule;
Real Property	<p>means:</p> <ul style="list-style-type: none">a. any land, buildings or fixtures including the Capital Works (both during and after completion) and the Works Locations; andb. any interest in the property specified in paragraph (a); <p>that are purchased, leased, upgraded or otherwise created or brought into existence wholly or in part with the use of the Funding and includes the property listed at item E.2.1 of the Schedule.</p>
Schedule	means the schedule to this Agreement and may include Annexures and incorporate other documents by reference;
Specified Personnel	means the Recipient's Personnel specified in Item I as Personnel required to undertake all or any part of the Activity;
Term	refers to the period described in clause 1.4.1 of this Agreement;
Third Party Interest	means any legal or equitable right, interest, power or remedy in favour of any person other than the Commonwealth or the Recipient in connection with the Agreement, including any right of possession, receivership, control or power of sale, and any mortgage, charge, security or other interest;
Undepreciated	in relation to the value of an Asset, means the value of the Asset which has not been Depreciated; and
Works Location	means a location where the Capital Works are to be undertaken including any premises in, or land on, which those Capital Works are to be undertaken and includes a Works Location listed in item E.2.3 of the Schedule.

1.2. Interpretation

1.2.1. In this Agreement, unless the contrary intention appears:

- a. words importing a gender include any other gender;
- b. words in the singular include the plural and words in the plural include the singular;

- c. clause headings are for convenient reference only and have no effect in limiting or extending the language of provisions to which they refer;
- d. words importing a person include a partnership and a body whether corporate or otherwise;
- e. a reference to dollars is a reference to Australian dollars;
- f. a reference to any legislation or legislative provision includes any statutory modification, substitution or re-enactment of that legislation or legislative provision;
- g. if any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- h. the use of the word “includes” or “including” in relation to a right or obligation of a party, does not limit or restrict the scope of that right or obligation;
- i. a reference to a clause is a reference to a clause in this Agreement;
- j. a reference to an Item is a reference to an Item in the Schedule;
- k. the Schedule and any attachments form part of the Agreement;
- l. if any conflict arises between the terms and conditions contained in the clauses of this Agreement and any part of the Schedule (and attachments if any), the terms and conditions of the clauses prevail; and
- m. if any conflict arises between any part of the Schedule and any part of an attachment, the Schedule prevails.

1.3. Guidance on construction of Agreement

- 1.3.1. This Agreement records the entire agreement between the parties in relation to its subject matter.
- 1.3.2. As far as possible all provisions of this Agreement will be construed so as not to be void or otherwise unenforceable.
- 1.3.3. If any clause in this Agreement is void or otherwise unenforceable then that clause will be severed to the extent it is void and unenforceable and the rest of the Agreement remains in force.
- 1.3.4. A provision of this Agreement will not be construed to the disadvantage of a party solely on the basis that it proposed or prepared that provision.
- 1.3.5. This Agreement may be executed in counterparts. All executed counterparts constitute one document.

1.4. Duration of Term

- 1.4.1. The Term of this Agreement commences on the Date of the Agreement and, unless terminated earlier, it expires on the Completion Date.

2. Activity, Project and Operational Period

2.1. Conduct of Activity

2.1.1. The Recipient agrees to carry out the Activity:

- a. to achieve the Activity Objectives;
- b. to assist the Programme to meet the Programme Objectives;
- c. to meet the Milestones;
- d. within the Activity Period;
- e. in an efficient, effective, economical and ethical manner;
- f. in accordance with this Agreement; and
- g. diligently and to a high standard.

2.1.2. Where the Commonwealth is satisfied that the Recipient does not have the capacity to adequately:

- a. manage the Funding; or
- b. undertake the Activity in accordance with this Agreement,
the Commonwealth may by written notice immediately:
- c. suspend, reduce or cease the release of Funding to the Recipient; and/or
- d. require the Recipient to refund some or all of the Funding to the Commonwealth; or
- e. terminate the Agreement in accordance with the provisions of clause 17.

2.2. Liaison and monitoring

2.2.1. The Recipient agrees to:

- a. liaise with and provide information to the Commonwealth as reasonably notified by the Commonwealth; and
- b. comply with all of the Commonwealth's reasonable requests, directions or monitoring requirements.

2.2.2. In relation to conducting a review and final evaluation of the Programme, the Recipient agrees to:

- a. provide all reasonable assistance required by the Commonwealth;
- b. respond to all of the Commonwealth's reasonable requests; and
- c. provide any information the Commonwealth reasonably requires.

2.2.3. Each of the parties may nominate, from time to time, a person who has authority to receive and sign notices and written communications for each of them under this Agreement and accept any request or direction in relation to the Activity.

2.3. **Subcontractors**

- 2.3.1. The Recipient is fully responsible for the performance of the Recipient's obligations under this Agreement, even though the Recipient may have **subcontracted any of them**.
- 2.3.2. Unless the Commonwealth agrees otherwise, the Recipient must have a written contract with each of the Recipient's subcontractors (subcontract) and ensure that each subcontract is consistent with, and allows the Recipient to give effect to, the Recipient's obligations under this Agreement. If requested by the Commonwealth, the Recipient must notify the Commonwealth of any subcontractors appointed to carry out any of the Recipient's obligations under this Agreement. The Recipient must notify the Commonwealth no later than 20 Business Days after the request from the Commonwealth.
- 2.3.3. The Recipient is responsible for ensuring the suitability of a subcontractor for the work proposed to be carried out and for ensuring that such work meets the requirements of this Agreement. The Commonwealth may direct the Recipient to terminate a subcontracting arrangement by notifying the Recipient in writing.
- 2.3.4. Upon receipt of a written notice from the Commonwealth directing the Recipient to terminate a subcontracting arrangement, the Recipient must, as soon as practicable (or as the Commonwealth may direct in the notice), cease using that subcontractor to perform any of the Recipient's obligations unless the Commonwealth directs that the subcontractor be replaced immediately, in which case the Recipient must comply with the direction.
- 2.3.5. If the Commonwealth directs the Recipient to terminate a subcontracting arrangement, the Recipient remains liable under this Agreement for the past acts or omissions of the Recipient's subcontractors as if they were current subcontractors.
- 2.3.6. The Recipient must, in any subcontract placed with a subcontractor, reserve a right of termination to take account of:
- a. The Commonwealth's right to direct the Recipient to terminate that subcontract under subclause 2.3; and
 - b. The Commonwealth's right of termination under clause 17,
- and the Recipient must make use of that right in the event of a termination by the Commonwealth.
- 2.3.7. The Recipient must, in any subcontract placed with a subcontractor, include a requirement for insurance that is consistent with the requirement for insurance under clause 21.5.
- 2.3.8. The Recipient must not enter into a subcontract under this Agreement with a subcontractor named by the Director of the Workplace Gender Equality Agency as an employer currently not complying with the Workplace Gender Equality Act 2012 (Cth).
- 2.3.9. For the purpose of this Agreement, 'subcontractor' includes any other member of the Recipient's consortium who is involved in the performance of the Activity.

2.4. **Reserved**

2.5. **Responsibility of the Recipient**

2.5.1. The Recipient is fully responsible for the performance of the Activity and for ensuring compliance with the requirements of this Agreement, and will not be relieved of that responsibility because of any:

- a. involvement by the Commonwealth in the performance of the Activity;
- b. subcontracting of the Activity;
- c. acceptance by the Commonwealth of Specified Personnel; or
- d. payment of any amount of Funding to the Recipient.

2.6. **Reports**

2.6.1. The Recipient agrees to provide to the Commonwealth written Reports in the manner specified in Item D of the Schedule.

2.7. **Project**

2.7.1. The Recipient must complete the Project by the Project Completion Date.

2.8. **Operational Period**

2.8.1. The Recipient must keep the completed Project Operational during the Operational Period specified in Item A.4 of the Schedule.

2A. Capital Works

2A.1. **Performance**

2A.1.1 The Recipient must perform the Capital Works:

- a. in accordance with the designs and plans submitted by the Recipient to the Commonwealth;
- b. in a good and workmanlike manner by qualified tradespeople; and
- c. with a minimum of delay.

2A.2. **Applicable Laws**

2A.2.1 The Recipient warrants and agrees that the Capital Works (whether undertaken before, on or after the Date of this Agreement) have been (if applicable) and will be carried out in accordance with all applicable Laws including, but not limited to, all necessary planning and regulatory approvals.

2A.2.2 The Recipient agrees to ensure that:

- a. the Works Locations comply at all times with all applicable Laws regarding their use as a site for the Capital Works; and
- b. the completed Capital Works comply with all Laws relating to their ongoing use throughout the Operational Period.

2A.3. Commence Construction

- a. The Recipient must Commence Construction required for the Activity within one year of the Date of this Agreement;
- b. The Recipient must notify the Commonwealth that the Recipient has Commenced Construction for the Activity, within five (5) Business Days of Commencing Construction; and
- c. If the Recipient fails to Commence Construction required for the Activity within six months of the Date of this Agreement, the Commonwealth may give the Recipient notice requiring the Recipient to repay the Commonwealth all or part of the Funding that the Commonwealth has previously paid to the Recipient within the period specified in the notice.

2A.4. Completion

2A.4.1 The Recipient must:

- a. plan, control, manage, co-ordinate and carry out the Capital Works in a manner that enables completion of all activities comprising the Capital Works by the Project Completion Date;
- b. in addition to the Recipient's reporting obligations under item D of Schedule 1, the Recipient must provide the Commonwealth with written evidence satisfactory to the Commonwealth of the completion of the Capital Works, no later than 10 Business Days after the end of the Project Completion Date; and
- c. consult the Commonwealth in advance about any proposed change to, the scope or timing of the Capital Works which is likely to delay the completion of the Capital Works, detailing the extent, or likely extent, of the change and the reasons for it.

3. Funding

3.1. Payment of Funding

- 3.1.1. Subject to sufficient funds being available, and compliance by the Recipient with this Agreement, the Commonwealth agrees to provide the Recipient with the Funding at the times and in the manner specified in Annexure A.
- 3.1.2. The Commonwealth is not responsible for the provision of additional money to meet any expenditure in excess of the Funding.

3.2. Commonwealth's right to suspend payment or reduce the amount of Funding

- 3.2.1. Without limiting the Commonwealth's rights, the Commonwealth may suspend any payment in whole or in part until the Recipient has performed its obligations under this Agreement.
- 3.2.2. Reserved.
- 3.2.3. The Commonwealth may reduce the amount of Funding payable under this Agreement where the Recipient:

- a. owes money to the Commonwealth, or
- b. has money that the Recipient should have, but has not yet, acquitted

under any arrangement with the Commonwealth (whether contractual, statutory or otherwise).

- 3.2.4. Notwithstanding such suspension of any payments or reduction in the amount of the Funding, the Recipient agrees to continue to perform any obligations under this Agreement.

4. Taxes, duties and government charges

- 4.1.1. Except as provided by clause 4, the Recipient agrees to pay all taxes, duties and government charges imposed or levied in Australia or overseas in connection with the performance of this Agreement.
- 4.1.2. Unless otherwise indicated, any Funding and all other consideration for any supply made under this Agreement is exclusive of any GST imposed on the supply.
- 4.1.3. If one party (the supplier) makes a taxable supply to the other party (the taxable supply recipient) under this Agreement, on receipt of a tax invoice from the supplier, the taxable supply recipient will pay without setoff an additional amount to the supplier equal to the GST imposed on the supply in question.
- 4.1.4. No party may claim or retain from the other party any amount in relation to a supply made under this Agreement for which the first party can obtain an input tax credit or decreasing adjustment.

5. Debt and Interest

- 5.1.1. In this clause 5, '**Interest**' means interest calculated at an interest rate equal to the general interest charge rate for a day pursuant to section 8AAD of the *Taxation Administration Act 1953* (Cth), on a daily compounding basis.
- 5.1.2. The Recipient agrees, upon request of the Commonwealth, to pay any amount owed or payable to the Commonwealth or which the Commonwealth is entitled to recover from the Recipient under this Agreement, including if demanded by the Commonwealth any Interest, as a debt due by the Recipient without further proof of the debt by the Commonwealth being necessary. Such payment is without prejudice to any other rights available to the Commonwealth under the Agreement, under statute, at law or in equity.
- 5.1.3. If the Commonwealth notifies the Recipient that an amount is to be refunded or otherwise paid to the Commonwealth and the amount is not refunded or paid within 20 Business Days, or as otherwise notified by the Commonwealth, the Recipient agrees to pay Interest, unless the Commonwealth notifies the Recipient otherwise, on the amount outstanding after the expiry of the date it was due, until the amount is paid in full.
- 5.1.4. In respect to any obligation the Recipient may have under this Agreement to pay the Commonwealth any Interest, the Recipient agrees that the Interest represents a reasonable pre-estimate of the loss incurred by the Commonwealth.

6. Management of Funding

- 6.1.1. The Recipient agrees to spend the Funding only for the Activity in accordance with this Agreement.

6.2. Budget

- 6.2.1. The Recipient agrees to only spend the Funding for the Activity and in accordance with the Budget.
- 6.2.2. Subject to clauses 6.2.3 and 6.2.4, the Recipient may spend the Funding on any separate category of expenditure item within the Budget.
- 6.2.3. The Recipient agrees to obtain prior written approval from the Commonwealth for any transfer of Funding between categories of expenditure items within the Budget which exceed a percentage of the total Budget as specified in Item B of the Schedule.
- 6.2.4. The total amount of transfers in any Financial Year must also not exceed the percentage of the Budget specified in Item B of the Schedule.

6.3. Account and financial records

- 6.3.1. The Recipient agrees to ensure that the Funding is held in an account in the Recipient's name and which the Recipient solely controls, with an authorised deposit-taking institution authorised under the Banking Act 1959 (Cth) to carry on banking business in Australia and that is an account that complies with any other requirements specified in Item A.7 in the Schedule.
- 6.3.2. Reserved
- 6.3.3. The Recipient must, in relation to the account referred to in clause 6.3.1:
- a. notify the Commonwealth, prior to the receipt of any Funding, of details sufficient to identify the account;
 - b. on notification from the Commonwealth, provide the Commonwealth and the authorised deposit-taking institution with a written authority for the Commonwealth to obtain any details relating to any use of the account;
 - c. if the account changes, notify the Commonwealth within 10 Business Days of the change occurring and provide the Commonwealth with details of the new account;
 - d. Reserved.
- 6.3.4. The Recipient agrees to:
- a. keep financial accounts and records relating to the Funding and the Project and Activity that identify
 - i. all receipts and payments related to the Project and Activity; and
 - ii. all interest earned on the Funding.
 - b. unless otherwise notified by the Commonwealth, prepare financial statements for the Project and Activity in accordance with Australian Accounting Standards including:

- i. Reserved; and
- ii. a register of the Assets and a register of Real Property created, acquired, written-off or Disposed of during the Financial Year to date compared with the Budget; and

6.4. Use as security

6.4.1. Except with the prior written approval of the Commonwealth, the Recipient agrees not to use any of the following as any form of security for the purpose of obtaining or complying with any form of loan, credit, payment or other interest, or for the preparation of, or in the course of, any litigation:

- a. the Funding;
- b. this Agreement or any of the Commonwealth's obligations under the Agreement; or
- c. any Assets or Intellectual Property Rights in the Activity Material.

6.5. Refunds of unexpended and misspent Funds

6.5.1. If at any time during the term of this Agreement (including on the Completion Date):

- a. there remains an amount of Funding that has not been spent or legally committed for expenditure in accordance with the Agreement and the period in which that Funding was expected to be spent or legally committed has passed; or
- b. an amount of Funding has been spent in contravention of the Agreement, the Commonwealth may (at its discretion and in addition to any other rights it may have) by notice in writing to the Recipient:
 - c. require the Recipient to refund this amount to the Commonwealth within 20 Business Days (or other such period specified in the notice); or
 - d. reduce any further payments of Funding to the Recipient (if applicable) by an amount up to this amount.

6.5.2. If clause 6.5.1.a applies, the Commonwealth may by notice in writing require the Recipient to otherwise deal with this amount in accordance with any conditions that the Commonwealth considers appropriate, including conditions relating to the ongoing use and expenditure by the Recipient of that amount for particular goals or objectives associated with the Activity

6.5.3. The Recipient must immediately notify the Commonwealth in writing if any of the events in clauses 6.5.1.a or 6.5.1.b occurs.

6.5.4. If the completed Project ceases to be Operational during the Operational Period, the Commonwealth may give the Recipient notice requiring the Recipient to repay all or part of the Funding to the Commonwealth within the period specified in the notice and the Recipient must comply with that notice.

6.5.5. On completion of the Project, if the cost of the completed Project is less than the Cost Estimate, the Commonwealth may give the Recipient notice requiring the

Recipient to return any unexpended Funding to the Commonwealth within the period specified in the notice and the Recipient must comply with that notice.

6.5.6. This clause survives termination or expiry of the Agreement.

7. Other Contributions and Cost Savings

7.1. Other Contributions

7.1.1. The Recipient must, within six (6) months of the date of the Agreement provide to the Commonwealth satisfactory written evidence that confirms the Other Contributions identified in Item C and detailed in Annexure B of the Schedule, including the amounts to be provided, the due dates for each of these amounts and the terms and conditions of the provision of the Other Contributions.

7.1.2. If, for any reason, the Recipient is not able to obtain the Other Contributions (including any part thereof) as required under this Agreement, then the Commonwealth may:

- a. suspend payment of the Funding or an instalment of the Funding until the Other Contributions are obtained (as the case may be);
- b. reduce the total Funding payable under this Agreement by an amount that, in the Commonwealth's opinion, represents an equivalent proportion of the overall reduction in the total value of the Other Contributions (as the case may be) resulting from the failure; or
- c. terminate this Agreement in accordance with clause 17.2.

7.1.3. The Recipient must notify the Commonwealth in writing as soon as possible after it becomes aware of any likely or actual failure (for any reason) to obtain the Other Contributions (including any part thereof) as required under this Agreement.

7.1.4. The Recipient agrees to notify the Commonwealth within 10 Business Days of entering into any arrangement under which the Recipient is entitled to receive any additional monetary or in-kind contributions in respect of the Project and Activity that are not identified as Other Contributions in Item C and Annexure B of the Schedule. Any such additional contribution that the Recipient becomes entitled to receive after the Date of this Agreement constitutes Other Contributions for the purposes of the Agreement (and Schedule 1 is deemed to be varied accordingly) on the date on which the Recipient notifies the Commonwealth of that contribution under this clause 7.1.4.

7.1.5. If the Recipient is provided with or obtains (and/or was required to provide or obtain) any Other Contributions and the cost of the completed Project is less than the Cost Estimate, the Commonwealth may give the Recipient notice requiring the Recipient to return to the Commonwealth, within the period specified in the notice, an amount equal to the Commonwealth's Proportion of the Cost Savings. In this subclause 7.1.5, 'the Commonwealth's Proportion of the Cost Savings' means $\text{savings} \times \% \text{ where:}$

- a. $\text{savings} = (\text{the Cost Estimate} - \text{the actual cost of the Project} - \text{any Funds previously repaid to the Commonwealth under this Agreement}); \text{ and}$

- b. $\% = (\text{the Funding} \div (\text{the maximum Funding} + \text{the maximum Other Contributions excluding any in-kind Other Contributions}))$.

7.1.6. If the Recipient receives a notice given by the Commonwealth under subclause 18, the Recipient must comply with the notice within the period specified within the notice.

7.2. **Cost Savings**

7.2.1. Subject to compliance with this Agreement, the Recipient must:

- a. continually identify any costs saving or efficiency measures in carrying out the Activity; and
- b. in consultation with the Commonwealth:
 - i. implement those costs saving or efficiency measures;
 - ii. ensure that any reductions in expenditure for the Activity that result from those costs saving or efficiency measures are accounted for and allocated equitably in proportion to the relative total values of the Funding, the Recipient Contributions and the Other Contributions (as applicable) as committed to the Activity.

8. **Statutory Approvals**

8.1 The Recipient must obtain all necessary statutory approvals in relation to the Project, including those specified in item K of the Schedule, and the Recipient must give the Commonwealth, within six (6) months after the Date of this Agreement, satisfactory written evidence that these statutory approvals have been obtained.

8.1A The Recipient must also provide satisfactory written evidence that the statutory approvals obtained under subclause 8.1 are sufficient for the Recipient to Commence Construction within six months after the Date of this Agreement.

8.2 If the Recipient does not comply with the requirement in subclause 8.1, the Commonwealth may at the Commonwealth's sole discretion:

- a. suspend payment of the Funding until the evidence of the statutory approvals referred to in subclause 8.1 has been received; or
- b. terminate this Agreement in accordance with clause 17.2.

9. **Assets**

9.1. **Acquisition of Asset**

9.1.1. The Recipient agrees not to use the Funding to acquire or create any Asset, apart from those detailed in the Item E, without obtaining the Commonwealth's prior written approval. Approval may be given subject to any conditions the Commonwealth may impose.

9.1.2. Unless it is specified in Item E that the Commonwealth or a third party owns the Asset or the Commonwealth provides written consent to a third party owning the

Asset, then the Recipient must ensure that it owns any Asset acquired with the Funding.

9.2. Terms applicable to Asset

9.2.1. If the Commonwealth owns the Asset clauses 9.4 and 9.6.2 do not apply.

9.2.2. If the Asset is owned by a third party then the Recipient agrees to ensure that the terms of the lease, hire or finance arrangement are consistent with clause 9.3, and clauses 9.4, 9.5 and 9.6 do not apply.

9.3. Recipient's responsibilities for Asset

9.3.1. Throughout the Term, the Recipient agrees to:

- a. use any Asset in accordance with this Agreement and for the purposes of the Activity;
- b. not encumber or Dispose of any Asset, or deal with or use any Asset other than in accordance with this clause 9 without the Commonwealth's prior written approval;
- c. hold all Assets securely and safeguard them against theft, loss, damage, or unauthorised use;
- d. maintain all Assets in good working order;
- e. maintain all appropriate insurances for all Assets to their full replacement cost noting the Commonwealth's interest, if any, in the Asset under the Agreement;
- f. if required by law, maintain registration and licensing of all Assets;
- g. be fully responsible for, and bear all risks relating to, the use or Disposal of all Assets; and
- h. if specified in Item E, maintain an Assets register in the form and containing the details as described in Item E and as and when requested by the Commonwealth, provide copies of the Assets register to the Commonwealth.

