

Capital Works Funding Agreement

Safe Places Emergency
Accommodation program

—

Commonwealth of Australia as represented by the
Department of Social Services (**Department**)

[insert entity name] ACN **[insert ACN]** (**Participant**)

Capital Works Funding Agreement

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Details

Date

Parties

Name	Commonwealth of Australia as represented by the Department of Social Services
ABN	36 342 015 855
Short form name	Department
Notice details	71 Athllon Drive, Greenway, ACT, 2900 GPO Box 9820, Canberra, ACT, 2601 Email: Capital@dss.gov.au Attention: Director, Community Grants Hub

Name	[insert entity name] ACN [insert ACN]
ABN	[insert ABN]
Short form name	Participant
Notice details	[insert physical address] [insert postal address] Email: [insert] Attention: [insert]

Background

- A The Department is providing the Funds through the Program.
- B The Program supports the establishment and delivery of emergency and crisis accommodation to ensure there are additional safe places for women and children experiencing domestic and family violence.
- C The Participant is committed to helping to achieve the Program Objectives and the Aim of the Project through the conduct of the Project, and ensuring the Works are available to be used for the Designated Use throughout the Designated Use Period.
- D The Participant has been approved to receive funding from the Department to carry out the Project in support of the Program Objectives and the Aim of the Project on the terms and conditions set out in this Agreement.
- E In consideration of the Department providing the Funds to the Participant, the Participant has agreed to perform the Project, and ensure the Works are available to be used for the Designated Use throughout the Designated Use Period, in accordance with the terms and conditions of this Agreement.

Agreed terms

Part A - Defined terms and interpretation

1. Defined terms & interpretation

1.1 Defined terms

In this Agreement, except where the contrary intention is expressed, the following definitions are used:

Acquittal Report means a Report, in a form acceptable to the Department, to be provided to the Department in accordance with clause 15.3.

Advisers means the financial, technical or legal advisers of a party and the respective Personnel of those financial, technical or legal advisers.

Agreement means this document and includes the Schedules and any annexures or attachments.

Agreement Period means the period described in clause 2, and includes the Project Period and the Designated Use Period.

Aim of the Project has the meaning provided in Item 1.2 of Schedule 1.

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

Approved Auditor means a person who is:

- (a) registered as a company auditor under the Corporations Act or an appropriately qualified member of the Institute of Chartered Accountants in Australia, CPA Australia or the Institute of Public Accountants;
- (b) acting in a professional capacity as an auditor; and
- (c) not a principal, member, shareholder, office holder or employee of the Participant;

Asset means an item of tangible property purchased or leased either wholly or in part with the use of the Funds, that is not a fixture, for the Project with a value at the time of acquisition of fifty thousand dollars (\$50,000) or more, exclusive of GST, but does not include the Property, the Works or Project Material.

Audit means an audit carried out by the Approved Auditor in accordance with the Australian Auditing Standards. **Audited** has a corresponding meaning.

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

Australian Accounting Standards means the standards of that name maintained by the Australian Accounting Standards Board (established under section 226 of the *Australian Securities and Investments Commission Act 2001* (Cth)) or other accounting standards which are generally accepted and consistently applied in Australia.

Australian Auditing Standards means the standards made by the Auditor-General under section 24 of the *Auditor-General Act 1997* (Cth) or other auditing standards which are generally accepted and consistently applied in Australia.

Bank means an 'authorised deposit-taking institution' as that term is defined in the *Banking Act 1959* (Cth).

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

Certificate of Occupancy means a certificate issued by the Proper Authority that provides such certificates confirming that the relevant Works comply with all relevant Laws, Approvals and other requirements and are fit for the purpose of occupancy and use for the Designated Use.

Committed means Funds that the Participant is contractually obliged to pay to a third party in respect of any part of the activities making up the Project and that can be identified in a written contractual arrangement with that third party.

Commonwealth means the Commonwealth of Australia.

Completion Date means the date that is 45 Business Days after the end of the Designated Use Period.