9.4. Sale or Disposal of Asset during Term

9.4.1. If the Recipient Disposes of an Asset during the Term of this Agreement, the greater of the following proportions must, unless the Commonwealth otherwise directs, be accounted for as Funding and used for the Activity:

- a. the proportion of the sale proceeds from the Asset; or
- b. the proportion of the Undepreciated value of the Asset,

that is equivalent to the proportion of the cost of the Asset that was funded from the Funding.

9.5. Loss, damage, etc of Asset

9.5.1. If any of the Assets are lost, damaged or destroyed, the Recipient agrees to promptly reinstate the Assets including from the proceeds of the insurance, and

this clause 9 continues to apply to the reinstated Assets. The proportion of any surplus from the proceeds of the insurance, which reflects the proportion of the cost of the Asset that was funded from the Funding, must be notified to the Commonwealth and accounted for as Funding and used for the Activity.

9.6. Dealing with Asset

9.6.1. On expiry of the Activity Period or earlier termination of the Agreement, the Commonwealth may require the Recipient to deal with an Asset as the Commonwealth may, at the sole discretion of the Commonwealth, notify the Recipient.

9.6.2. Subject to clause 9.6.1, if on expiry of the Activity Period or the earlier termination of this Agreement, an Asset has not been fully Depreciated, the Commonwealth may, by written notice, require the Recipient to:

- a. pay to the Commonwealth within 20 Business Days of the expiry of the Activity Period or earlier termination of the Agreement, an amount equal to the proportion of the Undepreciated value of the Asset that is equivalent to the proportion of the cost of the Asset that was funded from the Funding;
- b. sell the Asset for the best price reasonably obtainable and pay to the Commonwealth within 20 Business Days of the sale the proportion of the proceeds of the sale that is equivalent to the proportion of the cost of the Asset (less an amount equal to the reasonable Disposal costs incurred by the Recipient) that was funded from the Funding; or
- c. continue to use the Asset for the purposes, and in accordance with any conditions, notified by the Commonwealth.

10. Real Property

10.1. Approval

10.1.1 The Recipient must obtain the Commonwealth's prior written approval to spend the Funding on any Real Property that is not specifically identified in the Budget. The Commonwealth may grant that approval subject to conditions.

10.2. Outgoings

10.2.1 The Recipient must pay all rents, rates, taxes, levies and other outgoings of any nature in relation to the Real Property. The Funding must not be used to pay rent.

10.3. Recipient's Responsibilities for Real Property

10.3.1 Throughout the Term of this Agreement, including the Operational Period, the Recipient agrees to:

- a. hold the Real Property securely and safeguard it against theft, loss, damage, or unauthorised use;
- b. maintain the Real Property in good condition;
- c. maintain all appropriate insurances for the Real Property to its full replacement cost and use that insurance to rectify any damage to or

destruction to the Real Property and this clause 10.3.1 continues to apply to the Real Property once rectified. The Recipient must notify the Commonwealth of any surplus from the proceeds of this insurance and the Recipient must use and account for that surplus as Funding under this Agreement;

- d. if required by any Law, maintain registration and licensing of the Real Property;
- e. be fully responsible for, and bear all risks relating to, the use or Disposal of all Real Property;
- f. if specified in item E.2 of the Schedule, maintain a Real Property register in the form and containing the details as described in that item of the Schedule; and
- g. as and when requested by the Commonwealth, provide copies of the Real Property register to the Commonwealth.

10.4. Recipient's Use of Real Property

10.4.1. The Recipient agrees to ensure that:

- a. the Real Property is used for, and is fit to be used for, the Purpose specified in item A.3 of the Schedule throughout the Operational Period; and
- b. the use of the Real Property for the Purpose specified in item A.3 of the Schedule throughout the Operational Period, does not infringe any conditions of the Recipient's ownership or occupation of the Real Property.

10.4.2. Throughout the Operational Period, the Recipient must use the Real Property for the Purpose specified in item A.3 of the Schedule.

10.4.3. If the Commonwealth requests, the Recipient must take all action necessary to grant the Commonwealth a security, including in the form of a charge or mortgage, over the Real Property and on terms acceptable to the Commonwealth.

10.5. Third Party Interests

10.5.1. If a third party has proprietary or other rights or interests in relation to any Real Property, the Recipient agrees to:

- a. enter into legally binding written agreements under which all such third parties agree to:
 - i. the use of the Works Locations to undertake the Capital Works throughout the Activity Period;
 - ii. the use of the Works Locations, and completed Capital Works for the Purpose specified in item A.3 of the Schedule throughout the Operational Period; and

- iii. the use of any other Real Property for the Activity throughout the Activity Period and for the Purpose specified in item A.3 of the Schedule throughout the Operational Period;
- b. not do anything that would give any such third party a right to rescind its agreement to one or more of the uses specified in paragraph (a); and
- c. within 10 Business Days of a request from the Commonwealth, provide evidence to the Commonwealth that the Recipient has complied with the requirements of this subclause 10.5.

10.6. Dealing with Real Property

10.6.1. If:

- a. the Agreement is terminated under clause 17.2 and some or all of the Funding has been provided to the Recipient for expenditure on Real Property;
- b. the Recipient fails to Commence Construction for the Activity within six months of the Date of this Agreement;
- c. the Recipient Disposes of any Real Property during the Term of this Agreement; or
- d. the Recipient fails to or ceases to use any Real Property for the Purpose specified in item A.3 of the Schedule at any time during the Operational Period

then:

- e. the Recipient must notify the Commonwealth at least 20 Business Days prior to the event in paragraph (b), (c) or (d) occurring; and
- f. the Commonwealth may give the Recipient a notice requiring the Recipient to repay the Commonwealth some or all of the Funding provided under this Agreement and the Recipient must repay the amount specified in any such notice within the period specified in that notice.

10.6.2. If the Recipient fails to pay the Commonwealth an amount as required by a notice given under subclause 10.6.1:

- a. the Recipient must pay the Commonwealth the Interest on the unpaid amount from the date it was due, for the period it remains unpaid; and
- b. that amount, and Interest owed under this subclause 10.6.2, will be recoverable by the Commonwealth as a debt due to the Commonwealth by the Recipient.

10.6.3. The provisions relating to this clause 10 shall survive the termination or expiration of this Agreement.

11. Records

11.1. Keeping Records

- 11.1.1. The Recipient must create and maintain full and accurate accounts and records of the conduct of the Project and Activity including, without limitation, all:
- a. progress against the Milestones;
 - b. receipt and use of Funding;
 - c. Other Contributions (if any); and
 - d. creation, acquisition and Disposal of Assets or Real Property.

11.2. Retention of Records

- 11.2.1. The Recipient agrees to create and maintain records and accounts under clause 11.1.1 and retain them for a period of no less than seven (7) years after the end of the Term.

12. Intellectual Property

12.1. Use of Commonwealth Material

- 12.1.1. The Commonwealth grants a royalty-free, non-exclusive licence for the Recipient to use, reproduce and adapt the Commonwealth Material for the purposes of this Agreement.
- 12.1.2. The Recipient agrees to use the Commonwealth Material strictly in accordance with any conditions or restrictions the Commonwealth may notify to the Recipient.

12.2. Rights in Activity Material

- 12.2.1. Subject to this clause 12, Intellectual Property in Activity Material vests or will vest in the Recipient.
- 12.2.2. Clause 12.2.1 does not affect the ownership of Intellectual Property in any Commonwealth Material incorporated into the Activity Material.
- 12.2.3. The Recipient grants to (or will procure for) the Commonwealth a permanent, irrevocable, royalty-free, worldwide, non-exclusive licence (including a right of sublicense) to use, reproduce, exploit, communicate, adapt and distribute the Activity Material for any purpose.
- 12.2.4. The Recipient agrees that the licence granted in clause 12.2.3 includes a right for the Commonwealth to licence the Activity Material to the public under an Open Access Licence.
- 12.2.5. The Recipient agrees, on request by the Commonwealth, to create, sign, execute or otherwise deal with any document necessary or desirable to give effect to this clause 12.
- 12.2.6. The Recipient warrants that:
- a. it is entitled; or
 - b. it will be entitled at the relevant time,

to deal with the Intellectual Property in the Activity Material in the manner provided for in this clause 12.

12.3. **Moral Rights**

12.3.1. In this clause 12.3:

- Permitted Acts** means any of the following classes or types of acts or omissions:
- a. using, reproducing, adapting or exploiting all or any part of the Activity Material, with or without attribution or authorship;
 - b. supplementing the Activity Material with any other Material;
 - c. using the Activity Material in a different context to that originally envisaged; and
 - d. releasing the Activity Material to the public under an Open Access Licence;

but does not include false attribution of authorship.

12.3.2. Where the Recipient is a natural person and the author of the Activity Material he or she:

- a. consents to the performance of the Permitted Acts by the Commonwealth or any person claiming under or through the Commonwealth (whether occurring before or after the consent is given); and
- b. acknowledges that their attention has been drawn to the Commonwealth's general policies and practices regarding Moral Rights.

12.3.3. Where clause 12.3.1 does not apply, the Recipient agrees:

- a. to obtain from each author a written consent which extends directly or indirectly to the performance of the Permitted Acts by the Commonwealth or any person claiming under or through the Commonwealth (whether occurring before or after the consent is given) and, upon request, will provide the executed original of any such consent to the Commonwealth; and
- b. to ensure that each author's attention is drawn to the Commonwealth's general policies and practices regarding Moral Rights.

12.3.4. This clause 12.3 does not apply to any Commonwealth Material incorporated in the Activity Material.

13. Confidential Information

13.1. **Confidential Information not to be disclosed**

13.1.1. Subject to clause 13.2.1, a party must not, without the prior written consent of the other party, disclose any Confidential Information of the other party to a third party.

13.2. Written Undertakings

13.2.1. The Recipient must, on request by the Commonwealth at any time, arrange for:

- a. its Personnel; or
- b. any person with a Third Party Interest,

to give a written undertaking in a form acceptable to the Commonwealth relating to the use and non-disclosure of the Commonwealth's Confidential Information.

13.3. Exceptions to Obligations

13.3.1. The obligations on the parties under this clause 13.3 will not be taken to have been breached to the extent that Confidential Information:

- a. is disclosed by a party to its Personnel solely in order to comply with obligations, or to exercise rights, under this Agreement;
- b. is disclosed to a party's internal management Personnel, solely to enable effective management or auditing of Agreement-related activities;
- c. is disclosed by the Commonwealth to the responsible Minister;
- d. is disclosed by the Commonwealth, in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia;
- e. is shared by the Commonwealth (including other agencies), where this serves the Commonwealth of Australia's legitimate interests;
- f. is authorised or required by law to be disclosed; or
- g. is in the public domain otherwise than due to a breach of this clause 13.3.

13.3.2. Where a party discloses Confidential Information to another person pursuant to clauses 13.3.1.a - 13.3.1.e, the disclosing party must notify the receiving person that the information is confidential.

13.3.3. In the circumstances referred to in clauses 13.3.1.a, 13.3.1.b and 13.3.1.e, the disclosing party agrees not to provide the information unless the receiving person agrees to keep the information confidential (subject to the exceptions in this clause 13.3).

13.3.4. The Recipient agrees to secure all of the Commonwealth's Confidential Information against loss and unauthorised access, use, modification or disclosure.

13.4. Period of Confidentiality

13.4.1. The obligations under this clause 13.4 will continue, notwithstanding the expiry or termination of this Agreement:

- a. in relation to an item of information described in Item N – for the period set out in respect of that item; and
- b. in relation to any item of information agreed after the Date of this Agreement to be Confidential Information – for the period agreed by the parties in writing in respect of that item, and if no such period is agreed by the parties, in perpetuity.

13.5. No reduction in Privacy Obligations

- 13.5.1. This clause 13 does not detract from any of the Recipient's obligations under the Privacy Act or under clause 21.2.

14. Acknowledgement and publicity

14.1. Acknowledgement of support

- 14.1.1. Unless otherwise notified by the Commonwealth, the Recipient agrees, in all publications, promotional and advertising materials, public announcements and activities by the Recipient or on the Recipient's behalf in relation to the Activity, or any products, processes or inventions developed as a result of it, to acknowledge the financial and other support the Recipient has received from the Australian Government, in the manner set out in Item H of the Schedule, or as otherwise approved by the Commonwealth prior to its use.
- 14.1.2. Where the Recipient has been provided with Funding to produce any publication, a copy of the publication must, on request, be provided to the Commonwealth.

14.2. Right to publicise Funding

- 14.2.1. The Commonwealth reserves the right to publicise and report on the awarding of Funding to the Recipient. The Commonwealth may do (but is not limited to doing) this by including the Recipient's name, the amount of the Funding given to the Recipient, the date the Agreement commences and its term, and the title, location, purpose and a brief description of the Activity in media releases, general announcements about the Funding, annual reports or through any other means as determined by the Commonwealth.

14.3. No restriction on advocacy activities

- 14.3.1. The Commonwealth confirms that, subject to clause 14.3.2:
- a. no right or obligation arising under this Agreement should be interpreted as limiting the Recipient's ability to enter into public debate or criticism of the Commonwealth of Australia or its agencies, employees, servants or agents;
 - b. the Commonwealth does not require the Recipient to obtain advance approval of any involvement by the Recipient in public debate or advocacy activities.
- 14.3.2. Nothing in this clause 14.3 limits or derogates from the Recipient's obligations under clauses 13 and 21.2.

15. Liability

15.1. Proportionate liability regime

- 15.1.1. To the extent permitted by law, the operation of any legislative proportionate liability regime is excluded in relation to any claim against the Recipient under or in connection with this Agreement.

15.2. Indemnity

15.2.1. The Recipient indemnifies the Commonwealth from and against any:

- a. cost or liability incurred by the Commonwealth;
- b. loss of or damage to property of the Commonwealth; or
- c. loss or expense incurred by the Commonwealth in dealing with any claim against it, including legal costs and expenses on a solicitor/own client basis and the cost of time spent, resources used, or disbursements paid by the Commonwealth,

arising from:

- d. any breach by the Recipient of the Agreement;
- e. any act or omission involving fault by the Recipient in connection with this Agreement;
- f. the use of Assets or Real Property; or
- g. the use by the Commonwealth of the Activity Material, including any claims by third parties about the ownership or right to use the Intellectual Property in the Activity Material.

15.2.2. The Recipient's liability to indemnify the Commonwealth under clause 15.2.1 will be reduced proportionally to the extent that any act or omission involving fault on the part of the Commonwealth or its Personnel contributed to the relevant cost, liability, loss, damage or expense.

15.2.3. The right of the Commonwealth to be indemnified under this clause 15.2 is in addition to, and not exclusive of, any other right, power or remedy provided by law, but the Commonwealth is not entitled to be compensated in excess of the amount of the relevant cost, liability, loss, damage or expense.

15.3. Meaning of 'fault'

15.3.1. In this clause 15, 'fault' means any negligent or unlawful act or omission or wilful misconduct.

16. Dispute resolution

16.1. Procedure for dispute resolution

16.1.1. The parties agree that a dispute arising under this Agreement will be dealt with as follows, and that, subject to clause 16.4, neither party will commence legal proceedings in relation to that dispute until this procedure is completed:

- a. the party claiming that there is a dispute will give the other party a notice setting out the nature of the dispute;
- b. within five (5) Business Days (or such other period as agreed by the parties in writing) each party will nominate a representative not having any prior involvement in the dispute;
- c. the representatives will try to settle the dispute by direct negotiation between them;

- d. failing settlement within a further 10 Business Days or such other period as agreed by the parties in writing (or failure of one or both parties to nominate a representative within the period set out in clause 16.1.1.b), the parties may agree to refer the dispute to an independent third person with power:
 - i. to intervene and direct some form of resolution, in which case the parties will be bound by that resolution; or
 - ii. to mediate and recommend some form of non-binding resolution;
- e. the parties will co-operate fully with any process instigated under clause 16.1.1.d in order to achieve a speedy resolution; and
- f. if the parties have been unable to agree to refer the dispute to an independent third person, or they have agreed and a resolution is not reached within a further 20 Business Days (or such other period as the parties) may agree in writing), either party may commence legal proceedings.

16.2. Costs

- 16.2.1. Each party will bear its own costs of complying with this clause 16 Dispute resolution, and the parties will bear equally the cost of any third person engaged under clause 16.1.1.d.

16.3. Continued performance

- 16.3.1. Despite the existence of a dispute, the Recipient will (unless requested in writing by the Commonwealth not to do so) continue to perform the Recipient's obligations under this Agreement.

16.4. Application of clause

- 16.4.1. This clause 16 does not apply to:
- a. legal proceedings by either party for urgent interlocutory relief; or
 - b. action by the Commonwealth under or purportedly under clauses 3, 6, 17 and 21.2.

17. Termination or reduction in scope of Agreement

17.1. Termination for convenience

- 17.1.1. The Commonwealth may by notice, at any time and in its absolute discretion, terminate this Agreement or reduce the scope of the Agreement immediately.
- 17.1.2. The Recipient agrees, on receipt of a notice of termination or reduction, to:
- a. stop or reduce the performance of the Recipient's obligations as specified in the notice;
 - b. take all available steps to minimise loss resulting from that termination or reduction;
 - c. continue performing any part of the Activity not affected by the notice; and

- d. immediately return to the Commonwealth any Funding in accordance with clause 17.1.5, or deal with any such Funding as directed by the Commonwealth.
- 17.1.3. In the event of termination under clause 17.1.1, the Commonwealth will be liable only:
 - a. to pay Funding due and owing to the Recipient under the payment provisions of the Agreement before the date of the notice of termination; and
 - b. to reimburse any expenses the Recipient unavoidably incurs that relate directly and entirely to the Activity and not covered by clause 17.1.3.a.
- 17.1.4. The Commonwealth will not be liable to pay amounts under 17.1.3.a and 17.1.3.b which would, added to any payments already paid to the Recipient under this Agreement, together exceed the Funding set out in Item A.7 of the Schedule and Annexure A.
- 17.1.5. The Commonwealth will be entitled to recover from the Recipient any part of the Funding which:
 - a. is not legally committed for expenditure by the Recipient in accordance with the Agreement and due and payable by the Recipient by the date that the notice of termination is received; or
 - b. has not, in the Commonwealth's opinion, been spent by the Recipient in accordance with the Agreement.
- 17.1.6. In the event of a reduction in the scope of the Agreement under clause 17.1.1, the Commonwealth's liability to pay any part of the Funding will, unless there is agreement in writing to the contrary, reduce in accordance with the reduction in the Activity.
- 17.1.7. The Commonwealth's liability to pay any compensation under or in relation to this clause 17.1 is subject to:
 - a. the Recipient's compliance with this clause 17.1; and
 - b. the Recipient's substantiation of any amount claimed under clause 17.1.3.b.
- 17.1.8. The Recipient will not be entitled to compensation for loss of prospective profits or loss of any benefits that would have been conferred on the Recipient.
- 17.2. **Termination for fault**
- 17.2.1. If the Recipient does not comply with any of its obligations under this Agreement, then the Commonwealth:
 - a. *if it considers that the non-compliance is not capable of remedy* - may by notice terminate this Agreement immediately;
 - b. *if it considers that the non-compliance is capable of remedy* - may, by notice require that the non-compliance be remedied within the time specified in the notice, and if not remedied within that time, may terminate the Agreement immediately by giving a second notice.

- 17.2.2. The Commonwealth may also by notice terminate this Agreement immediately if:
- a. the Recipient comes under one of the forms of external administration referred to in Chapter 5 of the Corporations Act 2001 (Cth) or equivalent provisions in legislation of the States and Territories pertaining to incorporated associations or Chapter 11 of the Corporations (Aboriginal and Torres Strait Islander) Act 2006 (Cth) or has an order made against it for the purpose of placing it under external administration;
 - b. the Recipient is unable to pay all its debts as and when they become due and payable or it fails to comply with a statutory demand within the meaning of sections 459E and 459F of the Corporations Act 2001 (Cth);
 - c. proceedings are initiated with a view to obtaining an order for winding up the Recipient, or any shareholder, member or director convenes a meeting for the purpose of considering or passing of any resolution for winding up the Recipient;
 - d. in relation to this Agreement, the Recipient breaches any law of the Commonwealth of Australia, or of a State or Territory;
 - e. the Recipient becomes bankrupt or enters into a scheme of arrangement with creditors;
 - f. another clause of this Agreement allows for termination under this clause 17.2; or
 - g. the Commonwealth is satisfied that any statement made in the Recipient's application for Funding is incorrect, incomplete, false or misleading in a way which would have affected the original decision to approve the Funding.
- 17.2.3. Where the Commonwealth terminates this Agreement under clause 17.2 the Commonwealth:
- a. will be liable only to pay Funding due and owing to the Recipient under the payment provisions of the Agreement before the date of the notice of termination; and
 - b. will be entitled to recover from the Recipient any part of the Funding which:
 - i. is not legally committed for expenditure by the Recipient in accordance with the Agreement and payable by the Recipient by the date that the notice of termination is received; or
 - ii. has not, in the Commonwealth's opinion, been spent by the Recipient in accordance with the Agreement.
- 17.3. **Preservation of other rights**
- 17.3.1. Clause 17.2 does not limit or exclude any of the Commonwealth's other rights under this Agreement.

18. Notices

18.1. Format, addressing and delivery

18.1.1. A notice under this Agreement is only effective if it is in writing, and addressed as follows:

- a. *if given by the Recipient to the Commonwealth* - addressed to the Commonwealth at the address specified in Item L of the Schedule, or other address as notified by the Commonwealth; or
- b. *if given by the Commonwealth to the Recipient* - given by the Commonwealth and addressed as specified in Item L of the Schedule, or other address as notified by the Recipient.

18.1.2. Any such notice must be delivered to the other party by hand, prepaid post or transmitted electronically (via email or facsimile) and be signed by the sending party. For the avoidance of doubt, an electronic signature on an email will be taken to be a signed notice for the purpose of this clause 18.