Confidential Information means information that:

- (a) is by its nature confidential;
- (b) is designated by the Department as being confidential; or
- (c) the Participant knows or ought to know is confidential,

but does not include information that:

- (d) is or becomes public knowledge, other than by breach of this Agreement or by any other confidentiality obligation.

Conflict means any circumstances where the Participant or any of its subcontractors or Personnel has an interest (financial or non-financial) or an association that is affected, will affect, or could be perceived to affect, the Participant's ability to deliver the Project, or their role in the Project, or its obligations under this Agreement fairly and independently.

Contractor has the meaning given to it in clause 5.1.

Control:

- (a) has the meaning given under the Corporations Act;
- (b) in respect of an 'entity' (as defined in the Corporations Act) also includes the direct or indirect power to directly or indirectly direct the management or policies of the entity or control the membership or voting of the board of directors or other governing body of the entity (whether or not the power has statutory, legal or equitable force or arises by means of statutory, legal or equitable rights or trusts, agreements, arrangements, understandings, practices, the ownership of any interest in a 'marketable security' (as defined in section 9 of the Corporations Act), bonds or instruments of the entity or otherwise); and
- (c) also includes owning or controlling, directly or indirectly, more than 50 per cent of the shares or units in an entity.

Corporations Act means the *Corporations Act 2001* (Cth).

Date for Practical Completion means the date specified in Item 3.2 of Schedule 1 by which the Participant must achieve Practical Completion of the Works.

Date of this Agreement means the date on which this Agreement is signed by the last Party to do so.

Department Material means any Material:

- (a) provided by the Department to the Participant for the purposes of this Agreement; or
- (b) copied or derived at any time from the Material referred to in paragraph (a);

Depreciated means the amount representing the same reduced value of an Asset as calculated for income tax purposes under, and in accordance with, the *Income Tax Assessment Act 1997* (Cth).

Designated Use means the designated use specified in Item 4.2 of Schedule 1.

Designated Use Period means the period specified in Item 4.1 of Schedule 1.

Designated Use Report means a Report, in a form acceptable to the Department, to be provided to the Department in accordance with clause 15.5.

Dispose means to sell, mortgage or encumber, lease or sub lease, license or sub-license, assign 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.

Draft Project Plan and Budget means a document including draft versions of the Project plan and Project budget, which the Participant is required to submit to the Department in accordance with clause 3.1.

External Administrator means an administrator, controller or managing controller (each as defined in the Corporations Act), trustee, provisional liquidator, liquidator or any other person (however described) holding or appointed to an analogous office or acting or purporting to act in an analogous capacity.

Final Report means the Report, in a form acceptable to the Department, to be provided to the Department in accordance with clause 15.4.

Freedom of Information Commissioner means the office established under the *Australian Information Commissioner Act 2010* (Cth) and includes any other person that may, from time to time, perform the functions of that office.

Funding Arrangement Manager means the Department person or position holder specified in Item 7.1 of Schedule 1.

Funds means the amount payable by the Department to the Participant under this Agreement and includes any interest earned on the Funds.

Government Agency means:

- (a) a body corporate or an unincorporated body established or constituted for a public purpose by Commonwealth legislation, or an instrument made under that legislation;
- (b) a body established by the Governor-General or by a Minister of State of the Commonwealth, including departments;
- (c) an incorporated company over which the Commonwealth exercises control; or
- (d) any federal, state, local government, semi-government, quasi-government or other department, body or authority (statutory or otherwise).

Guidelines means the guidelines for the Program prepared by the Department as described in Item 1.3 of Schedule 1.

Information Commissioner means the office established under the *Australian Information Commissioner Act 2010* (Cth) and includes any other person that may, from time to time, perform the functions of that office.

Insolvency Event means, in respect of the Participant, any of the following:

- (a) it becomes insolvent within the meaning of section 95A, or is taken to have failed to comply with a statutory demand under section 459F(1), or must be presumed by a court to be insolvent under section 459C(2), or is the subject of a circumstance specified in section 461 (whether or not an application to court has been made under that section) or, if the person is a Part 5.7 body, is taken to be unable to pay its debts under section 585, of the Corporations Act;
- (b) except with the Department's consent:
 - (i) it is the subject of a Liquidation, or an order or an application is made for its Liquidation; or
 - (ii) an effective resolution is passed or meeting summoned or convened to consider a resolution for its Liquidation;
- (c) an External Administrator is appointed to it or any of its assets or a step is taken to do so or its Related Body requests such an appointment;
- (d) if a registered corporation under the Corporations Act, a step is taken under section 601AA, 601AB or 601AC of the Corporations Act to cancel its registration;
- (e) if a trustee of a Trust, it is unable to satisfy out of the assets of the Trust the liabilities incurred by it as and when those liabilities fall due;

- (f) any event or conduct occurs which would enable a court to grant a petition, or an order is made, for the bankruptcy of an individual or his estate pursuant to the *Bankruptcy Act 1966* (Cth);
- (g) any application (not withdrawn or dismissed within five (5) Business Days) is made to a court for an order, a meeting is convened, a resolution is passed or any negotiations are commenced, for the purpose of implementing or agreeing:
 - (i) a moratorium of any debts of a person;
 - (ii) a personal insolvency agreement;
 - (iii) any other assignment, composition or arrangement (formal or informal) with a person's creditors;
 - (iv) any similar proceeding or arrangement by which the assets of a person are subjected conditionally or unconditionally to the control of that person's creditors or a trustee; or
 - (v) or any agreement or other arrangement of the type referred to in this paragraph (g) is ordered, declared or agreed to;
- (h) a person becomes an insolvent under administration (as defined in the Corporations Act);
- (i) an analogous or equivalent event to any listed above occurs in any jurisdiction; or
- (j) it stops or suspends payment to all or a class of creditors generally.

Intellectual Property Rights means all intellectual property rights subsisting anywhere in the world (whether registered or unregistered, and whether or not capable of being registered), including the following rights:

- (a) patents, copyright, rights in circuit layouts, designs, trade marks and service marks (including goodwill in those marks), domain names, trade names and any rights to prevent third parties from using and disclosing confidential information (including know-how and trade secrets);
- (b) any application or right to apply for registration of any of the rights referred to in paragraph (a); and
- (c) all rights of a similar nature to any of the rights in paragraphs (a) and (b) that may subsist anywhere in the world.

Interest means interest calculated at the 90 day bank-accepted bill rate (available from the Reserve Bank of Australia) less 10 basis points.

Item means an Item in Schedule 1.

Law means any applicable statute, regulation, by-law, ordinance or subordinate legislation in force from time to time anywhere in Australia, whether made by a State, Territory, the Commonwealth, or a local government, and includes the common law and rules of equity as applicable from time to time.

Liquidation means:

- (a) a winding up, dissolution, liquidation, provisional liquidation, administration, bankruptcy or other proceeding for which an External Administrator is appointed, or an analogous or equivalent event or proceeding in any jurisdiction; or
- (b) an arrangement, moratorium, assignment or composition with or for the benefit of creditors or any class or group of them.

Material means any software, firmware, documented methodology or process, tools, object libraries, documentation or other material in whatever form, including without limitation any reports, specifications, business rules or requirements, user manuals, user guides, operations manuals, training materials and instructions, and the subject matter of any Intellectual Property Rights.

Milestone means a milestone set out in the Milestone Schedule.

Milestone Schedule means the milestone schedule set out in Schedule 2, as updated from time to time in the Project Plan that is approved by the Department in accordance with clause 3.33.

Moral Rights means each and every "moral right", as defined in the *Copyright Act 1968* (Cth).

Notice of Change means a notice of change substantially in the form of Schedule 4.

Ombudsman means the office established under the *Ombudsman Act 1976* (Cth) and includes any other person that may, from time to time, perform the functions of that office.

Other Contributions means financial or in-kind resources (with in-kind resources valued at market rates) from third parties or the Participant for the Project, other than the Funds.

Participant Contact Officer means the Participant person or position holder specified in Item 7.2 of Schedule 1.

Party means a party to this Agreement.

Personal Information has the meaning given in the Privacy Act.