18.2. When received

18.2.1. Subject to clause 18.2.2, a notice is deemed to be received:

- a. *if delivered by hand* - upon delivery to the relevant address;
- b. *if sent by prepaid post* - upon delivery to the relevant address; or
- c. *if transmitted electronically* - upon receipt by the sender of either an electronic receipt notification (generated by the system transmitting the notice) or an acknowledgement from the other party that it has received the notice (whichever is earlier).

18.2.2. If a notice is received:

- a. after 5.00 pm on any Business Day; or
- b. on a day that is not a Business Day,

it is deemed to be received at 9:00am on the next Business Day for the purposes of this clause 18.

19. Compliance with the Code for the Tendering and Performance of Building Work 2016

19.1. In this clause 19:

ABCC	means the body referred to in subsection 29(2) of the Act.
Act	means the Building and Construction Industry (Improving Productivity) Act 2016.
Building Code	means the Code for the Tendering and Performance of Building Work 2016, which is available at https://www.legislation.gov.au/Details/F2017C00125

Building Contractor	has the same meaning as in the Act.
Building Industry Participant	has the same meaning as in the Act.
Building Work	has the same meaning as in subsection 3(4) of the Building Code.
Commonwealth Funded Building Work	means Building Work in items 1-8 of Schedule 1 of the Building Code.
Contractor	means a Building Contractor or Building Industry Participant who the Funding Recipient has entered, or proposes to enter, into a contract with to undertake any of the Works.
Exclusion Sanction	has the same meaning as in subsection 3(3) of the Building Code
Funding	means the funding provided by the Commonwealth to the Funding Recipient.
Funding Recipient	means the entity that the Commonwealth is providing funding or assistance to in relation to building works to which the Building Code applies.
Related Entity	has the same meaning as in subsection 3(2) of the Building Code.
Works	means Commonwealth Funded Building Work that is being indirectly funded by the Commonwealth through the provision of the Funding to the Funding Recipient.

19.2. The Funding Recipient must ensure that:

- a. tender processes and calls for expressions of interest (howsoever described) in respect of Commonwealth Funded Building Work are conducted in a manner consistent with this code of practice; and
- b. respondents are only permitted to participate in tender processes where the respondent is not subject to an exclusion sanction.

19.3. The Funding Recipient must ensure that any request for expressions of interest or request for tender (howsoever described) for Commonwealth Funded Building Work requires a respondent:

- a. to confirm that the respondent and any related entity will comply with the Building Code when undertaking the Commonwealth Funded building Work; and

- b. to confirm that the respondent, and any related entities; will comply with the Building Code from the time of lodging an expression of interest or tender response (if not already obligated to do so); and
 - c. to confirm that it is not subject to an exclusion sanction at the time of lodging an expression of interest or tender; and
 - d. to demonstrate a positive commitment to the provision of appropriate training and skill development for their workforce. Such commitment may be evidenced by compliance with any state or territory government building training policies and supporting the delivery of nationally endorsed building and construction competencies; and
 - e. to include details of the number of current apprentice and trainee employees and the number of classes of persons that hold visas under the Migration Act 1958 that are engaged by the respondent, and that are intended to be engaged by the respondent to undertake the Commonwealth Funded Building Work; and
 - f. to advise whether the respondent has, within the preceding 3 year period:.
 - i. had an adverse decision, direction or order made by a court or tribunal for a breach of a designated building law, work health and safety law or the Migration Act 1958; or
 - ii. been required to pay any amount under an adjudication certificate (provided in accordance with a law relating to the security of payments that are due to persons in respect of building work) including by any related entity to a building contractor or building industry participant; or
 - iii. owed any unsatisfied judgement debts (including such debts owed by any related entity) to a building contractor or building industry participant.
- 19.4. Where the value of the Commonwealth's contribution to the project that includes the Works meets the financial thresholds set out in Item 1, Schedule 2 to the Building Code, the Funding Recipient must:
- a. ensure the requirement to have a Workplace Relations Management Plan (WRMP) for the Works approved by ABCC is included in all expression of interest and tender documents; and
 - b. on behalf of the funding entity:
 - i. apply to the ABCC to have a WRMP for the Works approved; and
 - ii. ensure that an application to the ABCC for approval of a WRMP for the Works is made in the manner and form required by the ABCC Commissioner; and
 - iii. ensure that the proposed WRMP for the Works is accompanied by any supporting evidence required by the ABCC; and

- iv. obtain and provide additional information to the ABCC when requested, to enable the ABCC to make a decision whether or not to approve the proposed WRMP for the Works.

20. Work Health and Safety

20.1. Use of Commonwealth's premises

- 20.1.1. The Recipient agrees, when using the Commonwealth's premises or facilities, to comply with all reasonable directions and procedures relating to work health and safety and security in effect at those premises or in regard to those facilities, as notified by the Commonwealth or as might reasonably be inferred from the use to which the premises or facilities are being put.

20.2. Assistance to the Commonwealth

- 20.2.1. Without limiting clause 2.2 of this Agreement, the Recipient agrees to, on request, give all reasonable assistance to the Commonwealth, by way of provision of information and documents, to assist the Commonwealth and its officers (as defined in the Work Health and Safety Act 2011 (WHS Act)) to comply with the duties imposed on them under the WHS Act.
- 20.2.2. The Recipient acknowledges that the Commonwealth may direct the Recipient to take specified measures in connection with the Recipient's work under this Agreement or otherwise in connection with the Activity that the Commonwealth considers reasonably necessary to deal with an event or circumstance that has, or is likely to have, an adverse effect on the health or safety of persons. The Recipient must comply with the direction. The Recipient agrees that it is not entitled to an adjustment to the Funding merely because of compliance with the direction.

20.3. Australian Government building and construction industry Work Health and Safety Accreditation Scheme

The Scheme	means the Scheme described at Section 43 of the Building and Construction Industry (Improving Productivity) Act 2016.
Builder	has the meaning given in Section 43(8) of the Building and Construction Industry (Improving Productivity) Act 2016.
Building Work	has the meaning given to it by Section 6 of the Building and Construction Industry (Improving Productivity) Act 2016.
Exclusions	means the building work is prescribed under section 26 of the Fair Work (Building Industry—Accreditation Scheme) Regulation 2016

- 20.3.1. Construction projects that utilise funds provided under this agreement are bound by the application of the Australian Government building and construction

industry Work Health and Safety Accreditation Scheme (the Scheme) and the following conditions:

All head contracts for building work under the project that are valued at \$4 million (GST inclusive) or more must:

- a. be notified to the Office of the Federal Safety Commissioner at the earliest possible opportunity (that is, when approaching the market).
- b. contain a requirement that the builder:
 - i. is accredited under the Scheme*;
 - ii. maintains Scheme accreditation for the life of the contract;
 - iii. must comply with all conditions of the Scheme accreditation; and
 - iv. must comply with the National Construction Code performance requirements in relation to building materials.

20.3.2. If conduct of the Activity requires You to carry out any Building Work, You must:

- a. maintain accreditation under the Scheme, and
- b. comply with all conditions of Scheme accreditation.

* Section 26(1)(f) of the Fair Work (Building Industry – Accreditation Scheme) Regulation 2016[#] outlines provisions applying to joint venture arrangements that include accredited and unaccredited builders.

[#] The Fair Work (Building Industry – Accreditation Scheme) Regulation 2016, made under section 35 of the Fair Work (Building Industry) Act 2012 (FWBI Act), was continued in force after the repeal of the FWBI Act as rules made for the purposes of section 43 of the Building and Construction Industry (Improving Productivity) Act 2016 (see item 11 of Schedule 2 to the Building and Construction Industry (Consequential and Transitional Provisions) Act 2016).

21. General Provisions

21.1. Constitution

- 21.1.1. The Recipient warrants that the Recipient's Constitution is not, and will not become, inconsistent with this Agreement.
- 21.1.2. The Recipient must provide a copy of the Recipient's Constitution to the Commonwealth, upon request.
- 21.1.3. The Recipient must obtain the Commonwealth's written approval to any amendments to the Recipient's Constitution which may affect the Recipient's eligibility for the Funding or the Recipient's capacity to comply with this Agreement. If the Recipient alters the Constitution in breach of this subclause 21.1.3, the Commonwealth may terminate this Agreement in accordance with clause 17.2 of this Agreement.

21.2. Obligations of Recipient in relation to privacy

- 21.2.1. The Recipient agrees, in conducting the Activity:

- a. not to do any act or engage in any practice which, if done or engaged in by the Commonwealth, would be a breach of an Australian Privacy Principle; and
 - b. to comply with any directions, guidelines, determinations or recommendations of the Commonwealth, to the extent that they are consistent with the Australian Privacy Principles.
- 21.2.2. The Recipient agrees to notify the Commonwealth immediately if it becomes aware of a breach or possible breach of any of its obligations under this clause 21.2.
- 21.2.3. The provisions of this clause 21.2 survive the termination or expiration of this Agreement.
- 21.3. **Audit and Access**
- 21.3.1. The Recipient agrees:
 - a. to give the Commonwealth, or any persons authorised in writing by the Commonwealth, access to premises where obligations under this Agreement are being carried out; and
 - b. to permit those persons to inspect and take copies of any Material relevant to this Agreement.
- 21.3.2. The rights referred to in clause 21.3.1. are subject to:
 - a. the Commonwealth providing reasonable prior notice; and
 - b. the reasonable security procedures in place at the premises.
- 21.3.3. The Auditor-General and Information Officer (and their delegates) are persons authorised for the purposes of clause 21.3.1.
- 21.3.4. This clause 21.3 does not detract from the statutory powers of the Auditor-General or Information Officer.
- 21.4. **Access to Documents**
- 21.4.1. In this clause 21.4, 'document' and 'Commonwealth contract' have the same meaning as in the Freedom of Information Act 1982 (Cth). This clause 21.4 only applies if this Agreement is a 'Commonwealth contract', as defined in the Freedom of Information Act 1982 (Cth).
- 21.4.2. Where the Commonwealth has received a request for access to a document created by, or in the possession of, the Recipient or any subcontractor that relates to the performance of this Funding Agreement (and not to the entry into the Funding Agreement), the Commonwealth may at any time by written notice require the Recipient to provide the document to the Commonwealth and the Recipient must, at no additional cost to the Commonwealth, promptly comply with the notice.
- 21.4.3. The Recipient must include in any subcontract relating to the performance of this Agreement provisions that will enable the Recipient to comply with its obligations under this clause 21.4.

21.5. **Insurance**

21.5.1. The Recipient agrees:

- a. to effect and maintain the insurance specified in Item F and
- b. on request, to provide proof of insurance acceptable to the Commonwealth.

21.5.2. This clause 21.5 continues in operation for so long as any obligations remain in connection with this Agreement.

21.6. **Extension of provisions to subcontractors and Personnel**

21.6.1. In this clause 21.6:

Requirement means an obligation, condition, restriction or prohibition binding on the Recipient under this Agreement.

21.6.2. The Recipient agrees to ensure that:

- a. its subcontractors and Personnel comply with all relevant Requirements; and
- b. any contract entered into in connection with this Agreement imposes all relevant Requirements on the other party.

21.6.3. The Recipient agrees to exercise any rights it may have against any of its subcontractors, Personnel or third parties in connection with a Requirement in accordance with any direction by the Commonwealth.

21.7. **Conflict of interest**

21.7.1. In this clause 21.7:

Conflict means any matter, circumstance, interest or activity involving or affecting the Recipient, its Personnel or subcontractors which may or may appear to impair the ability of the Recipient to perform the Activity diligently and independently.

21.7.2. The Recipient warrants that, to the best of its knowledge after making diligent inquiry, at the Date of this Agreement no Conflict exists or is likely to arise in the performance of the Recipient's obligations under the Agreement.

21.7.3. If during the Term a Conflict arises, the Recipient agrees to:

- a. notify the Commonwealth immediately;
- b. make full disclosure of all relevant information relating to the Conflict; and
- c. take any steps the Commonwealth reasonably requires to resolve or otherwise deal with that Conflict.

21.8. **Relationship of parties**

21.8.1. The Recipient is not by virtue of this Agreement an officer, employee, partner or agent of the Commonwealth, nor does the Recipient have any power or authority to bind or represent the Commonwealth.

21.8.2. The Recipient agrees:

- a. not to misrepresent its relationship with the Commonwealth; and
- b. not to engage in any misleading or deceptive conduct in relation to the Activity.

21.9. **Waiver**

21.9.1. A failure or delay by a party to exercise any right or remedy it holds under this Agreement or at law does not operate as a waiver of that right.

21.9.2. A single or partial exercise by a party of any right or remedy it holds under this Agreement or at law does not prevent the party from exercising the right again or to the extent it has not fully exercised the right.

21.10. **Variation of Agreement**

21.10.1. No variation of this Agreement is binding unless it is agreed in writing and signed by both parties.

21.11. **Assignment**

21.11.1. The Recipient cannot assign its obligations, and agrees not to assign its rights, under this Agreement without the Commonwealth's prior written approval.

21.11.2. The Recipient agrees not to enter into negotiations with any other person for the purposes of entering into an arrangement that will require novation of this Agreement without first consulting the Commonwealth.

21.12. **Survival**

21.12.1. Unless the contrary intention appears, the expiry or earlier termination of this Agreement will not affect the continued operation of any provision relating to:

- a. Intellectual Property;
- b. confidentiality;
- c. security;
- d. privacy;
- e. dealing with copies;
- f. books and records;
- g. audit and access;
- h. an indemnity;
- i. acknowledgement and publicity;
- j. rights or obligations following termination or expiry of the Agreement; or

- k. any other provision which expressly or by implication from its nature is intended to continue.

21.13. **Compliance with Legislation and Policies**

21.13.1. In this clause 21.13:

Legislation means a provision of a statute or subordinate legislation of the Commonwealth of Australia, or of a State, Territory or local authority.

21.13.2. The Recipient agrees to comply with any Legislation applicable to its performance of this Agreement.

21.13.3. The Recipient agrees, in carrying out its obligations under this Agreement, to comply with any of the Commonwealth's policies as notified, referred or made available by the Commonwealth to the Recipient (including by reference to an internet site), including those listed in Item J.

21.14. **Applicable law and jurisdiction**

21.14.1. This Agreement is to be construed in accordance with, and any matter related to it is to be governed by, the law of the Australian Capital Territory specified in Item M.

21.14.2. The parties submit to the jurisdiction of the courts of the Australian Capital Territory.

21.15. **Child Safety**

In this Agreement:

Child means an individual(s) under the age of 18 years and Children has a similar meaning;

Child-Related Personnel

means officers, employees, contractors (including subcontractors), agents and volunteers of the Grantee involved with the Activity who as part of that involvement may interact with Children;

Legislation means a provision of a statute or subordinate legislation of the Commonwealth, or of a State, Territory or local authority;

National Principles for Child Safe Organisations

means the National Principles for Child Safe Organisations, which have been endorsed in draft form by the Commonwealth Government (available at: <https://www.humanrights.gov.au/national-principles-child-safe-organisations>) and subsequently, from the time of their endorsement by the Council of Australian Governments, the final

National Principles for Child Safe Organisations as published by the Australian Government;

Relevant Legislation

means Legislation in force in any jurisdiction where any part of the Activity may be carried out;

Working With Children Check or WWCC

means the process in place pursuant to Relevant Legislation to screen an individual for fitness to work with Children.

Relevant Checks and authority

21.15.1. The Grantee must:

- a. comply with all Relevant Legislation relating to the employment or engagement of Child-Related Personnel in relation to the Activity, including all necessary Working With Children Checks however described; and
- b. ensure that Working With Children Checks obtained in accordance with this clause 21.15.1 remain current and that all Child-Related Personnel continue to comply with all Relevant Legislation for the duration of their involvement in the Activity.

National Principles for Child Safe Organisations and other action for the safety of Children

21.15.2. The Grantee agrees in relation to the Activity to:

- a. implement the National Principles for Child Safe Organisations;
- b. ensure that all Child-Related Personnel implement the National Principles for Child Safe Organisations;
- c. complete and update, at least annually, a risk assessment to identify the level of responsibility for Children and the level of risk of harm or abuse to Children;
- d. put into place and update, at least annually, an appropriate risk management strategy to manage risks identified through the risk assessment required by this clause 21.15.2;
- e. provide training and establish a compliance regime to ensure that all Child-Related Personnel are aware of, and comply with:
 - i. the National Principles for Child Safe Organisations;
 - ii. the Grantee's risk management strategy required by this clause 21.15.2;
 - iii. Relevant Legislation relating to requirements for working with Children, including Working With Children Checks;

- iv. Relevant Legislation relating to mandatory reporting of suspected child abuse or neglect, however described; and
 - f. provide the Commonwealth with an annual statement of compliance with clauses 21.15.1 and 21.15.2, in such form as may be specified by the Commonwealth.
- 21.15.3. With reasonable notice to the Grantee, the Commonwealth may conduct a review of the Grantee's compliance with this clause 21.15.
- 21.15.4. The Grantee agrees to:
 - a. notify the Commonwealth of any failure to comply with this clause 21.15;
 - b. co-operate with the Commonwealth in any review conducted by the Commonwealth of the Grantee's implementation of the National Principles for Child Safe Organisations or compliance with this clause 21.15; and
 - c. promptly, and at the Grantee's cost, take such action as is necessary to rectify, to the Commonwealth's satisfaction, any failure to implement the National Principles for Child Safe Organisations or any other failure to comply with this clause 21.15.

Executed as a deed

Executed by the parties as evidence of their agreement.

SIGNED for and on behalf of the
COMMONWEALTH OF AUSTRALIA,)
as represented by and acting through)
the **Department of Infrastructure,**)
Transport, Regional Development)
and Communications:
ABN 86 267 354 017

Name of signatory

Signature

Position

Insert Date

In the presence of:

Name of witness

Signature of witness

Executed on behalf of **GIANT STEPS**
MELBOURNE LTD,)
ABN 46 606 552 283 by Barry Irvin)
who by signing warrants they are)
authorised to bind **Giant Steps**)
Melbourne Ltd

Signature

Insert Date

In the presence of:

Name of witness

Signature of witness

SCHEDULE 1 PARTICULARS

A. Programme, Project, Purpose, Activity and Funding and Payment (Recital A, clauses 1.1.1 and 2.1.1)

A.1. Programme

The Commonwealth is undertaking the Community Development Grants programme, which was to support needed infrastructure that promotes stable, secure and viable local and regional economies.

A.2. Project

The project to be undertaken by the Recipient is the Giant Steps Autism School Expansion at 11 Malmsbury Street, Kew VIC, 3101. The Project will include the Activity that the Programme will fund, defined in more detail in item A.5 of the Schedule.

The Project Completion Date is **31 January 2022**.

A.3. Purpose

The Purpose for which the completed Project is required to be used is:

To provide expanded autism services in Melbourne to help meet demand and increase student enrolments across all programs to enable the provision of individualised programs for children and young adults with Autism.

A.4. Operational Period

The Operational Period commences on the date the Commonwealth accepts the Project Completion Report, to the Commonwealth's satisfaction. The duration of the Operational Period is dependent on the amount of Funding provided by the Commonwealth under this Agreement. The thresholds are set out in the table below:

Amount of Funding	Duration of Operational Period
Over \$1,000,000	Five (5) years

During the Operational Period, the Recipient must, if requested by the Commonwealth to do so, promptly provide evidence satisfactory to the Commonwealth that the Project is Operational.

A.5. Activity

The Activity to be undertaken by the Recipient is the Giant Steps Autism School Expansion project including:

- Planning and design;
- Construction of a new four storey building providing at least an additional 3,500m² of new floor space, minor renovations to the existing building to allow the connectivity with the new buildings and upgrade to some amenity, provision of a ground floor playground, and the establishment of at least 480m² of rooftop undercover play area.
- The basement area will include:

- parking for up to 24 vehicles and a 14 seater school bus;
 - bicycle and general storage areas; and
 - service and utility access rooms.
- The ground floor will include:
 - 5 discrete learning areas;
 - a multi-purpose hall of at least 140m²;
 - a common room of at least 80m²;
 - 2 kitchen areas, a laundry, and four storage rooms;
 - 5 individual unisex toilets rooms and a large common toilet amenity block providing 4 unisex toilets cubicles and 2 unisex shower rooms;
 - Interface with the existing building including the refurbishment of the reception area and the board room.
- The first floor will include:
 - A principal's office, staff room and office area with at least 18 stations, a meeting room, staff kitchen, and 2 unisex toilets;
 - A daily living program delivery area with study area, an industrial kitchen, 5 individual unisex toilets and 3 shower areas;
 - 3 rooms allowing overnight accommodation; and
 - 3 discrete learning rooms and 3 breakout rooms.
- The second floor will provide:
 - a multi-purpose hall of at least 140m²; and
 - a rooftop pay area.
- The ground floor and rooftop playgrounds will include:
 - equipment such as a trampoline, swings, and a climbing frame;
 - undercover and shaded areas; and
 - provision of quiet zones and sensory experience areas.
- The multi levels will be serviced by a single lift and 3 discrete stairways.

The Activity Period commences on the Date of this Agreement and ends on the Activity Completion Date which is **2 May 2022**

A.6. Reserved

A.7. Funding and Payment
(clauses 1.1.1, 3.1, 6)

The total Funding for the Activity is **\$9,700,000** GST exclusive. The Funding will be paid as follows:

1. The first payment of Funding specified in the table at Annexure A will not be made until:
 - a) this Agreement has been executed by all Parties and all Milestones specified in the table at Annexure A that relate to the first payment have been achieved to the Commonwealth's satisfaction; and
 - b) all Reports identified in item D of the Schedule as being due on or before the due date for the first payment have been received and accepted by the Commonwealth; and
2. The second and each subsequent payment specified in the table at Annexure A will not be made until:

- a) all Milestones specified in the table at Annexure A that relate to the relevant payment have been achieved to the Commonwealth's satisfaction;
- b) all Reports identified in item D of this Schedule as being due on or before the due date for the relevant payment have been received and accepted by the Commonwealth; and
- c) the Recipient has provided the Commonwealth with evidence that all previously paid Funds have been expended or committed.

Invoicing

The Commonwealth must receive a properly rendered invoice or, if required a tax invoice which meets the requirements of the Australian Taxation Office for the amount of the payment and;

The Recipient must provide the Commonwealth with evidence that all previous paid Funding has been expended or committed.

B. Budget (clause 6.2)

The Budget for the Activity, identifying the Funding and Other Contributions, is at Annexure B.