Personnel means an officer, employee, contractor, subcontractor, agent or representative of that party (except that the Department's Personnel excludes the Participant and the Participant Personnel).

Practical Completion occurs when the Works have been completed and the requirements of clause 4.8 have been satisfied.

Privacy Commissioner means the office established under the *Australian Information Commissioner Act 2010* (Cth) and includes any other person that may, from time to time, perform the functions of that office.

Privacy Act means the *Privacy Act 1988* (Cth).

Program means the program referred to in Recitals A and B of this Agreement and includes the Project conducted under that Program pursuant to this Agreement.

Program Objectives means the program objectives described in Item 1.1 of Schedule 1.

Progress Report means a Report, in a form acceptable to the Department, to be provided to the Department in accordance with clause 15.2(a) and Item 5.1 of Schedule 1.

Project means the project described in Item 2.1 of Schedule 1 and includes carrying out the Works.

Project Budget means the budget set out at Attachment B to this Agreement, detailing how the Participant will expend the Funds, and identifying any Other Contributions (if any) and the proposed expenditure of such amounts for the purposes of conducting the Project and otherwise performing obligations under this Agreement, as updated by the Participant from time to time, provided any amendments comply with clause 3.3.

Project Documents means all plans, drawings and other information relating to the Project and the Works that are brought into existence by or on behalf of the Participant under or in connection with this Agreement or otherwise relating to the Project or the Works, including those documents identified in Item 2.4 of Schedule 1.

Project Manager means an independent, suitably qualified project manager engaged by the Participant to supervise all construction works (including the Works) who is not a principal, an employee or an officer of the Participant.

Project Material means all Material that is:

- (a) created by the Participant (or its subcontractors) for the purpose of or as a result of performing the Project, including all Project Documents;
- (b) incorporated in, supplied or required to be supplied along with the Material referred to in paragraph (a); or
- (c) copied or derived from the Material referred to in paragraphs (a) or (b);

but excludes the Department Material.

Project Period means the period specified in Item 3.3 of Schedule 1.

Project Plan means the project plan set out at Attachment A to this Agreement, detailing how the Participant will conduct and complete the Project, including details of the Works and the timeframes for completion of various stages of the Project, as updated by the Participant from time to time, provided any amendments comply with clause 3.33.

Proper Authority includes any ministry, department, government, governmental or semi-governmental authority, agency, instrumentality, council, corporation or other legal entity with legislative authority which has jurisdiction or authority over or in connection with this Agreement, the Works, a Project, a Property or the Designated Use.

Property means the property on which the Works are to be undertaken that is detailed in Item 2.3 of Schedule 1 or is approved by the Department in accordance with clause 7.2 and includes the land, and any buildings, fixtures and other improvements on the land, but does not include items that would be regarded as fittings or chattels at Law.

Proposed Property has the meaning given to it in clause 7.2.

Related Agreement means any other agreement between the Parties under which the Department provides funding to the Participant, whether entered into before or after this Agreement.

Related Body means, regardless of any body's trustee or other capacity:

- (a) a body corporate which would be related under section 50 of the Corporations Act; or
- (b) an entity which Controls, is Controlled by, or is under common Control with, that body.

Related Entity has the meaning given to it in the Corporations Act.

Reports means the reports that the Participant is required to produce and provide to the Department in accordance with clause 14 and Item 5 of Schedule 1.

SOP Act means:

- (a) *Building and Construction Industry Security of Payment Act 1999* (NSW);
- (b) *Building and Construction Industry Security of Payment Act 2002* (Vic);
- (c) *Building Industry Fairness (Security of Payment) Act 2017* (Qld);
- (d) *Construction Contracts Act 2004* (WA);
- (e) *Construction Contracts (Security of Payments) Act 2004* (NT);
- (f) *Building and Construction Industry Security of Payment Act 2009* (Tas);
- (g) *Building and Construction Industry (Security of Payment) Act 2009* (ACT);
- (h) *Building and Construction Industry Security of Payment Act 2009* (SA); and
- (i) any legislation in any State or Territory of Australia addressing security of payment in the building and construction industry.