The percentage of the Budget (Total Cost) below which Funding may be transferred between Cost items without the Commonwealth's approval is 10%.

The percentage of the Budget (Total Cost) which must not be exceeded in total transfers between expenditure items per Financial Year is 20%.

C. Other Contributions (clause 7)

C.1. Other Contributions

Other Contributions are specified at the table titled "Other Contributions" in Annexure B. Any financial or in-kind assistance that the Recipient has received from the Commonwealth of Australia or a State, Territory or local government and which the Recipient intends to, or is required to, use to perform the Activity must be identified in Other Contributions.

D. Reporting (clauses 1.1.1, 2.6)

D.1. Progress Reports, Activity Completion Report and Project Completion Report

- D.1.1 The Recipient must give the Commonwealth the Progress Reports, the Activity Completion Report and Project Completion Report by the times specified in the Table of Milestones, Reports and Payments relating to the Activity at Annexure A.

D.1.2 Each Progress Report must contain:

- a. details of progress and performance against the Activity, and the Project (to the extent that it is directly related to the relevant part of the Activity which is being covered by that Progress Report) and evidence of completion of the Milestones listed in Annexure A of the Schedule that are due for completion (including but not limited to photographs to demonstrate completion of Milestones) during the period between the Recipient's previous Progress Report and the due date of this Progress Report (or in the case of the first Progress Report, the period between the Date of this Agreement and the due date of the first Progress Report);
- b. details of mitigating circumstances and remedial action undertaken in the event a Milestone is not met or completed in the manner and/or by the time specified;
- c. copies of any published reports, promotional material, media publicity, pamphlets or other documentation relevant to the Project;
- d. evidence that the Recipient has obtained and/or utilised in-kind Other Contributions specified in the table at Annexure B;
- e. a statement of receipts (which separately identifies any interest earned on the Funding) and expenditure to date in respect of the Funding; and
- f. a statement of receipts and expenditure to date in respect of Other Contributions (excluding in-kind).

D.1.3 The Activity Completion Report must contain:

- a. evidence that the Activity and the Milestones have been completed;
- b. an analysis of the planning, implementation and overall process the Recipient followed to deliver the Activity;
- c. any recommendations on improved practice, relevant to the Recipient's and the Commonwealth's practices, that may assist in the delivery of future projects;
- d. a copy of the current Assets register described in item E.1.2 of this Schedule and a copy of the Real Property register described in item E.2.4 of this Schedule;
- e. evidence that the Recipient has obtained in-kind Other Contributions for the Activity specified in the table at Annexure B;
- f. an up to date Audited Financial Report in respect of the Activity; and
- g. copies of any published reports, promotional material, media publicity, pamphlets or other documentation relevant to the Activity, not already included in the Progress Report/s.
- h. a copy of the Assets register described in item E.1 of this Schedule and a copy of the Real Property register described in item E.2 of this Schedule.

D.1.4 The Project Completion Report must contain:

- a. evidence that the Project has been completed;
- b. an analysis of the planning, implementation and overall process the Recipient followed to deliver the Project;

- c. any recommendations on improved practice, relevant to the Recipient's and the Commonwealth's practices, that may assist in the delivery of future projects;
- d. a copy of the Assets register described in item E.1 of this Schedule and a copy of the Real Property register described in item E.2 of this Schedule.
- e. evidence that the Recipient obtained in-kind contributions specified in the table at Annexure B;
- f. an Audited Financial Report; and
- g. copies of any published reports, promotional material, media publicity, pamphlets or other documentation relevant to the Project, not already included in the Progress Report/s.

In addition, the Project Completion Report must also:

- h. describe the Recipient's activities during the Term;
- i. discuss in detail the conduct, benefits and outcomes of the Activity as a whole and the Activity's results and findings; and
- j. Reserved

The Recipient must also include in the Project Completion Report a discussion of any other matters relating to the performance of the Project and Activity, which the Commonwealth notifies the Recipient is required to be included in the Project Completion Report. Any such requirement will be notified to the Recipient at least 20 Business Days before the Project Completion Report is due.

D.1.5. Unless otherwise agreed by the Commonwealth in writing, all Reports must be:

- a. supplied in hard copy or electronic form;
- b. supplied in a format that is acceptable to the Commonwealth; and
- c. signed by the Recipient's Chief Executive Officer, Chief Financial Officer or other person authorised by the Recipient to execute documents and legally bind the Recipient by their execution.

D.2. Audit and certification

D.2.1. The Activity Completion Report and Project Completion Report must be accompanied by a copy of a letter to the Recipient from the Approved Auditor, or a report from the Approved Auditor, that includes:

- a. separate audited statements of receipts and expenditure in respect of the Funding and Other Contributions (excluding in-kind), which must:
 - i. comply with all relevant Australian Accounting Standards
 - ii. separately identify any interest earned on the Funding
 - iii. include a definitive statement made by an Approved Auditor as to whether:
 - 1. the statements of receipts and expenditure are fair and true
 - 2. Funding and Other Contributions (excluding in-kind) were held and expended in accordance with this Agreement

- b. a certificate, signed by the Recipient's Chief Executive Officer, Chief Financial Officer or a person authorised by the Recipient to execute documents and legally bind the Recipient by their execution, that:
 - i. all Funding and Other Contributions (excluding in-kind) received was expended for the purpose of the Activity and Project and expended and held in a manner in accordance with this Agreement
 - ii. salaries and allowances paid to persons involved in the Activity are in accordance with any applicable award or agreement in force under any relevant Law on industrial or workplace relations.

D.3. Other Reports

Throughout the Term, the Commonwealth may require the Recipient to provide ad-hoc Reports concerning:

- a. any significant developments concerning the Activity;
- b. any significant delays or difficulties encountered in performing the Activity in accordance with the Agreement; and
- c. the outcomes and outputs of the project as listed in the application.

The Recipient must provide any such ad-hoc Reports within the timeframe notified by the Commonwealth.

E. Assets and Real Property

(clauses 1.1.1 and 9)

E.1. Assets

- E.1.1. For the purposes of Clause 9, the Recipient may create, acquire or upgrade the following Assets:

None Specified

- E.1.2. The Recipient must for the Term of this Agreement maintain an Asset Register in the following form and containing the following information:

- a. Asset description;
- b. acquisition, upgrade or creation price or total lease cost;
- c. date of acquisition, creation, upgrade or lease;
- d. if leased, type and term of lease;
- e. location of Asset;
- f. date of Disposal;
- g. disposal method; and
- h. if the Asset was partly created, acquired or upgraded using the Funding, the proportion of that creation, acquisition or upgrade that was paid for with the Funding.

- E.1.3. The Recipient must use the Assets created, acquired, or upgraded under this Agreement for the Purpose set out in item A.3 of the Schedule for the duration of

the Operational Period.

E.2. Real Property

- E.2.1. The Real Property includes the Giant Steps Autism School Expansion.
- E.2.2 The Capital Works includes design, construction and fit-out of the Real Property at the Works Location.
- E.2.3 The Works Locations includes 11 Malmsbury Street, Kew, VIC, 3101
- E.2.4. The Recipient must for the Term of this Agreement maintain a Real Property Register in the following form and containing the following information:
 - a. Real Property description;
 - b. acquisition, upgrade or creation price or total lease cost;
 - c. date of acquisition, creation, upgrade or lease;
 - d. if leased, type and term of lease;
 - e. location of Real Property;
 - f. date of Disposal;
 - g. disposal method; and
 - h. if the Real Property was partly created, acquired or upgraded using the Funding, the proportion of that creation, acquisition or upgrade that was paid for with the Funding.
- E.2.5. The Recipient must use the Real Property created, acquired, or upgraded under this Agreement for the Purpose set out in item A.3 of the Schedule for the duration of the Operational Period.

F. Insurance
(clause 21.5)

The Recipient must maintain:

- a. workers compensation insurance as required by law where the Recipient carries out activities under this Agreement;
- b. public liability insurance to the value of at least \$10 million for each and every claim, or occurrence giving rise to a claim, in respect to activities undertaken under this Agreement, where occurrence means either a single occurrence or a series of occurrences if these are linked or occur in connection with one another from one original cause, as the case may be; and
- c. insurance against any loss or damage to an Asset or Real Property for its full replacement cost including where relevant the costs of demolition and removal of debris and the cost of architects, engineers and other consultants.

G. Reserved

**H. Acknowledgement and publicity
(clause 14)**

- H.1.1 If the Recipient erects or maintains any signage in relation to the Project, the signage must be approved by the Commonwealth prior to use and contain an acknowledgement of the Funding as required under Clause 14 of this Agreement. Any signage must remain in place during the Operational Period for the Project as specified in Item A.4. Signage for the Activity may be paid from the Budget if approved by Us. Signage for any other part of the Project must be at the Recipient's own cost.
- H.1.2 If a Federal, State or Local Government election is announced, the Recipient must cover any sign that is displayed within 100 metres of a polling place with an opaque (impenetrable to sight), durable and water repellent material from a period not less than 48 hours before the commencement of polling at that polling place until the polls close.
- H.1.3 The Recipient must include the Commonwealth logo in all signage, publications and promotional activities related to the Activity.
- H.1.4 The Recipient must not use the Commonwealth's logo without the Commonwealth's approval. If the Commonwealth provides approval for the Recipient's use of the Commonwealth's logo, the Recipient must use it in accordance with the Commonwealth's Print Style Guidelines (as advised by the Commonwealth).
- H.1.5 All the Recipient's publicity, announcements and media releases relating to the Activity must be cleared through the Commonwealth's contact officer specified at item L of the Schedule with at least 10 Business Days' notice, before release.
- H.1.6 The Commonwealth reserves the right to publicise and report on the provision of Funding to the Recipient, including progress on completing the Activity and the Project. The Commonwealth may do this by including the information specified in clause 14.2 in media releases, general announcements about the Funding and in annual reports and in electronic media.
- H.1.7 The Recipient must conduct an official opening of the completed Activity and Project unless otherwise agreed by the Commonwealth.
- H.1.8 The Recipient must provide to the Commonwealth with at least 3 options for dates for the official opening, or any other milestone events that the Recipient chooses to conduct (e.g. stage completion), for the Activity and the Project. These dates must be provided at least 56 days prior to the first proposed date for each event to be conducted.
- H.1.9 The date of official openings or other official public function for the completed Activity and Project must be agreed by the Commonwealth.

- H.1.10 The Recipient must invite the Commonwealth's representative to officiate at any official opening or other official public function relating to the Activity or the Project.
- H.1.11 The Commonwealth Minister's prior agreement must be sought, to invite any other Commonwealth or State elected official or other officials to attending either function. This invitation must be provided to the Commonwealth no later than 56 days before the date of the official opening or other official public function relating to the Activity or the Project.
- H.1.12 The Recipient must coordinate requests for the Commonwealth's agreement to the date of official openings and requests for Commonwealth representation at official openings or other official functions relating to the Activity or the Project through the Commonwealth's contact officer specified at item L of the Schedule.

I. Reserved

**J. Compliance with laws and policies
(clause 21.13)**

The Recipient must comply with the following laws and policies in carrying out the Activity:

- Crimes Act 1914;
- Criminal Code of Conduct 1995;
- Disability Discrimination Act 1992;
- Workplace Gender Equality Act 2012;
- Building and Construction Industry (Improving Productivity) Act 2016;
- Racial Discrimination Act 1975;
- Sex Discrimination Act 1984;
- Migration Act 1958
- Work Health and Safety Act 2011.

For the purposes of clause 21.13, the following policies are identified:

Community Development Grants Programme – Grant Programme Guidelines

**K. Statutory Approvals
(clause 2A.2)**

For the purposes of subclause clause 2A.2, the Recipient must obtain statutory approvals for the Project.

L. Notices

(clause 18.1)

The Commonwealth's details for notices are as follows:

Name: General Manager
Regional Programs Branch

Address: Department of Infrastructure, Transport, Cities and Regional
Development
GPO Box 594
CANBERRA ACT 2601

Email: CDG@infrastructure.gov.au

The Recipient's details for notices are as follows:

Name: s47F

Position: s47F

Address: s47F

Telephone: s47F

E-mail: s47F

M. Applicable Law

(clause 21.14)

The Laws of the Australian Capital Territory apply to this Agreement.

N. Confidential Information

(clause 13)

Commonwealth's Confidential Information

Agreement Provisions/Schedules/Attachments

None Specified

Agreement related material

None Specified

Recipient's Confidential Information

Agreement Provisions/Schedules/Attachments

None Specified

Agreement related material

None Specified

ANNEXURE A

Table of Milestones, Reports and Funding payments relating to the Activity

Report	Milestone(s) / Information covered by the Report	Milestone Completion Date	Payment amount (GST Exclusive)	Due Date for Report	Due Date for Funding Payment
Progress Report 1	Evidence acceptable to the Commonwealth that the following have been achieved: <ul style="list-style-type: none"> 15% of the Project is completed and certified by the Project Manager, Quantity Surveyor, or similar. 	01/07/2020	\$1,455,000	03/08/2020	17/08/2020
Progress Report 2	Evidence acceptable to the Commonwealth that the following have been achieved: <ul style="list-style-type: none"> 35% of the Project is completed and certified by the Project Manager, Quantity Surveyor, or similar. 	07/12/2020	\$1,940,000	11/01/2021	25/01/2021
Progress Report 3	Evidence acceptable to the Commonwealth that the following have been achieved: <ul style="list-style-type: none"> 60% of the Project is completed and certified by the Project Manager, Quantity Surveyor, or similar. 	07/06/2021	\$2,425,000	05/07/2021	19/07/2021
Progress Report 4	Evidence acceptable to the Commonwealth that the following have been achieved: <ul style="list-style-type: none"> 80% of the Project is completed and certified by the Project Manager, Quantity Surveyor, or similar. 	18/10/2021	\$1,940,000	15/11/2021	29/11/2021

Report	Milestone(s) / Information covered by the Report	Milestone Completion Date	Payment amount (GST Exclusive)	Due Date for Report	Due Date for Funding Payment
Progress Report 5	<p>Evidence acceptable to the Commonwealth that the following have been achieved:</p> <ul style="list-style-type: none"> • an Event Invitation has been submitted to the Department as required at Item H of the Schedule; • 90% of the Project is completed and certified by the Project Manager, Quantity Surveyor, or similar. 	17/01/2022	\$1,740,000	14/02/2022	01/03/2022
Project Completion Report	<p>Evidence acceptable to the Commonwealth that the following has been achieved:</p> <ul style="list-style-type: none"> • the Activity, at Item A.5 of the Schedule, is complete; • the Project, at Item A.2 of the Schedule, is complete; • all approvals required to enable public access and use of the facility have been met and the Project is fully Operational; and • 100% of the Project is completed and certified by the Project Manager, Quantity Surveyor, or similar. 	02/05/2022	\$200,000	13/06/2022	01/07/2022

ANNEXURE B

BUDGET FOR THE EXPENDITURE OF CDG FUNDING		
Cost item	Description	Amount (GST exclusive)
Design, construction & fit out	Giants Steps Autism School Expansion	\$9,700,000
Funding (A)		\$9,700,000

OTHER CONTRIBUTIONS (FINANCIAL)			
Name of Contributor	Cost Item	Description of item	Amount (GST exclusive)
Other Contributions (Financial) (B)			

TOTAL COST ESTIMATE (A + B) (GST exclusive):	s47G
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OTHER CONTRIBUTIONS (IN-KIND)	
Name of Contributor	Description of Other Contribution (In-kind)
N/A	N/A



Australian Government

**Department of Infrastructure, Transport,
Cities and Regional Development**

DEED OF AGREEMENT

**FUNDING AGREEMENT IN RELATION TO THE GIANT STEPS AUTISM
SCHOOL EXPANSION (CDG1085)**

The Commonwealth of Australia as represented by the Department of
Infrastructure, Transport, Cities and Regional Development
ABN 86 267 354 017

Giant Steps Melbourne Ltd
ABN 46 606 552 283

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FUNDING AGREEMENT (LONG FORM)

**FUNDING AGREEMENT IN RELATION TO THE GIANT STEPS AUTISM
SCHOOL EXPANSION (CDG1085)**

Parties

This Funding Agreement is made between and binds the following parties:

1. **The Commonwealth of Australia** as represented by the Department of Infrastructure, Transport, Cities and Regional Development
ABN 86 267 354 017, 111 Alinga Street, Canberra, Australian Capital Territory
(**Commonwealth**)
2. **Giant Steps Melbourne Ltd**
ACN 606552283, 11 Malmsbury Street, Kew, VIC 3101
(**Recipient**)

Context

- A. The Commonwealth is undertaking the Community Development Grants programme, which was to support needed infrastructure that promotes stable, secure and viable local and regional economies.
- B. The Recipient submitted an application to obtain funding under the Programme to conduct the Activity. The Activity will contribute to the completion of the Project, and will help achieve the objectives of the Programme.
- C. The Commonwealth has agreed to provide Funding to the Recipient to support the carrying out of the Activity.
- D. The Recipient agrees to accept the Funding for the purposes, and subject to the terms and conditions, set out in this Agreement.
- E. The Recipient agrees that it is a precondition of entitlement to the Funding that the Recipient must:
 - a. provide to the Commonwealth with satisfactory evidence that the Recipient is registered with a Commonwealth, State or Territory Regulatory Body or satisfactory evidence of the Recipient's correct statutory authority name;
 - b. correctly use the Recipient's name on all documentation provided to the Commonwealth;
 - c. have an Australian Business Number (ABN);
 - d. immediately notify the Commonwealth if the Recipient ceases to hold an ABN;
 - e. correctly quote the Recipient's ABN on all documentation provided to the Commonwealth;
 - f. supply proof of the Recipient's GST status, if requested by the Commonwealth; and
 - g. immediately notify the Commonwealth of changes to the Recipient's GST status.

Operative provisions

In consideration of the mutual promises contained in this Agreement, the parties to this Funding Agreement agree as follows:

1. Interpretation

1.1. Definitions

1.1.1. In this Agreement, unless the context indicates otherwise:

ABN	means (Australian Business Number) as set out in section 41 of the A New Tax System (Australian Business Number) Act 1999 (Cth).
Activity	means the Activity described in Item A and includes the provision to the Commonwealth of the Activity Material;
Activity Completion date	means the date that the Activity must be completed by as set out in item A.5 of the Schedule.
Activity Material	means any Material: <ul style="list-style-type: none">a. created by the Recipient for the purpose of this Agreement;b. provided or required to be provided to the Commonwealth under the Agreement; orc. derived at any time from the Material referred to in paragraphs a or b, and includes <ul style="list-style-type: none">d. any Existing Material incorporated in the Material referred to in paragraphs b or c; ande. any Reports;
Activity Objectives	means the objectives of the Activity described in Item A.6 of the Schedule;
Activity Period	means the period specified in Item A during which the Activity must be completed;
Agreement	means this document and includes any Schedules and Annexures;
Annexure	means any annexure to Schedule 1;

Approved Auditor	means a person who is: <ul style="list-style-type: none">a. registered as a company auditor under the Corporations Act 2001 (Cth) or an appropriately qualified member of the Institute of Chartered Accountants in Australia or of CPA Australia;b. not a principal, member, shareholder, officer, agent, subcontractor, employee or related entity of the Recipient or of a related body corporate (the terms 'related entity' and 'related body corporate' have the same meaning as in section 9 of the Corporations Act 2001 (Cth)); andc. not the Recipient's Qualified Accountant;
Asset	means any item of property, purchased, leased, hired, financed, created or otherwise brought into existence either wholly or in part with use of the Funding, which has a value of over \$5,000 exclusive of GST, but excludes any Intellectual Property Rights and Real Property (including any property once it becomes part of the structure of Real Property).
Auditor-General	means the office established under the Auditor-General Act 1997 (Cth) and includes any other entity that may, from time to time, perform the functions of that office;
Australian Accounting Standards	refers to the standards of that name maintained by the Australian Accounting Standards Board created by section 226 of the Australian Securities and Investments Commission Act 2001 (Cth);
Australian Auditing Standards	refers to the standards made by the Auditing and Assurance Standards Board created by section 227A of the Australian Securities and Investments Commission Act 2001 (Cth);
Australian Privacy Principle	has the same meaning as it has in the Privacy Act 1988 (Cth).
Budget	means the budget set out in Annexure B of the Schedule;
Business Day (in a place)	means a weekday other than a public holiday in the place specified or, if no place is specified, in the State or Territory specified in Item M of the Schedule;
Capital Works	means any part of the Activity that comprises construction and building activities and includes the Capital Works listed at item E.2.2 of the Schedule.

Commence Construction	means to begin a continuous programme of on-site construction for the Activity's Capital Works. For the purposes of this definition, only significant and continuous site preparation work such as major clearing or excavation or placement or assembly, or installation of facilities or equipment at the site constitute a programme of on-site construction.
Commonwealth	where the context permits, includes officers, delegates, employees and agents and successors of the Department of Infrastructure, Regional Development and Cities;
Commonwealth Material	means any Material: <ul style="list-style-type: none">a. provided by the Commonwealth to the Recipient for the purposes of this Agreement; orb. derived at any time from the Material referred to in paragraph a;
Completion Date	means the day after the Recipient has done all that it is required to do under clauses 2 and 6 of this Agreement to the satisfaction of the Commonwealth;
Constitution	means (depending on the context): <ul style="list-style-type: none">a. a company's constitution, which (where relevant) includes rules and any amendments that are part of the company's constitution, orb. in relation to any other kind of body:<ul style="list-style-type: none">i. the body's charter, rules or memorandum, orii. any instrument or Law constituting or defining the constitution of the body or governing the activities of the body or its members.
Cost Estimate	means the estimate for the Project which is the sum of the Funding and Other Contributions specified in Annexure B to the Schedule.
Cost Item	means an item of expenditure specified in the Budget at Annexure B to the Schedule.

Confidential Information	means: <ul style="list-style-type: none">a. the information described in Item N; andb. information that the parties agree in writing after the Date of this Agreement is confidential information for the purposes of this Agreement;
Date of this Agreement	means the date written on the execution page of this Agreement, or if no date or more than one date is written there, then the date on which the Agreement is signed by the last party to do so;
Depreciated	means the amount representing the reduction in value of an Asset calculated in accordance with Australian Accounting Standards;
Director	means any of the following: <ul style="list-style-type: none">a. a person appointed to the position of a director or alternate director and acting in that capacity for a body corporate within the meaning of the Corporations Act 2001 (Cth) regardless of the name given to their position;b. a member of the governing committee of an Aboriginal and Torres Strait Islander corporation under the Corporations (Aboriginal and Torres Strait Islander) Act 2006 (Cth);c. a member of the committee of an organisation incorporated pursuant to State or Territory laws relating to the incorporation of associations; ord. a member of the board, committee or group of persons (however described) that is responsible for managing or overseeing the affairs of the body corporate;
Dispose	means to sell, licence, lease or sublease, or otherwise transfer or give up ownership or the right to occupy or use, or to enter into an agreement to do any of the preceding acts and 'Disposal' means the method of so disposing;
Existing Material	means all Material in existence prior to the Date of this Agreement: <ul style="list-style-type: none">a. incorporated in;b. supplied with, or as part of; orc. required to be supplied with, or as part of, the Activity Material;

Financial Year	means each period from 1 July to the following 30 June occurring during the Term, or any part of such a period occurring at the beginning or end of the Term;
Funding	means: <ul style="list-style-type: none">a. the amount or amounts (in cash or kind) payable by the Commonwealth under this Agreement as specified in Item A.7 and Annexure A of this Agreement, andb. any interest earned on the Funding once paid by the Commonwealth to the Recipient;
GST	has the meaning that it has in the A New Tax System (Goods and Services Tax) Act 1999 (Cth);
Information Officer	means any of the information officers appointed under the Australian Information Commissioner Act 2010 (Cth) when performing privacy functions as defined in that Act;
Intellectual Property	<p>includes:</p> <ul style="list-style-type: none">a. all copyright (including rights in relation to phonograms and broadcasts);b. all rights in relation to inventions, plant varieties, trademarks (including service marks), designs, circuit layouts; andc. all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields; <p>but does not include:</p> <ul style="list-style-type: none">d. Moral Rights;e. the non-proprietary rights of performers; orf. rights in relation to confidential information;

Law	<p>includes:</p> <ol style="list-style-type: none">Acts of the Commonwealth and the State(s) and Territory(s) in which the Activity will be undertaken, and any other relevant State or Territory;ordinances, regulations, by-laws, orders and proclamations or other instruments of legal effect made under those Acts referred to in paragraph (a);directions by any person exercising statutory powers regarding the Recipient or the Activity, including the Real Property; andall the requirements, standard, approvals, licences, registrations or permits of any government (including local government) department, authority, agency or regulatory body that apply to the Activity, including the Real Property;
Material	<p>means anything in relation to which Intellectual Property rights arise;</p>
Milestone	<p>means a milestone or stage of completion of the Activity as set out in Annexure A of this Agreement;</p>
Moral Rights	<p>includes the following rights of an author of copyright Material:</p> <ol style="list-style-type: none">the right of attribution of authorship;the right of integrity of authorship; andthe right not to have authorship falsely attributed;
Open Access Licence	<p>means a licence to the public on broad open access terms that allows any member of the public to perform a wide range of acts in respect of the material subject to certain restrictions. An Open Access Licence includes any Australian Government open access licence and any Creative Commons Attribution licence (see http://creativecommons.org.au/learn-more/licences);</p>
Operational	<p>means that the completed Project is operating in a way that enables it to achieve its Purpose;</p>
Operational Period	<p>means the period during which the Recipient must keep the completed Project Operational;</p>

Other Contributions	means financial or in-kind resources (with in-kind resources valued at cost other than the Funding, which are specified in Item C and Annexure B of the Schedule and are to be used by the Recipient to perform the Activity;
Personnel	means: <ul style="list-style-type: none">a. in relation to the Recipient - any natural person who is an officer, employee, agent, or professional advisor of the Recipient or its subcontractors; andb. in relation to the Commonwealth - any natural person, other than a person referred to in paragraph a, who is an officer, employee, agent or professional advisor of the Commonwealth;
Privacy Act	refers to the Privacy Act 1988 (Cth);
Programme	means the Community Development Grants programme under which the Commonwealth is able to provide Funding to the Recipient.
Programme Guidelines	refers to the guidelines for the Programme, if any, as described in Item A of the Schedule;
Programme Objectives	means the objectives of the Programme, as set out in the Programme Guidelines or otherwise in Item A of the Schedule;
Project	has the meaning given in Item A.2 of the Schedule and includes the Activity;
Project Completion Date	means the date specified in item A.2 of the Schedule, which is the date by which the Recipient must complete the Project;
Purpose	means the purpose of the Project as set out at item A.3 of the Schedule;
Qualified Accountant	means a person who is a member of the Institute of Chartered Accountants in Australia or of CPA Australia;
Recipient	includes, where the context permits, the officers, employees, agents, volunteers and subcontractors, and successors of the Recipient;
Records	includes documents, information and data stored by any means and all copies and extracts of the same;

Report	means Activity Material that is provided to the Commonwealth for reporting purposes as stipulated in Item D of the Schedule;
Real Property	<p>means:</p> <p>a. any land, buildings or fixtures including the Capital Works (both during and after completion) and the Works Locations; and</p> <p>b. any interest in the property specified in paragraph (a);</p> <p>that are purchased, leased, upgraded or otherwise created or brought into existence wholly or in part with the use of the Funding and includes the property listed at item E.2.1 of the Schedule.</p>
Schedule	means the schedule to this Agreement and may include Annexures and incorporate other documents by reference;
Specified Personnel	means the Recipient's Personnel specified in Item I as Personnel required to undertake all or any part of the Activity;
Term	refers to the period described in clause 1.4.1 of this Agreement;
Third Party Interest	means any legal or equitable right, interest, power or remedy in favour of any person other than the Commonwealth or the Recipient in connection with the Agreement, including any right of possession, receivership, control or power of sale, and any mortgage, charge, security or other interest;
Undepreciated	in relation to the value of an Asset, means the value of the Asset which has not been Depreciated; and
Works Location	means a location where the Capital Works are to be undertaken including any premises in, or land on, which those Capital Works are to be undertaken and includes a Works Location listed in item E.2.3 of the Schedule.

1.2. **Interpretation**

1.2.1. In this Agreement, unless the contrary intention appears:

- a. words importing a gender include any other gender;
- b. words in the singular include the plural and words in the plural include the singular;

- c. clause headings are for convenient reference only and have no effect in limiting or extending the language of provisions to which they refer;
- d. words importing a person include a partnership and a body whether corporate or otherwise;
- e. a reference to dollars is a reference to Australian dollars;
- f. a reference to any legislation or legislative provision includes any statutory modification, substitution or re-enactment of that legislation or legislative provision;
- g. if any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- h. the use of the word "includes" or "including" in relation to a right or obligation of a party, does not limit or restrict the scope of that right or obligation;
- i. a reference to a clause is a reference to a clause in this Agreement;
- j. a reference to an Item is a reference to an Item in the Schedule;
- k. the Schedule and any attachments form part of the Agreement;
- l. if any conflict arises between the terms and conditions contained in the clauses of this Agreement and any part of the Schedule (and attachments if any), the terms and conditions of the clauses prevail; and
- m. if any conflict arises between any part of the Schedule and any part of an attachment, the Schedule prevails.

1.3. Guidance on construction of Agreement

- 1.3.1. This Agreement records the entire agreement between the parties in relation to its subject matter.
- 1.3.2. As far as possible all provisions of this Agreement will be construed so as not to be void or otherwise unenforceable.
- 1.3.3. If any clause in this Agreement is void or otherwise unenforceable then that clause will be severed to the extent it is void and unenforceable and the rest of the Agreement remains in force.
- 1.3.4. A provision of this Agreement will not be construed to the disadvantage of a party solely on the basis that it proposed or prepared that provision.
- 1.3.5. This Agreement may be executed in counterparts. All executed counterparts constitute one document.

1.4. Duration of Term

- 1.4.1. The Term of this Agreement commences on the Date of the Agreement and, unless terminated earlier, it expires on the Completion Date.

2. Activity, Project and Operational Period

2.1. Conduct of Activity

2.1.1. The Recipient agrees to carry out the Activity:

- a. to achieve the Activity Objectives;
- b. to assist the Programme to meet the Programme Objectives;
- c. to meet the Milestones;
- d. within the Activity Period;
- e. in an efficient, effective, economical and ethical manner;
- f. in accordance with this Agreement; and
- g. diligently and to a high standard.

2.1.2. Where the Commonwealth is satisfied that the Recipient does not have the capacity to adequately:

- a. manage the Funding; or
- b. undertake the Activity in accordance with this Agreement,
the Commonwealth may by written notice immediately:
- c. suspend, reduce or cease the release of Funding to the Recipient; and/or
- d. require the Recipient to refund some or all of the Funding to the Commonwealth; or
- e. terminate the Agreement in accordance with the provisions of clause 17.

2.2. Liaison and monitoring

2.2.1. The Recipient agrees to:

- a. liaise with and provide information to the Commonwealth as reasonably notified by the Commonwealth; and
- b. comply with all of the Commonwealth's reasonable requests, directions or monitoring requirements.

2.2.2. In relation to conducting a review and final evaluation of the Programme, the Recipient agrees to:

- a. provide all reasonable assistance required by the Commonwealth;
- b. respond to all of the Commonwealth's reasonable requests; and
- c. provide any information the Commonwealth reasonably requires.

2.2.3. Each of the parties may nominate, from time to time, a person who has authority to receive and sign notices and written communications for each of them under this Agreement and accept any request or direction in relation to the Activity.

2.3. **Subcontractors**

- 2.3.1. The Recipient is fully responsible for the performance of the Recipient's obligations under this Agreement, even though the Recipient may have **subcontracted any of them.**
- 2.3.2. Unless the Commonwealth agrees otherwise, the Recipient must have a written contract with each of the Recipient's subcontractors (subcontract) and ensure that each subcontract is consistent with, and allows the Recipient to give effect to, the Recipient's obligations under this Agreement. If requested by the Commonwealth, the Recipient must notify the Commonwealth of any subcontractors appointed to carry out any of the Recipient's obligations under this Agreement. The Recipient must notify the Commonwealth no later than 20 Business Days after the request from the Commonwealth.
- 2.3.3. The Recipient is responsible for ensuring the suitability of a subcontractor for the work proposed to be carried out and for ensuring that such work meets the requirements of this Agreement. The Commonwealth may direct the Recipient to terminate a subcontracting arrangement by notifying the Recipient in writing.
- 2.3.4. Upon receipt of a written notice from the Commonwealth directing the Recipient to terminate a subcontracting arrangement, the Recipient must, as soon as practicable (or as the Commonwealth may direct in the notice), cease using that subcontractor to perform any of the Recipient's obligations unless the Commonwealth directs that the subcontractor be replaced immediately, in which case the Recipient must comply with the direction.
- 2.3.5. If the Commonwealth directs the Recipient to terminate a subcontracting arrangement, the Recipient remains liable under this Agreement for the past acts or omissions of the Recipient's subcontractors as if they were current subcontractors.
- 2.3.6. The Recipient must, in any subcontract placed with a subcontractor, reserve a right of termination to take account of:
- a. The Commonwealth's right to direct the Recipient to terminate that subcontract under subclause 2.3; and
 - b. The Commonwealth's right of termination under clause 17,
- and the Recipient must make use of that right in the event of a termination by the Commonwealth.
- 2.3.7. The Recipient must, in any subcontract placed with a subcontractor, include a requirement for insurance that is consistent with the requirement for insurance under clause 21.5.
- 2.3.8. The Recipient must not enter into a subcontract under this Agreement with a subcontractor named by the Director of the Workplace Gender Equality Agency as an employer currently not complying with the Workplace Gender Equality Act 2012 (Cth).
- 2.3.9. For the purpose of this Agreement, 'subcontractor' includes any other member of the Recipient's consortium who is involved in the performance of the Activity.

2.4. **Reserved**

2.5. **Responsibility of the Recipient**

2.5.1. The Recipient is fully responsible for the performance of the Activity and for ensuring compliance with the requirements of this Agreement, and will not be relieved of that responsibility because of any:

- a. involvement by the Commonwealth in the performance of the Activity;
- b. subcontracting of the Activity;
- c. acceptance by the Commonwealth of Specified Personnel; or
- d. payment of any amount of Funding to the Recipient.

2.6. **Reports**

2.6.1. The Recipient agrees to provide to the Commonwealth written Reports in the manner specified in Item D of the Schedule.

2.7. **Project**

2.7.1. The Recipient must complete the Project by the Project Completion Date.

2.8. **Operational Period**

2.8.1. The Recipient must keep the completed Project Operational during the Operational Period specified in Item A.4 of the Schedule.

2A. Capital Works

2A.1. **Performance**

2A.1.1 The Recipient must perform the Capital Works:

- a. in accordance with the designs and plans submitted by the Recipient to the Commonwealth;
- b. in a good and workmanlike manner by qualified tradespeople; and
- c. with a minimum of delay.

2A.2. **Applicable Laws**

2A.2.1 The Recipient warrants and agrees that the Capital Works (whether undertaken before, on or after the Date of this Agreement) have been (if applicable) and will be carried out in accordance with all applicable Laws including, but not limited to, all necessary planning and regulatory approvals.

2A.2.2 The Recipient agrees to ensure that:

- a. the Works Locations comply at all times with all applicable Laws regarding their use as a site for the Capital Works; and
- b. the completed Capital Works comply with all Laws relating to their ongoing use throughout the Operational Period.

2A.3. Commence Construction

- a. The Recipient must Commence Construction required for the Activity within **six months** of the Date of this Agreement;
- b. The Recipient must notify the Commonwealth that the Recipient has Commenced Construction for the Activity, within five (5) Business Days of Commencing Construction; and
- c. If the Recipient fails to Commence Construction required for the Activity within six months of the Date of this Agreement, the Commonwealth may give the Recipient notice requiring the Recipient to repay the Commonwealth all or part of the Funding that the Commonwealth has previously paid to the Recipient within the period specified in the notice.

2A.4. Completion

2A.4.1 The Recipient must:

- a. plan, control, manage, co-ordinate and carry out the Capital Works in a manner that enables completion of all activities comprising the Capital Works by the Project Completion Date;
- b. in addition to the Recipient's reporting obligations under item D of Schedule 1, the Recipient must provide the Commonwealth with written evidence satisfactory to the Commonwealth of the completion of the Capital Works, no later than 10 Business Days after the end of the Project Completion Date; and
- c. consult the Commonwealth in advance about any proposed change to, the scope or timing of the Capital Works which is likely to delay the completion of the Capital Works, detailing the extent, or likely extent, of the change and the reasons for it.

3. Funding

3.1. Payment of Funding

- 3.1.1. Subject to sufficient funds being available, and compliance by the Recipient with this Agreement, the Commonwealth agrees to provide the Recipient with the Funding at the times and in the manner specified in Annexure A.
- 3.1.2. The Commonwealth is not responsible for the provision of additional money to meet any expenditure in excess of the Funding.

3.2. Commonwealth's right to suspend payment or reduce the amount of Funding

- 3.2.1. Without limiting the Commonwealth's rights, the Commonwealth may suspend any payment in whole or in part until the Recipient has performed its obligations under this Agreement.
- 3.2.2. Reserved.
- 3.2.3. The Commonwealth may reduce the amount of Funding payable under this Agreement where the Recipient:

- a. owes money to the Commonwealth, or
- b. has money that the Recipient should have, but has not yet, acquitted

under any arrangement with the Commonwealth (whether contractual, statutory or otherwise).

- 3.2.4. Notwithstanding such suspension of any payments or reduction in the amount of the Funding, the Recipient agrees to continue to perform any obligations under this Agreement.

4. Taxes, duties and government charges

- 4.1.1. Except as provided by clause 4, the Recipient agrees to pay all taxes, duties and government charges imposed or levied in Australia or overseas in connection with the performance of this Agreement.
- 4.1.2. Unless otherwise indicated, any Funding and all other consideration for any supply made under this Agreement is exclusive of any GST imposed on the supply.
- 4.1.3. If one party (the supplier) makes a taxable supply to the other party (the taxable supply recipient) under this Agreement, on receipt of a tax invoice from the supplier, the taxable supply recipient will pay without setoff an additional amount to the supplier equal to the GST imposed on the supply in question.
- 4.1.4. No party may claim or retain from the other party any amount in relation to a supply made under this Agreement for which the first party can obtain an input tax credit or decreasing adjustment.

5. Debt and Interest

- 5.1.1. In this clause 5, '**Interest**' means interest calculated at an interest rate equal to the general interest charge rate for a day pursuant to section 8AAD of the *Taxation Administration Act 1953* (Cth), on a daily compounding basis.
- 5.1.2. The Recipient agrees, upon request of the Commonwealth, to pay any amount owed or payable to the Commonwealth or which the Commonwealth is entitled to recover from the Recipient under this Agreement, including if demanded by the Commonwealth any Interest, as a debt due by the Recipient without further proof of the debt by the Commonwealth being necessary. Such payment is without prejudice to any other rights available to the Commonwealth under the Agreement, under statute, at law or in equity.
- 5.1.3. If the Commonwealth notifies the Recipient that an amount is to be refunded or otherwise paid to the Commonwealth and the amount is not refunded or paid within 20 Business Days, or as otherwise notified by the Commonwealth, the Recipient agrees to pay Interest, unless the Commonwealth notifies the Recipient otherwise, on the amount outstanding after the expiry of the date it was due, until the amount is paid in full.
- 5.1.4. In respect to any obligation the Recipient may have under this Agreement to pay the Commonwealth any Interest, the Recipient agrees that the Interest represents a reasonable pre-estimate of the loss incurred by the Commonwealth.

6. Management of Funding

6.1.1. The Recipient agrees to spend the Funding only for the Activity in accordance with this Agreement.

6.2. Budget

6.2.1. The Recipient agrees to only spend the Funding for the Activity and in accordance with the Budget.

6.2.2. Subject to clauses 6.2.3 and 6.2.4, the Recipient may spend the Funding on any separate category of expenditure item within the Budget.

6.2.3. The Recipient agrees to obtain prior written approval from the Commonwealth for any transfer of Funding between categories of expenditure items within the Budget which exceed a percentage of the total Budget as specified in Item B of the Schedule.

6.2.4. The total amount of transfers in any Financial Year must also not exceed the percentage of the Budget specified in Item B of the Schedule.

6.3. Account and financial records

6.3.1. The Recipient agrees to ensure that the Funding is held in an account in the Recipient's name and which the Recipient solely controls, with an authorised deposit-taking institution authorised under the Banking Act 1959 (Cth) to carry on banking business in Australia and that is an account that complies with any other requirements specified in Item A.7 in the Schedule.

6.3.2. Reserved

6.3.3. The Recipient must, in relation to the account referred to in clause 6.3.1:

- a. notify the Commonwealth, prior to the receipt of any Funding, of details sufficient to identify the account;
- b. on notification from the Commonwealth, provide the Commonwealth and the authorised deposit-taking institution with a written authority for the Commonwealth to obtain any details relating to any use of the account;
- c. if the account changes, notify the Commonwealth within 10 Business Days of the change occurring and provide the Commonwealth with details of the new account;
- d. Reserved.

6.3.4. The Recipient agrees to:

- a. keep financial accounts and records relating to the Funding and the Project and Activity that identify
 - i. all receipts and payments related to the Project and Activity; and
 - ii. all interest earned on the Funding.
- b. unless otherwise notified by the Commonwealth, prepare financial statements for the Project and Activity in accordance with Australian Accounting Standards including:

- i. Reserved; and
- ii. a register of the Assets and a register of Real Property created, acquired, written-off or Disposed of during the Financial Year to date compared with the Budget; and

6.4. Use as security

6.4.1. Except with the prior written approval of the Commonwealth, the Recipient agrees not to use any of the following as any form of security for the purpose of obtaining or complying with any form of loan, credit, payment or other interest, or for the preparation of, or in the course of, any litigation:

- a. the Funding;
- b. this Agreement or any of the Commonwealth's obligations under the Agreement; or
- c. any Assets or Intellectual Property Rights in the Activity Material.

6.5. Refunds of unexpended and misspent Funds

6.5.1. If at any time during the term of this Agreement (including on the Completion Date):

- a. there remains an amount of Funding that has not been spent or legally committed for expenditure in accordance with the Agreement and the period in which that Funding was expected to be spent or legally committed has passed; or
- b. an amount of Funding has been spent in contravention of the Agreement, the Commonwealth may (at its discretion and in addition to any other rights it may have) by notice in writing to the Recipient:
 - c. require the Recipient to refund this amount to the Commonwealth within 20 Business Days (or other such period specified in the notice); or
 - d. reduce any further payments of Funding to the Recipient (if applicable) by an amount up to this amount.

6.5.2. If clause 6.5.1.a applies, the Commonwealth may by notice in writing require the Recipient to otherwise deal with this amount in accordance with any conditions that the Commonwealth considers appropriate, including conditions relating to the ongoing use and expenditure by the Recipient of that amount for particular goals or objectives associated with the Activity

6.5.3. The Recipient must immediately notify the Commonwealth in writing if any of the events in clauses 6.5.1.a or 6.5.1.b occurs.

6.5.4. If the completed Project ceases to be Operational during the Operational Period, the Commonwealth may give the Recipient notice requiring the Recipient to repay all or part of the Funding to the Commonwealth within the period specified in the notice and the Recipient must comply with that notice.

6.5.5. On completion of the Project, if the cost of the completed Project is less than the Cost Estimate, the Commonwealth may give the Recipient notice requiring the

Recipient to return any unexpended Funding to the Commonwealth within the period specified in the notice and the Recipient must comply with that notice.

6.5.6. This clause survives termination or expiry of the Agreement.

7. Other Contributions and Cost Savings

7.1. Other Contributions

7.1.1. The Recipient must, within six (6) months of the date of the Agreement provide to the Commonwealth satisfactory written evidence that confirms the Other Contributions identified in Item C and detailed in Annexure B of the Schedule, including the amounts to be provided, the due dates for each of these amounts and the terms and conditions of the provision of the Other Contributions.