Specialist Service includes services focussed on women and children that are rights-based, client-centred, trauma-informed, culturally competent and accessible, age appropriate, have gender expertise, demonstrates expertise and understanding of domestic and family violence, and places the safety, needs and interests of women and children at the centre of all decisions.

Specialist Service Provider means any person or organisation who, from time to time, provides a Specialist Service in connection with the Program at the Property or the Works.

Specified Personnel Position in respect of a Project means a position identified in Item 8 of Schedule 1.

Trust means, in respect of a person, each trust or managed investment scheme of which it is or becomes trustee or responsible entity.

Uncommitted Funds means all Funds that are, at the time of the Department's request, Unspent, or cannot be shown to the reasonable satisfaction of the Department to have been spent or Committed in accordance with this Agreement.

Unforeseen Event means a circumstance beyond the Participant's reasonable control (other than lack of funds for any reason or any strike, lockout and labour disputes), including acts of God, natural disasters, acts of war, riots and strikes outside the Participant's organisation.

Unspent means Funds for the Project that have not been spent or Committed by the Participant.

WHS Act means the *Work Health and Safety Act 2011* (Cth).

WHS Laws means the WHS Act and regulations made under the WHS Act.

Works means that part of the Project which relates to the design, construction, modification, expansion, refurbishment or fit-out (as the case may be) and related activities at the Property, as contemplated by the Project Plan and also as described in Item 2.2 of Schedule 1.

1.2 Interpretation

In this Agreement, unless the contrary intention appears:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this Agreement, and a reference to this Agreement includes any schedule or annexure;
- (d) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (e) a reference to **A\$, \$A, dollar** or **\$** is to Australian currency;
- (f) a reference to time is to Canberra, Australia time;
- (g) a reference to a party is to a Party to this Agreement, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;
- (h) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (i) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (j) a word or expression defined in the Corporations Act has the meaning given to it in the Corporations Act;
- (k) the meaning of general words is not limited by specific examples introduced by **including, for example** or similar expressions;
- (l) any agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- (m) any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- (n) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this agreement or any part of it;
- (o) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day;
- (p) clause headings are inserted for convenient reference only and have no effect in limiting or extending the language of provisions to which they refer;
- (q) where any word or phrase is given a defined meaning, any other form of that word or phrase has a corresponding meaning; and
- (r) the term 'may' where used in the context of a right or remedy exercisable by the Department means that the Department may exercise that right or remedy in its sole and absolute discretion, and the Department has no obligation to the Participant to do so unless expressly stated.

1.3 Priority of documents

If there is any conflict or inconsistency between:

- (a) the terms and conditions contained in the clauses of this Agreement and any part of a Schedule, then the terms and conditions of the clauses will prevail to the extent of the conflict or inconsistency;

- (b) the terms and conditions contained in the clauses of this Agreement and any part of the annexures or attachments (if any), then the terms and conditions of the clauses of the Agreement will prevail to the extent of the conflict or inconsistency; and
- (c) any part of a Schedule and any part of the annexures or attachments (if any), then the Schedule will prevail to the extent of the conflict or inconsistency.

Part B – Term, Project, Works and planning

2. Agreement Period

This Agreement commences on the Date of this Agreement and, unless terminated earlier, expires on the Completion Date.

3. Planning, design and approvals

3.1 Draft Project Plan and Budget

- (a) The Participant must submit to the Department a draft Project plan and draft Project budget (**Draft Project Plan and Budget**) on or before the date specified in the Milestone Schedule for the Project or, if no date is specified, within 20 Business Days after the Date of this Agreement.
- (b) The Participant must ensure that the Draft Project Plan and Budget:
 - (i) has been prepared diligently, effectively and to a high professional standard;
 - (ii) will, if implemented in accordance with this Agreement, ensure that all timeframes arising under this Agreement will be met and the Works will meet all requirements of this Agreement and, in particular, will be fit for the Designated Use;
 - (iii) includes, if applicable, a revised Milestone Schedule that identifies, amongst other things, the dates for completion of Milestones; and
 - (iv) is consistent with the Aim of the Project and Program Objectives.