7.1.2. If, for any reason, the Recipient is not able to obtain the Other Contributions (including any part thereof) as required under this Agreement, then the Commonwealth may:

- a. suspend payment of the Funding or an instalment of the Funding until the Other Contributions are obtained (as the case may be);
- b. reduce the total Funding payable under this Agreement by an amount that, in the Commonwealth's opinion, represents an equivalent proportion of the overall reduction in the total value of the Other Contributions (as the case may be) resulting from the failure; or
- c. terminate this Agreement in accordance with clause 17.2.

7.1.3. The Recipient must notify the Commonwealth in writing as soon as possible after it becomes aware of any likely or actual failure (for any reason) to obtain the Other Contributions (including any part thereof) as required under this Agreement.

7.1.4. The Recipient agrees to notify the Commonwealth within 10 Business Days of entering into any arrangement under which the Recipient is entitled to receive any additional monetary or in-kind contributions in respect of the Project and Activity that are not identified as Other Contributions in Item C and Annexure B of the Schedule. Any such additional contribution that the Recipient becomes entitled to receive after the Date of this Agreement constitutes Other Contributions for the purposes of the Agreement (and Schedule 1 is deemed to be varied accordingly) on the date on which the Recipient notifies the Commonwealth of that contribution under this clause 7.1.4.

7.1.5. If the Recipient is provided with or obtains (and/or was required to provide or obtain) any Other Contributions and the cost of the completed Project is less than the Cost Estimate, the Commonwealth may give the Recipient notice requiring the Recipient to return to the Commonwealth, within the period specified in the notice, an amount equal to the Commonwealth's Proportion of the Cost Savings. In this subclause 7.1.5, 'the Commonwealth's Proportion of the Cost Savings' means $\text{savings} \times \%$ where:

- a. $\text{savings} = (\text{the Cost Estimate} - \text{the actual cost of the Project} - \text{any Funds previously repaid to the Commonwealth under this Agreement})$; and

- b. $\% = (\text{the Funding} \div (\text{the maximum Funding} + \text{the maximum Other Contributions excluding any in-kind Other Contributions}))$.

7.1.6. If the Recipient receives a notice given by the Commonwealth under subclause 18, the Recipient must comply with the notice within the period specified within the notice.

7.2. **Cost Savings**

7.2.1. Subject to compliance with this Agreement, the Recipient must:

- a. continually identify any costs saving or efficiency measures in carrying out the Activity; and
- b. in consultation with the Commonwealth:
 - i. implement those costs saving or efficiency measures;
 - ii. ensure that any reductions in expenditure for the Activity that result from those costs saving or efficiency measures are accounted for and allocated equitably in proportion to the relative total values of the Funding, the Recipient Contributions and the Other Contributions (as applicable) as committed to the Activity.

8. **Statutory Approvals**

8.1 The Recipient must obtain all necessary statutory approvals in relation to the Project, including those specified in item K of the Schedule, and the Recipient must give the Commonwealth, within six (6) months after the Date of this Agreement, satisfactory written evidence that these statutory approvals have been obtained.

8.1A The Recipient must also provide satisfactory written evidence that the statutory approvals obtained under subclause 8.1 are sufficient for the Recipient to Commence Construction within six months after the Date of this Agreement.

8.2 If the Recipient does not comply with the requirement in subclause 8.1, the Commonwealth may at the Commonwealth's sole discretion:

- a. suspend payment of the Funding until the evidence of the statutory approvals referred to in subclause 8.1 has been received; or
- b. terminate this Agreement in accordance with clause 17.2.

9. **Assets**

9.1. **Acquisition of Asset**

9.1.1. The Recipient agrees not to use the Funding to acquire or create any Asset, apart from those detailed in the Item E, without obtaining the Commonwealth's prior written approval. Approval may be given subject to any conditions the Commonwealth may impose.

9.1.2. Unless it is specified in Item E that the Commonwealth or a third party owns the Asset or the Commonwealth provides written consent to a third party owning the

Asset, then the Recipient must ensure that it owns any Asset acquired with the Funding.

9.2. Terms applicable to Asset

- 9.2.1. If the Commonwealth owns the Asset clauses 9.4 and 9.6.2 do not apply.
- 9.2.2. If the Asset is owned by a third party then the Recipient agrees to ensure that the terms of the lease, hire or finance arrangement are consistent with clause 9.3, and clauses 9.4, 9.5 and 9.6 do not apply.

9.3. Recipient's responsibilities for Asset

- 9.3.1. Throughout the Term, the Recipient agrees to:
- a. use any Asset in accordance with this Agreement and for the purposes of the Activity;
 - b. not encumber or Dispose of any Asset, or deal with or use any Asset other than in accordance with this clause 9 without the Commonwealth's prior written approval;
 - c. hold all Assets securely and safeguard them against theft, loss, damage, or unauthorised use;
 - d. maintain all Assets in good working order;
 - e. maintain all appropriate insurances for all Assets to their full replacement cost noting the Commonwealth's interest, if any, in the Asset under the Agreement;
 - f. if required by law, maintain registration and licensing of all Assets;
 - g. be fully responsible for, and bear all risks relating to, the use or Disposal of all Assets; and
 - h. if specified in Item E, maintain an Assets register in the form and containing the details as described in Item E and as and when requested by the Commonwealth, provide copies of the Assets register to the Commonwealth.

9.4. Sale or Disposal of Asset during Term

- 9.4.1. If the Recipient Disposes of an Asset during the Term of this Agreement, the greater of the following proportions must, unless the Commonwealth otherwise directs, be accounted for as Funding and used for the Activity:
- a. the proportion of the sale proceeds from the Asset; or
 - b. the proportion of the Undepreciated value of the Asset,
- that is equivalent to the proportion of the cost of the Asset that was funded from the Funding.

9.5. Loss, damage, etc of Asset

- 9.5.1. If any of the Assets are lost, damaged or destroyed, the Recipient agrees to promptly reinstate the Assets including from the proceeds of the insurance, and

this clause 9 continues to apply to the reinstated Assets. The proportion of any surplus from the proceeds of the insurance, which reflects the proportion of the cost of the Asset that was funded from the Funding, must be notified to the Commonwealth and accounted for as Funding and used for the Activity.

9.6. Dealing with Asset

- 9.6.1. On expiry of the Activity Period or earlier termination of the Agreement, the Commonwealth may require the Recipient to deal with an Asset as the Commonwealth may, at the sole discretion of the Commonwealth, notify the Recipient.
- 9.6.2. Subject to clause 9.6.1, if on expiry of the Activity Period or the earlier termination of this Agreement, an Asset has not been fully Depreciated, the Commonwealth may, by written notice, require the Recipient to:
- a. pay to the Commonwealth within 20 Business Days of the expiry of the Activity Period or earlier termination of the Agreement, an amount equal to the proportion of the Undepreciated value of the Asset that is equivalent to the proportion of the cost of the Asset that was funded from the Funding;
 - b. sell the Asset for the best price reasonably obtainable and pay to the Commonwealth within 20 Business Days of the sale the proportion of the proceeds of the sale that is equivalent to the proportion of the cost of the Asset (less an amount equal to the reasonable Disposal costs incurred by the Recipient) that was funded from the Funding; or
 - c. continue to use the Asset for the purposes, and in accordance with any conditions, notified by the Commonwealth.

10. Real Property

10.1. Approval

- 10.1.1 The Recipient must obtain the Commonwealth's prior written approval to spend the Funding on any Real Property that is not specifically identified in the Budget. The Commonwealth may grant that approval subject to conditions.

10.2. Outgoings

- 10.2.1 The Recipient must pay all rents, rates, taxes, levies and other outgoings of any nature in relation to the Real Property. The Funding must not be used to pay rent.

10.3. Recipient's Responsibilities for Real Property

- 10.3.1 Throughout the Term of this Agreement, including the Operational Period, the Recipient agrees to:
- a. hold the Real Property securely and safeguard it against theft, loss, damage, or unauthorised use;
 - b. maintain the Real Property in good condition;
 - c. maintain all appropriate insurances for the Real Property to its full replacement cost and use that insurance to rectify any damage to or

destruction to the Real Property and this clause 10.3.1 continues to apply to the Real Property once rectified. The Recipient must notify the Commonwealth of any surplus from the proceeds of this insurance and the Recipient must use and account for that surplus as Funding under this Agreement;

- d. if required by any Law, maintain registration and licensing of the Real Property;
- e. be fully responsible for, and bear all risks relating to, the use or Disposal of all Real Property;
- f. if specified in item E.2 of the Schedule, maintain a Real Property register in the form and containing the details as described in that item of the Schedule; and
- g. as and when requested by the Commonwealth, provide copies of the Real Property register to the Commonwealth.

10.4. **Recipient's Use of Real Property**

10.4.1. The Recipient agrees to ensure that:

- a. the Real Property is used for, and is fit to be used for, the Purpose specified in item A.3 of the Schedule throughout the Operational Period; and
- b. the use of the Real Property for the Purpose specified in item A.3 of the Schedule throughout the Operational Period, does not infringe any conditions of the Recipient's ownership or occupation of the Real Property.

10.4.2. Throughout the Operational Period, the Recipient must use the Real Property for the Purpose specified in item A.3 of the Schedule.

10.4.3. If the Commonwealth requests, the Recipient must take all action necessary to grant the Commonwealth a security, including in the form of a charge or mortgage, over the Real Property and on terms acceptable to the Commonwealth.

10.5. **Third Party Interests**

10.5.1. If a third party has proprietary or other rights or interests in relation to any Real Property, the Recipient agrees to:

- a. enter into legally binding written agreements under which all such third parties agree to:
 - i. the use of the Works Locations to undertake the Capital Works throughout the Activity Period;
 - ii. the use of the Works Locations, and completed Capital Works for the Purpose specified in item A.3 of the Schedule throughout the Operational Period; and

- iii. the use of any other Real Property for the Activity throughout the Activity Period and for the Purpose specified in item A.3 of the Schedule throughout the Operational Period;
- b. not do anything that would give any such third party a right to rescind its agreement to one or more of the uses specified in paragraph (a); and
- c. within 10 Business Days of a request from the Commonwealth, provide evidence to the Commonwealth that the Recipient has complied with the requirements of this subclause 10.5.

10.6. Dealing with Real Property

10.6.1. If:

- a. the Agreement is terminated under clause 17.2 and some or all of the Funding has been provided to the Recipient for expenditure on Real Property;
- b. the Recipient fails to Commence Construction for the Activity within six months of the Date of this Agreement;
- c. the Recipient Disposes of any Real Property during the Term of this Agreement; or
- d. the Recipient fails to or ceases to use any Real Property for the Purpose specified in item A.3 of the Schedule at any time during the Operational Period

then:

- e. the Recipient must notify the Commonwealth at least 20 Business Days prior to the event in paragraph (b), (c) or (d) occurring; and
- f. the Commonwealth may give the Recipient a notice requiring the Recipient to repay the Commonwealth some or all of the Funding provided under this Agreement and the Recipient must repay the amount specified in any such notice within the period specified in that notice.

10.6.2. If the Recipient fails to pay the Commonwealth an amount as required by a notice given under subclause 10.6.1:

- a. the Recipient must pay the Commonwealth the Interest on the unpaid amount from the date it was due, for the period it remains unpaid; and
- b. that amount, and Interest owed under this subclause 10.6.2, will be recoverable by the Commonwealth as a debt due to the Commonwealth by the Recipient.

10.6.3. The provisions relating to this clause 10 shall survive the termination or expiration of this Agreement.

11. Records

11.1. Keeping Records

- 11.1.1. The Recipient must create and maintain full and accurate accounts and records of the conduct of the Project and Activity including, without limitation, all:
- a. progress against the Milestones;
 - b. receipt and use of Funding;
 - c. Other Contributions (if any); and
 - d. creation, acquisition and Disposal of Assets or Real Property.

11.2. Retention of Records

- 11.2.1. The Recipient agrees to create and maintain records and accounts under clause 11.1.1 and retain them for a period of no less than seven (7) years after the end of the Term.

12. Intellectual Property

12.1. Use of Commonwealth Material

- 12.1.1. The Commonwealth grants a royalty-free, non-exclusive licence for the Recipient to use, reproduce and adapt the Commonwealth Material for the purposes of this Agreement.
- 12.1.2. The Recipient agrees to use the Commonwealth Material strictly in accordance with any conditions or restrictions the Commonwealth may notify to the Recipient.

12.2. Rights in Activity Material

- 12.2.1. Subject to this clause 12, Intellectual Property in Activity Material vests or will vest in the Recipient.
- 12.2.2. Clause 12.2.1 does not affect the ownership of Intellectual Property in any Commonwealth Material incorporated into the Activity Material.
- 12.2.3. The Recipient grants to (or will procure for) the Commonwealth a permanent, irrevocable, royalty-free, worldwide, non-exclusive licence (including a right of sublicense) to use, reproduce, exploit, communicate, adapt and distribute the Activity Material for any purpose.
- 12.2.4. The Recipient agrees that the licence granted in clause 12.2.3 includes a right for the Commonwealth to licence the Activity Material to the public under an Open Access Licence.
- 12.2.5. The Recipient agrees, on request by the Commonwealth, to create, sign, execute or otherwise deal with any document necessary or desirable to give effect to this clause 12.
- 12.2.6. The Recipient warrants that:
- a. it is entitled; or
 - b. it will be entitled at the relevant time,

to deal with the Intellectual Property in the Activity Material in the manner provided for in this clause 12.

12.3. **Moral Rights**

12.3.1. In this clause 12.3:

- Permitted Acts** means any of the following classes or types of acts or omissions:
- a. using, reproducing, adapting or exploiting all or any part of the Activity Material, with or without attribution or authorship;
 - b. supplementing the Activity Material with any other Material;
 - c. using the Activity Material in a different context to that originally envisaged; and
 - d. releasing the Activity Material to the public under an Open Access Licence;
- but does not include false attribution of authorship.

12.3.2. Where the Recipient is a natural person and the author of the Activity Material he or she:

- a. consents to the performance of the Permitted Acts by the Commonwealth or any person claiming under or through the Commonwealth (whether occurring before or after the consent is given); and
- b. acknowledges that their attention has been drawn to the Commonwealth's general policies and practices regarding Moral Rights.

12.3.3. Where clause 12.3.1 does not apply, the Recipient agrees:

- a. to obtain from each author a written consent which extends directly or indirectly to the performance of the Permitted Acts by the Commonwealth or any person claiming under or through the Commonwealth (whether occurring before or after the consent is given) and, upon request, will provide the executed original of any such consent to the Commonwealth; and
- b. to ensure that each author's attention is drawn to the Commonwealth's general policies and practices regarding Moral Rights.

12.3.4. This clause 12.3 does not apply to any Commonwealth Material incorporated in the Activity Material.

13. Confidential Information

13.1. **Confidential Information not to be disclosed**

13.1.1. Subject to clause 13.2.1, a party must not, without the prior written consent of the other party, disclose any Confidential Information of the other party to a third party.

13.2. **Written Undertakings**

13.2.1. The Recipient must, on request by the Commonwealth at any time, arrange for:

- a. its Personnel; or
- b. any person with a Third Party Interest,

to give a written undertaking in a form acceptable to the Commonwealth relating to the use and non-disclosure of the Commonwealth's Confidential Information.

13.3. **Exceptions to Obligations**

13.3.1. The obligations on the parties under this clause 13.3 will not be taken to have been breached to the extent that Confidential Information:

- a. is disclosed by a party to its Personnel solely in order to comply with obligations, or to exercise rights, under this Agreement;
- b. is disclosed to a party's internal management Personnel, solely to enable effective management or auditing of Agreement-related activities;
- c. is disclosed by the Commonwealth to the responsible Minister;
- d. is disclosed by the Commonwealth, in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia;
- e. is shared by the Commonwealth (including other agencies), where this serves the Commonwealth of Australia's legitimate interests;
- f. is authorised or required by law to be disclosed; or
- g. is in the public domain otherwise than due to a breach of this clause 13.3.

13.3.2. Where a party discloses Confidential Information to another person pursuant to clauses 13.3.1.a - 13.3.1.e, the disclosing party must notify the receiving person that the information is confidential.

13.3.3. In the circumstances referred to in clauses 13.3.1.a, 13.3.1.b and 13.3.1.e, the disclosing party agrees not to provide the information unless the receiving person agrees to keep the information confidential (subject to the exceptions in this clause 13.3).

13.3.4. The Recipient agrees to secure all of the Commonwealth's Confidential Information against loss and unauthorised access, use, modification or disclosure.

13.4. **Period of Confidentiality**

13.4.1. The obligations under this clause 13.4 will continue, notwithstanding the expiry or termination of this Agreement:

- a. in relation to an item of information described in Item N – for the period set out in respect of that item; and
- b. in relation to any item of information agreed after the Date of this Agreement to be Confidential Information – for the period agreed by the parties in writing in respect of that item, and if no such period is agreed by the parties, in perpetuity.

13.5. No reduction in Privacy Obligations

- 13.5.1. This clause 13 does not detract from any of the Recipient's obligations under the Privacy Act or under clause 21.2.

14. Acknowledgement and publicity

14.1. Acknowledgement of support

- 14.1.1. Unless otherwise notified by the Commonwealth, the Recipient agrees, in all publications, promotional and advertising materials, public announcements and activities by the Recipient or on the Recipient's behalf in relation to the Activity, or any products, processes or inventions developed as a result of it, to acknowledge the financial and other support the Recipient has received from the Australian Government, in the manner set out in Item H of the Schedule, or as otherwise approved by the Commonwealth prior to its use.
- 14.1.2. Where the Recipient has been provided with Funding to produce any publication, a copy of the publication must, on request, be provided to the Commonwealth.

14.2. Right to publicise Funding

- 14.2.1. The Commonwealth reserves the right to publicise and report on the awarding of Funding to the Recipient. The Commonwealth may do (but is not limited to doing) this by including the Recipient's name, the amount of the Funding given to the Recipient, the date the Agreement commences and its term, and the title, location, purpose and a brief description of the Activity in media releases, general announcements about the Funding, annual reports or through any other means as determined by the Commonwealth.

14.3. No restriction on advocacy activities

- 14.3.1. The Commonwealth confirms that, subject to clause 14.3.2:
- a. no right or obligation arising under this Agreement should be interpreted as limiting the Recipient's ability to enter into public debate or criticism of the Commonwealth of Australia or its agencies, employees, servants or agents;
 - b. the Commonwealth does not require the Recipient to obtain advance approval of any involvement by the Recipient in public debate or advocacy activities.
- 14.3.2. Nothing in this clause 14.3 limits or derogates from the Recipient's obligations under clauses 13 and 21.2.

15. Liability

15.1. Proportionate liability regime

- 15.1.1. To the extent permitted by law, the operation of any legislative proportionate liability regime is excluded in relation to any claim against the Recipient under or in connection with this Agreement.

15.2. Indemnity

15.2.1. The Recipient indemnifies the Commonwealth from and against any:

- a. cost or liability incurred by the Commonwealth;
- b. loss of or damage to property of the Commonwealth; or
- c. loss or expense incurred by the Commonwealth in dealing with any claim against it, including legal costs and expenses on a solicitor/own client basis and the cost of time spent, resources used, or disbursements paid by the Commonwealth,

arising from:

- d. any breach by the Recipient of the Agreement;
- e. any act or omission involving fault by the Recipient in connection with this Agreement;
- f. the use of Assets or Real Property; or
- g. the use by the Commonwealth of the Activity Material, including any claims by third parties about the ownership or right to use the Intellectual Property in the Activity Material.

15.2.2. The Recipient's liability to indemnify the Commonwealth under clause 15.2.1 will be reduced proportionally to the extent that any act or omission involving fault on the part of the Commonwealth or its Personnel contributed to the relevant cost, liability, loss, damage or expense.

15.2.3. The right of the Commonwealth to be indemnified under this clause 15.2 is in addition to, and not exclusive of, any other right, power or remedy provided by law, but the Commonwealth is not entitled to be compensated in excess of the amount of the relevant cost, liability, loss, damage or expense.

15.3. Meaning of 'fault'

15.3.1. In this clause 15, 'fault' means any negligent or unlawful act or omission or wilful misconduct.

16. Dispute resolution

16.1. Procedure for dispute resolution

16.1.1. The parties agree that a dispute arising under this Agreement will be dealt with as follows, and that, subject to clause 16.4, neither party will commence legal proceedings in relation to that dispute until this procedure is completed:

- a. the party claiming that there is a dispute will give the other party a notice setting out the nature of the dispute;
- b. within five (5) Business Days (or such other period as agreed by the parties in writing) each party will nominate a representative not having any prior involvement in the dispute;
- c. the representatives will try to settle the dispute by direct negotiation between them;

- d. failing settlement within a further 10 Business Days or such other period as agreed by the parties in writing (or failure of one or both parties to nominate a representative within the period set out in clause 16.1.1.b), the parties may agree to refer the dispute to an independent third person with power:
 - i. to intervene and direct some form of resolution, in which case the parties will be bound by that resolution; or
 - ii. to mediate and recommend some form of non-binding resolution;
- e. the parties will co-operate fully with any process instigated under clause 16.1.1.d in order to achieve a speedy resolution; and
- f. if the parties have been unable to agree to refer the dispute to an independent third person, or they have agreed and a resolution is not reached within a further 20 Business Days (or such other period as the parties) may agree in writing), either party may commence legal proceedings.

16.2. Costs

- 16.2.1. Each party will bear its own costs of complying with this clause 16 Dispute resolution, and the parties will bear equally the cost of any third person engaged under clause 16.1.1.d.

16.3. Continued performance

- 16.3.1. Despite the existence of a dispute, the Recipient will (unless requested in writing by the Commonwealth not to do so) continue to perform the Recipient's obligations under this Agreement.

16.4. Application of clause

- 16.4.1. This clause 16 does not apply to:
- a. legal proceedings by either party for urgent interlocutory relief; or
 - b. action by the Commonwealth under or purportedly under clauses 3, 6, 17 and 21.2.

17. Termination or reduction in scope of Agreement

17.1. Termination for convenience

- 17.1.1. The Commonwealth may by notice, at any time and in its absolute discretion, terminate this Agreement or reduce the scope of the Agreement immediately.
- 17.1.2. The Recipient agrees, on receipt of a notice of termination or reduction, to:
- a. stop or reduce the performance of the Recipient's obligations as specified in the notice;
 - b. take all available steps to minimise loss resulting from that termination or reduction;
 - c. continue performing any part of the Activity not affected by the notice; and

- d. immediately return to the Commonwealth any Funding in accordance with clause 17.1.5, or deal with any such Funding as directed by the Commonwealth.
- 17.1.3. In the event of termination under clause 17.1.1, the Commonwealth will be liable only:
 - a. to pay Funding due and owing to the Recipient under the payment provisions of the Agreement before the date of the notice of termination; and
 - b. to reimburse any expenses the Recipient unavoidably incurs that relate directly and entirely to the Activity and not covered by clause 17.1.3.a.
- 17.1.4. The Commonwealth will not be liable to pay amounts under 17.1.3.a and 17.1.3.b which would, added to any payments already paid to the Recipient under this Agreement, together exceed the Funding set out in Item A.7 of the Schedule and Annexure A.
- 17.1.5. The Commonwealth will be entitled to recover from the Recipient any part of the Funding which:
 - a. is not legally committed for expenditure by the Recipient in accordance with the Agreement and due and payable by the Recipient by the date that the notice of termination is received; or
 - b. has not, in the Commonwealth's opinion, been spent by the Recipient in accordance with the Agreement.
- 17.1.6. In the event of a reduction in the scope of the Agreement under clause 17.1.1, the Commonwealth's liability to pay any part of the Funding will, unless there is agreement in writing to the contrary, reduce in accordance with the reduction in the Activity.
- 17.1.7. The Commonwealth's liability to pay any compensation under or in relation to this clause 17.1 is subject to:
 - a. the Recipient's compliance with this clause 17.1; and
 - b. the Recipient's substantiation of any amount claimed under clause 17.1.3.b.
- 17.1.8. The Recipient will not be entitled to compensation for loss of prospective profits or loss of any benefits that would have been conferred on the Recipient.
- 17.2. **Termination for fault**
- 17.2.1. If the Recipient does not comply with any of its obligations under this Agreement, then the Commonwealth:
 - a. *if it considers that the non-compliance is not capable of remedy* - may by notice terminate this Agreement immediately;
 - b. *if it considers that the non-compliance is capable of remedy* - may, by notice require that the non-compliance be remedied within the time specified in the notice, and if not remedied within that time, may terminate the Agreement immediately by giving a second notice.

17.2.2. The Commonwealth may also by notice terminate this Agreement immediately if:

- a. the Recipient comes under one of the forms of external administration referred to in Chapter 5 of the Corporations Act 2001 (Cth) or equivalent provisions in legislation of the States and Territories pertaining to incorporated associations or Chapter 11 of the Corporations (Aboriginal and Torres Strait Islander) Act 2006 (Cth) or has an order made against it for the purpose of placing it under external administration;
- b. the Recipient is unable to pay all its debts as and when they become due and payable or it fails to comply with a statutory demand within the meaning of sections 459E and 459F of the Corporations Act 2001 (Cth);
- c. proceedings are initiated with a view to obtaining an order for winding up the Recipient, or any shareholder, member or director convenes a meeting for the purpose of considering or passing of any resolution for winding up the Recipient;
- d. in relation to this Agreement, the Recipient breaches any law of the Commonwealth of Australia, or of a State or Territory;
- e. the Recipient becomes bankrupt or enters into a scheme of arrangement with creditors;
- f. another clause of this Agreement allows for termination under this clause 17.2; or
- g. the Commonwealth is satisfied that any statement made in the Recipient's application for Funding is incorrect, incomplete, false or misleading in a way which would have affected the original decision to approve the Funding.

17.2.3. Where the Commonwealth terminates this Agreement under clause 17.2 the Commonwealth:

- a. will be liable only to pay Funding due and owing to the Recipient under the payment provisions of the Agreement before the date of the notice of termination; and
- b. will be entitled to recover from the Recipient any part of the Funding which:
 - i. is not legally committed for expenditure by the Recipient in accordance with the Agreement and payable by the Recipient by the date that the notice of termination is received; or
 - ii. has not, in the Commonwealth's opinion, been spent by the Recipient in accordance with the Agreement.

17.3. **Preservation of other rights**

17.3.1. Clause 17.2 does not limit or exclude any of the Commonwealth's other rights under this Agreement.

18. Notices

18.1. Format, addressing and delivery

18.1.1. A notice under this Agreement is only effective if it is in writing, and addressed as follows:

- a. *if given by the Recipient to the Commonwealth* - addressed to the Commonwealth at the address specified in Item L of the Schedule, or other address as notified by the Commonwealth; or
- b. *if given by the Commonwealth to the Recipient* - given by the Commonwealth and addressed as specified in Item L of the Schedule, or other address as notified by the Recipient.

18.1.2. Any such notice must be delivered to the other party by hand, prepaid post or transmitted electronically (via email or facsimile) and be signed by the sending party. For the avoidance of doubt, an electronic signature on an email will be taken to be a signed notice for the purpose of this clause 18.

18.2. When received

18.2.1. Subject to clause 18.2.2, a notice is deemed to be received:

- a. *if delivered by hand* - upon delivery to the relevant address;
- b. *if sent by prepaid post* - upon delivery to the relevant address; or
- c. *if transmitted electronically* - upon receipt by the sender of either an electronic receipt notification (generated by the system transmitting the notice) or an acknowledgement from the other party that it has received the notice (whichever is earlier).

18.2.2. If a notice is received:

- a. after 5.00 pm on any Business Day; or
- b. on a day that is not a Business Day,

it is deemed to be received at 9:00am on the next Business Day for the purposes of this clause 18.

19. Compliance with the Code for the Tendering and Performance of Building Work 2016

19.1. In this clause 19:

ABCC	means the body referred to in subsection 29(2) of the Act.
Act	means the Building and Construction Industry (Improving Productivity) Act 2016.
Building Code	means the Code for the Tendering and Performance of Building Work 2016, which is available at https://www.legislation.gov.au/Details/F2017C00125

Building Contractor	has the same meaning as in the Act.
Building Industry Participant	has the same meaning as in the Act.
Building Work	has the same meaning as in subsection 3(4) of the Building Code.
Commonwealth Funded Building Work	means Building Work in items 1-8 of Schedule 1 of the Building Code.
Contractor	means a Building Contractor or Building Industry Participant who the Funding Recipient has entered, or proposes to enter, into a contract with to undertake any of the Works.
Exclusion Sanction	has the same meaning as in subsection 3(3) of the Building Code
Funding	means the funding provided by the Commonwealth to the Funding Recipient.
Funding Recipient	means the entity that the Commonwealth is providing funding or assistance to in relation to building works to which the Building Code applies.
Related Entity	has the same meaning as in subsection 3(2) of the Building Code.
Works	means Commonwealth Funded Building Work that is being indirectly funded by the Commonwealth through the provision of the Funding to the Funding Recipient.

- 19.2. The Funding Recipient must ensure that:
- tender processes and calls for expressions of interest (howsoever described) in respect of Commonwealth Funded Building Work are conducted in a manner consistent with this code of practice; and
 - respondents are only permitted to participate in tender processes where the respondent is not subject to an exclusion sanction.
- 19.3. The Funding Recipient must ensure that any request for expressions of interest or request for tender (howsoever described) for Commonwealth Funded Building Work requires a respondent:
- to confirm that the respondent and any related entity will comply with the Building Code when undertaking the Commonwealth Funded building Work; and

- b. to confirm that the respondent, and any related entities; will comply with the Building Code from the time of lodging an expression of interest or tender response (if not already obligated to do so); and
- c. to confirm that it is not subject to an exclusion sanction at the time of lodging an expression of interest or tender; and
- d. to demonstrate a positive commitment to the provision of appropriate training and skill development for their workforce. Such commitment may be evidenced by compliance with any state or territory government building training policies and supporting the delivery of nationally endorsed building and construction competencies; and
- e. to include details of the number of current apprentice and trainee employees and the number of classes of persons that hold visas under the Migration Act 1958 that are engaged by the respondent, and that are intended to be engaged by the respondent to undertake the Commonwealth Funded Building Work; and
- f. to advise whether the respondent has, within the preceding 3 year period: .
 - i. had an adverse decision, direction or order made by a court or tribunal for a breach of a designated building law, work health and safety law or the Migration Act 1958; or
 - ii. been required to pay any amount under an adjudication certificate (provided in accordance with a law relating to the security of payments that are due to persons in respect of building work) including by any related entity to a building contractor or building industry participant; or
 - iii. owed any unsatisfied judgement debts (including such debts owed by any related entity) to a building contractor or building industry participant.

19.4. Where the value of the Commonwealth's contribution to the project that includes the Works meets the financial thresholds set out in Item 1, Schedule 2 to the Building Code, the Funding Recipient must:

- a. ensure the requirement to have a Workplace Relations Management Plan (WRMP) for the Works approved by ABCC is included in all expression of interest and tender documents; and
- b. on behalf of the funding entity:
 - i. apply to the ABCC to have a WRMP for the Works approved; and
 - ii. ensure that an application to the ABCC for approval of a WRMP for the Works is made in the manner and form required by the ABCC Commissioner; and
 - iii. ensure that the proposed WRMP for the Works is accompanied by any supporting evidence required by the ABCC; and

- iv. obtain and provide additional information to the ABCC when requested, to enable the ABCC to make a decision whether or not to approve the proposed WRMP for the Works.

20. Work Health and Safety

20.1. Use of Commonwealth's premises

- 20.1.1. The Recipient agrees, when using the Commonwealth's premises or facilities, to comply with all reasonable directions and procedures relating to work health and safety and security in effect at those premises or in regard to those facilities, as notified by the Commonwealth or as might reasonably be inferred from the use to which the premises or facilities are being put.

20.2. Assistance to the Commonwealth

- 20.2.1. Without limiting clause 2.2 of this Agreement, the Recipient agrees to, on request, give all reasonable assistance to the Commonwealth, by way of provision of information and documents, to assist the Commonwealth and its officers (as defined in the Work Health and Safety Act 2011 (WHS Act)) to comply with the duties imposed on them under the WHS Act.
- 20.2.2. The Recipient acknowledges that the Commonwealth may direct the Recipient to take specified measures in connection with the Recipient's work under this Agreement or otherwise in connection with the Activity that the Commonwealth considers reasonably necessary to deal with an event or circumstance that has, or is likely to have, an adverse effect on the health or safety of persons. The Recipient must comply with the direction. The Recipient agrees that it is not entitled to an adjustment to the Funding merely because of compliance with the direction.

20.3. Australian Government building and construction industry Work Health and Safety Accreditation Scheme

The Scheme	means the Scheme described at Section 43 of the Building and Construction Industry (Improving Productivity) Act 2016.
Builder	has the meaning given in Section 43(8) of the Building and Construction Industry (Improving Productivity) Act 2016.
Building Work	has the meaning given to it by Section 6 of the Building and Construction Industry (Improving Productivity) Act 2016.
Exclusions	means the building work is prescribed under section 26 of the Fair Work (Building Industry—Accreditation Scheme) Regulation 2016

- 20.3.1. Construction projects that utilise funds provided under this agreement are bound by the application of the Australian Government building and construction

industry Work Health and Safety Accreditation Scheme (the Scheme) and the following conditions:

All head contracts for building work under the project that are valued at \$4 million (GST inclusive) or more must:

- a. be notified to the Office of the Federal Safety Commissioner at the earliest possible opportunity (that is, when approaching the market).
- b. contain a requirement that the builder:
 - i. is accredited under the Scheme*;
 - ii. maintains Scheme accreditation for the life of the contract;
 - iii. must comply with all conditions of the Scheme accreditation; and
 - iv. must comply with the National Construction Code performance requirements in relation to building materials.

20.3.2. If conduct of the Activity requires You to carry out any Building Work, You must:

- a. maintain accreditation under the Scheme, and
- b. comply with all conditions of Scheme accreditation.

* Section 26(1)(f) of the Fair Work (Building Industry – Accreditation Scheme) Regulation 2016[#] outlines provisions applying to joint venture arrangements that include accredited and unaccredited builders.

[#] The Fair Work (Building Industry – Accreditation Scheme) Regulation 2016, made under section 35 of the Fair Work (Building Industry) Act 2012 (FWBI Act), was continued in force after the repeal of the FWBI Act as rules made for the purposes of section 43 of the Building and Construction Industry (Improving Productivity) Act 2016 (see item 11 of Schedule 2 to the Building and Construction Industry (Consequential and Transitional Provisions) Act 2016).

21. General Provisions

21.1. Constitution

- 21.1.1. The Recipient warrants that the Recipient's Constitution is not, and will not become, inconsistent with this Agreement.
- 21.1.2. The Recipient must provide a copy of the Recipient's Constitution to the Commonwealth, upon request.
- 21.1.3. The Recipient must obtain the Commonwealth's written approval to any amendments to the Recipient's Constitution which may affect the Recipient's eligibility for the Funding or the Recipient's capacity to comply with this Agreement. If the Recipient alters the Constitution in breach of this subclause 21.1.3, the Commonwealth may terminate this Agreement in accordance with clause 17.2 of this Agreement.

21.2. Obligations of Recipient in relation to privacy

- 21.2.1. The Recipient agrees, in conducting the Activity:

- a. not to do any act or engage in any practice which, if done or engaged in by the Commonwealth, would be a breach of an Australian Privacy Principle; and
- b. to comply with any directions, guidelines, determinations or recommendations of the Commonwealth, to the extent that they are consistent with the Australian Privacy Principles.

21.2.2. The Recipient agrees to notify the Commonwealth immediately if it becomes aware of a breach or possible breach of any of its obligations under this clause 21.2.

21.2.3. The provisions of this clause 21.2 survive the termination or expiration of this Agreement.

21.3. **Audit and Access**

21.3.1. The Recipient agrees:

- a. to give the Commonwealth, or any persons authorised in writing by the Commonwealth, access to premises where obligations under this Agreement are being carried out; and
- b. to permit those persons to inspect and take copies of any Material relevant to this Agreement.

21.3.2. The rights referred to in clause 21.3.1. are subject to:

- a. the Commonwealth providing reasonable prior notice; and
- b. the reasonable security procedures in place at the premises.

21.3.3. The Auditor-General and Information Officer (and their delegates) are persons authorised for the purposes of clause 21.3.1.

21.3.4. This clause 21.3 does not detract from the statutory powers of the Auditor-General or Information Officer.

21.4. **Access to Documents**

21.4.1. In this clause 21.4, 'document' and 'Commonwealth contract' have the same meaning as in the Freedom of Information Act 1982 (Cth). This clause 21.4 only applies if this Agreement is a 'Commonwealth contract', as defined in the Freedom of Information Act 1982 (Cth).

21.4.2. Where the Commonwealth has received a request for access to a document created by, or in the possession of, the Recipient or any subcontractor that relates to the performance of this Funding Agreement (and not to the entry into the Funding Agreement), the Commonwealth may at any time by written notice require the Recipient to provide the document to the Commonwealth and the Recipient must, at no additional cost to the Commonwealth, promptly comply with the notice.

21.4.3. The Recipient must include in any subcontract relating to the performance of this Agreement provisions that will enable the Recipient to comply with its obligations under this clause 21.4.

21.5. **Insurance**

21.5.1. The Recipient agrees:

- a. to effect and maintain the insurance specified in Item F and
- b. on request, to provide proof of insurance acceptable to the Commonwealth.

21.5.2. This clause 21.5 continues in operation for so long as any obligations remain in connection with this Agreement.

21.6. **Extension of provisions to subcontractors and Personnel**

21.6.1. In this clause 21.6:

Requirement means an obligation, condition, restriction or prohibition binding on the Recipient under this Agreement.

21.6.2. The Recipient agrees to ensure that:

- a. its subcontractors and Personnel comply with all relevant Requirements; and
- b. any contract entered into in connection with this Agreement imposes all relevant Requirements on the other party.

21.6.3. The Recipient agrees to exercise any rights it may have against any of its subcontractors, Personnel or third parties in connection with a Requirement in accordance with any direction by the Commonwealth.

21.7. **Conflict of interest**

21.7.1. In this clause 21.7:

Conflict means any matter, circumstance, interest or activity involving or affecting the Recipient, its Personnel or subcontractors which may or may appear to impair the ability of the Recipient to perform the Activity diligently and independently.

21.7.2. The Recipient warrants that, to the best of its knowledge after making diligent inquiry, at the Date of this Agreement no Conflict exists or is likely to arise in the performance of the Recipient's obligations under the Agreement.

21.7.3. If during the Term a Conflict arises, the Recipient agrees to:

- a. notify the Commonwealth immediately;
- b. make full disclosure of all relevant information relating to the Conflict; and
- c. take any steps the Commonwealth reasonably requires to resolve or otherwise deal with that Conflict.

21.8. **Relationship of parties**

21.8.1. The Recipient is not by virtue of this Agreement an officer, employee, partner or agent of the Commonwealth, nor does the Recipient have any power or authority to bind or represent the Commonwealth.

21.8.2. The Recipient agrees:

- a. not to misrepresent its relationship with the Commonwealth; and
- b. not to engage in any misleading or deceptive conduct in relation to the Activity.

21.9. **Waiver**

21.9.1. A failure or delay by a party to exercise any right or remedy it holds under this Agreement or at law does not operate as a waiver of that right.

21.9.2. A single or partial exercise by a party of any right or remedy it holds under this Agreement or at law does not prevent the party from exercising the right again or to the extent it has not fully exercised the right.

21.10. **Variation of Agreement**

21.10.1. No variation of this Agreement is binding unless it is agreed in writing and signed by both parties.

21.11. **Assignment**

21.11.1. The Recipient cannot assign its obligations, and agrees not to assign its rights, under this Agreement without the Commonwealth's prior written approval.

21.11.2. The Recipient agrees not to enter into negotiations with any other person for the purposes of entering into an arrangement that will require novation of this Agreement without first consulting the Commonwealth.

21.12. **Survival**

21.12.1. Unless the contrary intention appears, the expiry or earlier termination of this Agreement will not affect the continued operation of any provision relating to:

- a. Intellectual Property;
- b. confidentiality;
- c. security;
- d. privacy;
- e. dealing with copies;
- f. books and records;
- g. audit and access;
- h. an indemnity;
- i. acknowledgement and publicity;
- j. rights or obligations following termination or expiry of the Agreement; or

- k. any other provision which expressly or by implication from its nature is intended to continue.

21.13. **Compliance with Legislation and Policies**

21.13.1. In this clause 21.13:

Legislation means a provision of a statute or subordinate legislation of the Commonwealth of Australia, or of a State, Territory or local authority.

21.13.2. The Recipient agrees to comply with any Legislation applicable to its performance of this Agreement.

21.13.3. The Recipient agrees, in carrying out its obligations under this Agreement, to comply with any of the Commonwealth's policies as notified, referred or made available by the Commonwealth to the Recipient (including by reference to an internet site), including those listed in Item J.

21.14. **Applicable law and jurisdiction**

21.14.1. This Agreement is to be construed in accordance with, and any matter related to it is to be governed by, the law of the Australian Capital Territory specified in Item M.

21.14.2. The parties submit to the jurisdiction of the courts of the Australian Capital Territory.

21.15. **Child Safety**

In this Agreement:

Child means an individual(s) under the age of 18 years and Children has a similar meaning;

Child-Related Personnel

means officers, employees, contractors (including subcontractors), agents and volunteers of the Grantee involved with the Activity who as part of that involvement may interact with Children;

Legislation means a provision of a statute or subordinate legislation of the Commonwealth, or of a State, Territory or local authority;

National Principles for Child Safe Organisations

means the National Principles for Child Safe Organisations, which have been endorsed in draft form by the Commonwealth Government (available at: <https://www.humanrights.gov.au/national-principles-child-safe-organisations>) and subsequently, from the time of their endorsement by the Council of Australian Governments, the final

National Principles for Child Safe Organisations as published by the Australian Government;

Relevant Legislation

means Legislation in force in any jurisdiction where any part of the Activity may be carried out;

Working With Children Check or WWCC

means the process in place pursuant to Relevant Legislation to screen an individual for fitness to work with Children.

Relevant Checks and authority

21.15.1. The Grantee must:

- a. comply with all Relevant Legislation relating to the employment or engagement of Child-Related Personnel in relation to the Activity, including all necessary Working With Children Checks however described; and
- b. ensure that Working With Children Checks obtained in accordance with this clause 21.15.1 remain current and that all Child-Related Personnel continue to comply with all Relevant Legislation for the duration of their involvement in the Activity.

National Principles for Child Safe Organisations and other action for the safety of Children

21.15.2. The Grantee agrees in relation to the Activity to:

- a. implement the National Principles for Child Safe Organisations;
- b. ensure that all Child-Related Personnel implement the National Principles for Child Safe Organisations;
- c. complete and update, at least annually, a risk assessment to identify the level of responsibility for Children and the level of risk of harm or abuse to Children;
- d. put into place and update, at least annually, an appropriate risk management strategy to manage risks identified through the risk assessment required by this clause 21.15.2;
- e. provide training and establish a compliance regime to ensure that all Child-Related Personnel are aware of, and comply with:
 - i. the National Principles for Child Safe Organisations;
 - ii. the Grantee's risk management strategy required by this clause 21.15.2;
 - iii. Relevant Legislation relating to requirements for working with Children, including Working With Children Checks;

- iv. Relevant Legislation relating to mandatory reporting of suspected child abuse or neglect, however described; and
 - f. provide the Commonwealth with an annual statement of compliance with clauses 21.15.1 and 21.15.2, in such form as may be specified by the Commonwealth.
- 21.15.3. With reasonable notice to the Grantee, the Commonwealth may conduct a review of the Grantee's compliance with this clause 21.15.
- 21.15.4. The Grantee agrees to:
 - a. notify the Commonwealth of any failure to comply with this clause 21.15;
 - b. co-operate with the Commonwealth in any review conducted by the Commonwealth of the Grantee's implementation of the National Principles for Child Safe Organisations or compliance with this clause 21.15; and
 - c. promptly, and at the Grantee's cost, take such action as is necessary to rectify, to the Commonwealth's satisfaction, any failure to implement the National Principles for Child Safe Organisations or any other failure to comply with this clause 21.15.

Executed as a deed

Executed by the parties as evidence of their agreement.