3.2 Review of Project Plan and Project Budget

- (a) The Department will review the Draft Project Plan and Budget submitted under clause 3.1(a) and notify the Participant that either:
 - (i) the Draft Project Plan and Budget are acceptable to the Department; or
 - (ii) the Draft Project Plan and Budget in the Department's opinion, require amendment in order to meet the requirements specified in clause 3.1(b).
- (b) The Department may accept the Draft Project Plan and Budget in accordance with clause 3.2(a)(i) or require amendment in accordance with clause 3.2(a)(ii) in its discretion.
- (c) On receipt of notification of acceptance from the Department under clause 3.2(a)(i), the Draft Project Plan and Budget will constitute the Project Plan and Project Budget.
- (d) On receipt of notification under clause 3.2(a)(ii), the Participant must amend the Draft Project Plan and Budget so as to take into account the Department's comments and resubmit the document within 10 Business Days of the date of the Department's notification for re-consideration by the Department in accordance with clause 3.2(a).
- (e) The Department's review of, or comment on, the Draft Project Plan and Budget does not in any way limit or affect the Participant's obligations under this Agreement.

3.3 Project in accordance with the Project Plan and the Project Budget

- (a) The Participant must perform the Project in accordance with:
 - (i) the Project Plan set out at Attachment A to this Agreement; and

- (ii) the Project Budget set out at Attachment B to this Agreement.
- (b) The Participant must not make any amendments to the Project Plan or the Project Budget (or both as the case may be) that would substantively alter:
 - (i) the nature of, or the manner of completion of, the Works as provided for in the Project Plan or Project Budget (or both as the case may be);
 - (ii) a date for completion of a Milestone;
 - (iii) the amount of the Funds to be spent by the Participant on any aspect of the Works or the nature of items on which the Funds are to be spent as provided for in the Project Budget; or
 - (iv) the consistency of the Project Plan or the Project Budget (or both as the case may be) with the Aim of the Project and the Program Objectives,unless approved in writing by the Department. Any amendment to the date for completion of a Milestone must be approved in writing by the Department.

3.4 Design of the Works

- (a) The Participant is responsible for the design of the Works and must ensure the design of the Works:
 - (i) is conducted with the level of skill and care of a prudent and competent design professional;
 - (ii) complies with the regulatory requirements of the relevant State or Territory and local government in the jurisdiction in which the Works are to be conducted;
 - (iii) are fit for the purpose of the Designated Use on and from the date of achievement of Practical Completion for the Project, and throughout the Designated Use Period; and
 - (iv) complies with all Laws and required Approvals.
- (b) The Participant must ensure that a Certificate of Occupancy is issued in respect of the Works on the achievement of Practical Completion.
- (c) The Participant must develop, prepare and maintain copies of all documents necessary to complete the Works, including all documents that would be prepared by a prudent and competent design professional, in order to ensure the Works are, on the date of achievement of Practical Completion, fit for the purposes of the Designated Use, throughout the Designated Use Period.

3.5 Project Documents

- (a) The Participant must deliver the Project Documents identified in Item 2.4 of Schedule 1 to the Department no later than the date specified in the Milestone Schedule for the Project.
- (b) The Participant must, at its cost, make copies of the Project Documents available to the Department for inspection and audit in accordance with clause 18.

3.6 Participant to obtain Approvals

The Participant must obtain all Approvals for:

- (a) the construction of the Works; and
 - (b) the use of the Works for the Designated Use during the Designated Use Period,
- and must deliver a copy of each Approval to the Department promptly on request.

3.7 Variations to Works

If the Works must be varied to obtain any Approval, the Participant must notify the Department in writing of those variations and must ensure that no variation will adversely affect the Project, the Works, the Aim of the Project and Program Objectives and the use of the Works for the Designated Use throughout the Designated Use Period.

3.8 Inconsistency

To the extent of any inconsistency between:

- (a) the Project Plan and this Agreement (including the Milestone Schedule); or
- (b) the Project Budget and this Agreement (including the Milestone Schedule),

those documents (including the dates specified in the updated Milestone Schedule and set out in the Project Plan) will prevail over the terms of this Agreement.