SIGNED for and on behalf of the
COMMONWEALTH OF
AUSTRALIA, as represented by and)
acting through the **Department of**)
Infrastructure, Transport, Cities)
and Regional Development:
ABN 86 267 354 017

Name of signatory

Signature

Position

Insert Date

In the presence of:

Name of witness

Signature of witness

Executed on behalf of **GIANT STEPS**)
MELBOURNE LTD, CAN 606552283)
by Barry Irvin who by signing warrants)
they are authorised to bind **Giant**)
Steps Melbourne Ltd

Signature

Insert Date

In the presence of:

Name of witness

Signature of witness

SCHEDULE 1 PARTICULARS

A. Programme, Project, Purpose, Activity and Funding and Payment (Recital A, clauses 1.1.1 and 2.1.1)

A.1. Programme

The Commonwealth is undertaking the Community Development Grants programme, which was to support needed infrastructure that promotes stable, secure and viable local and regional economies.

A.2. Project

The project to be undertaken by the Recipient is the Giant Steps Autism School Expansion at 11 Malmsbury Street, Kew VIC, 3101. The Project will include the Activity that the Programme will fund, defined in more detail in item A.5 of the Schedule.

The Project Completion Date is 20 May 2022.

A.3. Purpose

The Purpose for which the completed Project is required to be used is:

To provide expanded autism services in Melbourne to help meet demand and increase student enrolments across all programs to enable the provision of individualised programs for children and young adults with Autism.

A.4. Operational Period

The Operational Period commences on the date the Commonwealth accepts the Project Completion Report, to the Commonwealth's satisfaction. The duration of the Operational Period is dependent on the amount of Funding provided by the Commonwealth under this Agreement. The thresholds are set out in the table below:

Amount of Funding	Duration of Operational Period
Over \$1,000,000	Five (5) years

During the Operational Period, the Recipient must, if requested by the Commonwealth to do so, promptly provide evidence satisfactory to the Commonwealth that the Project is Operational.

A.5. Activity

The Activity to be undertaken by the Recipient is the Giant Steps Autism School Expansion project including:

The Activity will include the planning, design, and construction of two new buildings along with minor renovations to 200 sqm of an existing building, totalling 3,500 sqm (excluding the roof play area).

This Activity will allow Giant Steps to enrol an additional 65-85 students including a new College program for 15-25 young adult students.

The expansion project will provide scope for an additional 3 primary and 6 secondary education classrooms. It will include a total of 20 new rooms, 12 unisex toilets, 6 showers and 7 storerooms across 3 levels.

The New Secondary education building will include an Industrial Kitchen of 53m² from which life skills and VCAL learning programs can be run.

The expansion project will allow Giant Steps to open a new post school College for 20 young adult students over 180m² of all new space and service provision including:

- a common meeting / learning space;
- an IT lab,
- a classroom;
- a kitchen for life skills teaching,;
- 2 shower rooms and;
- 2 bathrooms and;
- a laundry.

The expansion project will see the development of new staff amenities, including staff work desks for 18 staff, a staff kitchen, a training / meeting area and 2 bathrooms. The staff area will also include a Principal's office. The expansion activity will allow Giant Steps to provide a total staff facilities area of 181sqm for up to 80 staff.

The Activity will include the development of new and renovated ground floor playground area of 600m². This area will include;

- a trampoline,
- swings,
- a climbing frame
- sensory engagement play equipment and;
- quiet zones, which can assist with play sessions as well as the provision of Occupational Therapy.

An additional roof top play zone of 481m² has been designed to provide a multi sensory experience for students that can engage with their environment and their peers. An additional 102m² of breakout zones between classrooms has also been designed to facilitate student interaction.

The Activity will include a new basement of 829sqm that will allow for:

- safe transition of students;
- parking for 24 cars;
- parking for the 14 seater school bus;
- bike storage and
- services / utilities access.

The renovation to the existing building will be over 150sqm and include:

- Dedicated reception area;
- Administration Office for up to 6 staff;
- Meeting room for parent meetings and our Mental Health Clinic;
- Dedicated Music Therapy room;
- Unisex bathroom.

Training programs will be run across multiple facilities developed across the site including the staff breakout space, industrial kitchen, College spaces and the reception Board Room.

The information above represents the design submitted to Council and our intentions regarding use of space. Should the demand for services evolve, Giant Steps will remain flexible around how the spaces are used and for which age group.

The Activity Period commences on the Date of this Agreement and ends on the Activity Completion Date which is 20 May 2022.

A.6. Reserved

**A.7. Funding and Payment
(clauses 1.1.1, 3.1, 6)**

The total Funding for the Activity is **\$9,700,000** GST exclusive. The Funding will be paid as follows:

1. The first payment of Funding specified in the table at Annexure A will not be made until:
 - a) this Agreement has been executed by all Parties and all Milestones specified in the table at Annexure A that relate to the first payment have been achieved to the Commonwealth's satisfaction; and
 - b) all Reports identified in item D of the Schedule as being due on or before the due date for the first payment have been received and accepted by the Commonwealth; and
2. The second and each subsequent payment specified in the table at Annexure A will not be made until:
 - a) all Milestones specified in the table at Annexure A that relate to the relevant payment have been achieved to the Commonwealth's satisfaction;
 - b) all Reports identified in item D of this Schedule as being due on or before the due date for the relevant payment have been received and accepted by the Commonwealth; and
 - c) the Recipient has provided the Commonwealth with evidence that all previously paid Funds have been expended or committed.

Invoicing

The Commonwealth must receive a properly rendered invoice or, if required a tax invoice which meets the requirements of the Australian Taxation Office for the amount of the payment and;

The Recipient must provide the Commonwealth with evidence that all previous paid Funding has been expended or committed.

B. Budget

(clause 6.2)

The Budget for the Activity, identifying the Funding and Other Contributions, is at Annexure B.

The percentage of the Budget (Total Cost) below which Funding may be transferred between Cost items without the Commonwealth's approval is 10%.

The percentage of the Budget (Total Cost) which must not be exceeded in total transfers between expenditure items per Financial Year is 20%.

C. Other Contributions

(clause 7)

C.1. Other Contributions

Other Contributions are specified at the table titled "Other Contributions" in Annexure B. Any financial or in-kind assistance that the Recipient has received from the Commonwealth of Australia or a State, Territory or local government and which the Recipient intends to, or is required to, use to perform the Activity must be identified in Other Contributions.

D. Reporting

(clauses 1.1.1, 2.6)

D.1. Progress Reports, Activity Completion Report and Project Completion Report

D.1.1 The Recipient must give the Commonwealth the Progress Reports, the Activity Completion Report and Project Completion Report by the times specified in the Table of Milestones, Reports and Payments relating to the Activity at Annexure A.

D.1.2 Each Progress Report must contain:

- a. details of progress and performance against the Activity, and the Project (to the extent that it is directly related to the relevant part of the Activity which is being covered by that Progress Report) and evidence of completion of the Milestones listed in Annexure A of the Schedule that are due for completion (including but not limited to photographs to demonstrate completion of Milestones) during the period between the Recipient's previous Progress Report and the due date of this Progress Report (or in the case of the first Progress Report, the period between the Date of this Agreement and the due date of the first Progress Report);
- b. details of mitigating circumstances and remedial action undertaken in the

event a Milestone is not met or completed in the manner and/or by the time specified;

- c. copies of any published reports, promotional material, media publicity, pamphlets or other documentation relevant to the Project;
- d. evidence that the Recipient has obtained and/or utilised in-kind Other Contributions specified in the table at Annexure B;
- e. a statement of receipts (which separately identifies any interest earned on the Funding) and expenditure to date in respect of the Funding; and
- f. a statement of receipts and expenditure to date in respect of Other Contributions (excluding in-kind).

D.1.3 The Activity Completion Report must contain:

- a. evidence that the Activity and the Milestones have been completed;
- b. an analysis of the planning, implementation and overall process the Recipient followed to deliver the Activity;
- c. any recommendations on improved practice, relevant to the Recipient's and the Commonwealth's practices, that may assist in the delivery of future projects;
- d. a copy of the current Assets register described in item E.1.2 of this Schedule and a copy of the Real Property register described in item E.2.4 of this Schedule;
- e. evidence that the Recipient has obtained in-kind Other Contributions for the Activity specified in the table at Annexure B;
- f. an up to date Audited Financial Report in respect of the Activity; and
- g. copies of any published reports, promotional material, media publicity, pamphlets or other documentation relevant to the Activity, not already included in the Progress Report/s.
- h. a copy of the Assets register described in item E.1 of this Schedule and a copy of the Real Property register described in item E.2 of this Schedule.

D.1.4 The Project Completion Report must contain:

- a. evidence that the Project has been completed;
- b. an analysis of the planning, implementation and overall process the Recipient followed to deliver the Project;
- c. any recommendations on improved practice, relevant to the Recipient's and the Commonwealth's practices, that may assist in the delivery of future projects;
- d. a copy of the Assets register described in item E.1 of this Schedule and a copy of the Real Property register described in item E.2 of this Schedule.
- e. evidence that the Recipient obtained in-kind contributions specified in the table at Annexure B;
- f. an Audited Financial Report; and
- g. copies of any published reports, promotional material, media publicity, pamphlets or other documentation relevant to the Project, not already included in the Progress Report/s.

In addition, the Project Completion Report must also:

- h. describe the Recipient's activities during the Term;
- i. discuss in detail the conduct, benefits and outcomes of the Activity as a whole and the Activity's results and findings; and
- j. Reserved

The Recipient must also include in the Project Completion Report a discussion of any other matters relating to the performance of the Project and Activity, which the Commonwealth notifies the Recipient is required to be included in the Project Completion Report. Any such requirement will be notified to the Recipient at least 20 Business Days before the Project Completion Report is due.

- D.1.5. Unless otherwise agreed by the Commonwealth in writing, all Reports must be:
- a. supplied in hard copy or electronic form;
 - b. supplied in a format that is acceptable to the Commonwealth; and
 - c. signed by the Recipient's Chief Executive Officer, Chief Financial Officer or other person authorised by the Recipient to execute documents and legally bind the Recipient by their execution.

D.2. Audit and certification

- D.2.1. The Activity Completion Report and Project Completion Report must be accompanied by a copy of a letter to the Recipient from the Approved Auditor, or a report from the Approved Auditor, that includes:

- a. separate audited statements of receipts and expenditure in respect of the Funding and Other Contributions (excluding in-kind), which must:
 - i. comply with all relevant Australian Accounting Standards
 - ii. separately identify any interest earned on the Funding
 - iii. include a definitive statement made by an Approved Auditor as to whether:
 - 1. the statements of receipts and expenditure are fair and true
 - 2. Funding and Other Contributions (excluding in-kind) were held and expended in accordance with this Agreement
- b. a certificate, signed by the Recipient's Chief Executive Officer, Chief Financial Officer or a person authorised by the Recipient to execute documents and legally bind the Recipient by their execution, that:
 - i. all Funding and Other Contributions (excluding in-kind) received was expended for the purpose of the Activity and Project and expended and held in a manner in accordance with this Agreement
 - ii. salaries and allowances paid to persons involved in the Activity are in accordance with any applicable award or agreement in force under any relevant Law on industrial or workplace relations.

D.3. Other Reports

Throughout the Term, the Commonwealth may require the Recipient to provide ad-hoc Reports concerning:

- a. any significant developments concerning the Activity;
- b. any significant delays or difficulties encountered in performing the Activity in accordance with the Agreement; and
- c. the outcomes and outputs of the project as listed in the application.

The Recipient must provide any such ad-hoc Reports within the timeframe notified by the Commonwealth.

E. Assets and Real Property
(clauses 1.1.1 and 9)

E.1. Assets

- E.1.1. For the purposes of Clause 9, the Recipient may create, acquire or upgrade the following Assets:

None Specified

- E.1.2. The Recipient must for the Term of this Agreement maintain an Asset Register in the following form and containing the following information:

- a. Asset description;
- b. acquisition, upgrade or creation price or total lease cost;
- c. date of acquisition, creation, upgrade or lease;
- d. if leased, type and term of lease;
- e. location of Asset;
- f. date of Disposal;
- g. disposal method; and
- h. if the Asset was partly created, acquired or upgraded using the Funding, the proportion of that creation, acquisition or upgrade that was paid for with the Funding.

- E.1.3. The Recipient must use the Assets created, acquired, or upgraded under this Agreement for the Purpose set out in item A.3 of the Schedule for the duration of the Operational Period.

E.2. Real Property

- E.2.1. The Real Property includes the Giant Steps Autism School Expansion.

- E.2.2. The Capital Works includes design, construction and fit-out of the Real Property at the Works Location.

- E.2.3. The Works Locations includes **11 Malmsbury Street, Kew, VIC, 3101**

- E.2.4. The Recipient must for the Term of this Agreement maintain a Real Property Register in the following form and containing the following information:

- a. Real Property description;

- b. acquisition, upgrade or creation price or total lease cost;
- c. date of acquisition, creation, upgrade or lease;
- d. if leased, type and term of lease;
- e. location of Real Property;
- f. date of Disposal;
- g. disposal method; and
- h. if the Real Property was partly created, acquired or upgraded using the Funding, the proportion of that creation, acquisition or upgrade that was paid for with the Funding.

E.2.5. The Recipient must use the Real Property created, acquired, or upgraded under this Agreement for the Purpose set out in item A.3 of the Schedule for the duration of the Operational Period.

**F. Insurance
(clause 21.5)**

The Recipient must maintain:

- a. workers compensation insurance as required by law where the Recipient carries out activities under this Agreement;
- b. public liability insurance to the value of at least \$10 million for each and every claim, or occurrence giving rise to a claim, in respect to activities undertaken under this Agreement, where occurrence means either a single occurrence or a series of occurrences if these are linked or occur in connection with one another from one original cause, as the case may be; and
- c. insurance against any loss or damage to an Asset or Real Property for its full replacement cost including where relevant the costs of demolition and removal of debris and the cost of architects, engineers and other consultants.

G. Reserved

**H. Acknowledgement and publicity
(clause 14)**

- H.1.1 If the Recipient erects or maintains any signage in relation to the Project, the signage must be approved by the Commonwealth prior to use and contain an acknowledgement of the Funding as required under Clause 14 of this Agreement. Any signage must remain in place during the Operational Period for the Project as specified in Item A.4. Signage for the Activity may be paid from the Budget if approved by Us. Signage for any other part of the Project must be at the Recipient's own cost.
- H.1.2 If a Federal, State or Local Government election is announced, the Recipient must cover any sign that is displayed within 100 metres of a polling place with an opaque (impenetrable to sight), durable and water repellent material from a

period not less than 48 hours before the commencement of polling at that polling place until the polls close.

- H.1.3 The Recipient must include the Commonwealth logo in all signage, publications and promotional activities related to the Activity.
- H.1.4 The Recipient must not use the Commonwealth's logo without the Commonwealth's approval. If the Commonwealth provides approval for the Recipient's use of the Commonwealth's logo, the Recipient must use it in accordance with the Commonwealth's Print Style Guidelines (as advised by the Commonwealth).
- H.1.5 All the Recipient's publicity, announcements and media releases relating to the Activity must be cleared through the Commonwealth's contact officer specified at item L of the Schedule with at least 10 Business Days' notice, before release.
- H.1.6 The Commonwealth reserves the right to publicise and report on the provision of Funding to the Recipient, including progress on completing the Activity and the Project. The Commonwealth may do this by including the information specified in clause 14.2 in media releases, general announcements about the Funding and in annual reports and in electronic media.
- H.1.7 The Recipient must conduct an official opening of the completed Activity and Project unless otherwise agreed by the Commonwealth.
- H.1.8 The Recipient must provide to the Commonwealth with at least 3 options for dates for the official opening, or any other milestone events that the Recipient chooses to conduct (e.g. stage completion), for the Activity and the Project. These dates must be provided at least 56 days prior to the first proposed date for each event to be conducted.
- H.1.9 The date of official openings or other official public function for the completed Activity and Project must be agreed by the Commonwealth.
- H.1.10 The Recipient must invite the Commonwealth's representative to officiate at any official opening or other official public function relating to the Activity or the Project.
- H.1.11 The Commonwealth Minister's prior agreement must be sought, to invite any other Commonwealth or State elected official or other officials to attending either function. This invitation must be provided to the Commonwealth no later than 56 days before the date of the official opening or other official public function relating to the Activity or the Project.
- H.1.12 The Recipient must coordinate requests for the Commonwealth's agreement to the date of official openings and requests for Commonwealth representation at official openings or other official functions relating to the Activity or the Project through the Commonwealth's contact officer specified at item L of the Schedule.

I. Reserved

**J. Compliance with laws and policies
(clause 21.13)**

The Recipient must comply with the following laws and policies in carrying out the Activity:

- Crimes Act 1914;
- Criminal Code of Conduct 1995;
- Disability Discrimination Act 1992;
- Workplace Gender Equality Act 2012;
- Building and Construction Industry (Improving Productivity) Act 2016;
- Racial Discrimination Act 1975;
- Sex Discrimination Act 1984;
- Migration Act 1958
- Work Health and Safety Act 2011.

For the purposes of clause 21.13, the following policies are identified:

Community Development Grants Programme – Grant Programme Guidelines

**K. Statutory Approvals
(clause 2A.2)**

For the purposes of subclause clause 2A.2, the Recipient must obtain statutory approvals for the Project.

**L. Notices
(clause 18.1)**

The Commonwealth's details for notices are as follows:

Name: General Manager
Regional Programs Branch

Address: Department of Infrastructure, Transport, Cities and Regional
Development
GPO Box 594
CANBERRA ACT 2601

Email: CDG@infrastructure.gov.au

The Recipient's details for notices are as follows:

Name: s47F

Position: s47F

Address: s47F

Telephone: s47F

E-mail: s47F

M. Applicable Law
(clause 21.14)

The Laws of the Australian Capital Territory apply to this Agreement.

N. Confidential Information
(clause 13)

Commonwealth's Confidential Information

Agreement Provisions/Schedules/Attachments

None Specified

Agreement related material

None Specified

Recipient's Confidential Information

Agreement Provisions/Schedules/Attachments

None Specified

Agreement related material

None Specified

ANNEXURE A

Table of Milestones, Reports and Funding payments relating to the Activity

Report	Milestone(s) / Information covered by the Report	Milestone Completion Date	Payment amount (GST Exclusive)	Due Date for Report	Due Date for Funding Payment
Progress Report 1	Evidence acceptable to the Commonwealth that the following have been achieved: <ul style="list-style-type: none"> 15% of the Project is completed and certified by the Project Manager, Quantity Surveyor, or similar. 	01/03/2020	\$1,455,000	30/06/2020	14/04/2020
Progress Report 2	Evidence acceptable to the Commonwealth that the following have been achieved: <ul style="list-style-type: none"> 35% of the Project is completed and certified by the Project Manager, Quantity Surveyor, or similar. 	01/11/2020	\$1,940,000	01/12/2020	14/12/2020
Progress Report 3	Evidence acceptable to the Commonwealth that the following have been achieved: <ul style="list-style-type: none"> 60% of the Project is completed and certified by the Project Manager, Quantity Surveyor, or similar. 	01/05/2021	\$2,425,000	01/06/2021	14/06/2021
Progress Report 4	Evidence acceptable to the Commonwealth that the following have been achieved: <ul style="list-style-type: none"> 80% of the Project is completed and certified by the Project Manager, Quantity Surveyor, or similar. 	01/09/2021	\$1,940,000	01/10/2021	14/10/2021

Report	Milestone(s) / Information covered by the Report	Milestone Completion Date	Payment amount (GST Exclusive)	Due Date for Report	Due Date for Funding Payment
Progress Report 5	<p>Evidence acceptable to the Commonwealth that the following have been achieved:</p> <ul style="list-style-type: none"> an Event Invitation has been submitted to the Department as required at Item H of the Schedule; 90% of the Project is completed and certified by the Project Manager, Quantity Surveyor, or similar. 	01/12/2021	\$1,746,000	01/01/2022	14/01/2022
Project Completion Report	<p>Evidence acceptable to the Commonwealth that the following has been achieved:</p> <ul style="list-style-type: none"> the Activity, at Item A.5 of the Schedule, is complete; the Project, at Item A.2 of the Schedule, is complete; the Project is fully Operational. 100% of the Project is completed and certified by the Project Manager, Quantity Surveyor, or similar. 	01/05/2022	\$194,000	01/06/2022	14/06/2022

ANNEXURE B

BUDGET FOR THE EXPENDITURE OF CDG FUNDING		
Cost item	Description	Amount (GST exclusive)
Design, construction & fit out	Giants Steps Autism School Expansion	\$9,700,000
Funding (A)		\$9,700,000

OTHER CONTRIBUTIONS (FINANCIAL)			
Name of Contributor	Cost Item	Description of item	Amount (GST exclusive)
s47G			
Other Contributions (Financial) (B)			

TOTAL COST ESTIMATE (A + B) (GST exclusive):	s47G
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OTHER CONTRIBUTIONS (IN-KIND)	
Name of Contributor	Description of Other Contribution (In-kind)
N/A	N/A

Project Handover Worksheet

Programme Name:	Community Development Grants
Proponent:	Giant Steps Melbourne Ltd
Project:	Giant Steps Autism School Expansion
Project ID:	CDG1085
Proponent Contact Name:	s47F
Proponent Contact Phone Number/email:	s47F

New Project Officer:	
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Project Status/comments and issues *(issues relating to payments, reports and variations)*

A draft funding agreement was sent to the grantee on 8/11/19 for review and input. The grantee provided feedback on the draft FA on 5/12 and advised there may be discrepancies with some of the standard clause aspects, such as Clause 9.6.2.

Emailed the grantee on 20/12 and let them know the program manager, s22 is happy to discuss their concerns and provided her details.

Proponent issues - risk/s *(Proponent's relationship/responsiveness to/with the Department)*

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Sensitivities *(If applicable)*

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Action Required

If required, organise a teleconference between s22 and the grantee to discuss the draft FA/grantee's concerns.

Handover officer

Name:	Signature:	Date:
s22		20 December 2019

Please ensure the following has been completed:

☒ File/s have been folioed.

(Note all pages with text need to be folioed. Up to 400 double sided folios per file. Then order a new file part)

☒ Project Index Sheet has been completed as much as possible and is retained as the top folio on the file.

☒ Sharepoint is up to date.