4. Conduct of the Project

4.1 Participant obligations

(a) The Participant must:

- (i) perform the Project in accordance with this Agreement;
- (ii) complete each of the Milestones in the Milestone Schedule (by achieving, to the satisfaction of the Department, the criteria for completion of the relevant Milestone specified in the Milestone Schedule) on or before the relevant date for completion of that Milestone specified in the Milestone Schedule; and
- (iii) ensure that all work undertaken under this Agreement is consistent with, and in furtherance of, the Program Objectives and the Aim of the Project.

(b) The Participant must:

- (i) if specified in Item 8 of Schedule 1, appoint in accordance with clause 4.3 a Project Manager to supervise the Works;
- (ii) comply with the timeframes (if any) specified in the Project Plan and otherwise comply with the timeframes specified in the Milestone Schedule for completion of the Works and the Project; and
- (iii) ensure that the Works are carried out:
 - (A) in accordance with the Approvals for the Works;
 - (B) in accordance with the Project Plan and Project Budget;
 - (C) in accordance with all Laws applicable to the Works;
 - (D) in accordance with relevant Australian industry standards, best practices and guidelines, or where none apply, relevant international industry standards, best practice and guidelines, including as updated from time to time;
 - (E) diligently, effectively and to a high professional standard;
 - (F) to high professional standards of occupational health and safety; and
 - (G) so as to ensure that the Works will be fit for purpose of the Designated Use.

(c) Without limiting clauses 4.1(a)(ii) or 16, the Participant must, as soon as it becomes aware that it is unlikely to complete any of the deliverables set out in the Milestone Schedule for a Milestone by the relevant date for completion specified in the Milestone Schedule:

- (i) notify the Funding Arrangement Manager of the following matters in writing:
 - (A) the reasons for the anticipated delay in completing the deliverables set out in the Milestone Schedule for the relevant Milestone; and
 - (B) the date on which the Participant anticipates completing all deliverables set out in the Milestone Schedule for the relevant Milestone; and
- (ii) prepare an updated Project Plan for consideration by the Department.

4.2 Timeframes

To the extent of any inconsistency between the timeframes (if any) specified in:

- (a) the Project Plan; and
 - (b) Item 3 of Schedule 1 and the Milestone Schedule,
- the timeframes specified in the Project Plan will prevail.

4.3 Specified Personnel Positions

The Participant must:

- (a) promptly after the Date of this Agreement, appoint a suitably qualified person to each Specified Personnel Position;
- (b) promptly after appointment, notify the Department of the identity and qualifications of each person appointed to a Specified Personnel Position;
- (c) where a person ceases to perform a Specified Personnel Position for any reason, promptly notify the Department of the date of that cessation and ensure that the Specified Personnel Position is not left vacant for a period of more than 10 Business Days; and
- (d) promptly after appointment, notify the Department of the identity and qualifications of any person appointed to fill a vacant Specified Personnel Position.

4.4 Commencement of Works

- (a) Without limiting the Participant's obligations under clause 4.4(b), the Participant must not commence the Works until it has:
 - (i) received a letter of commencement from the Department;
 - (ii) obtained all relevant Approvals required under clause 3.6 that are necessary to enable the commencement of the Works;
 - (iii) obtained all insurances required under clause 22.2; and
 - (iv) where applicable, provided security to the Department in accordance with clause 9,

and it has obtained written confirmation from the Department (which will not be unreasonably withheld) that the Department is satisfied that the Participant has complied with the requirements set out in clauses 4.4(a)(i) to 4.1(a)(iii) (inclusive) above.

- (b) The Participant must:
 - (i) obtain written confirmation from the Department under clause 4.4; and
 - (ii) commence the Works,on or before the date specified for the commencement of the Works in Item 3.1 of Schedule 1.

4.5 Access

- (a) Upon giving reasonable notice and subject to the Participant's reasonable requirements in relation to safety and security:
 - (i) the Department, or persons authorised by the Department, may enter the Property to inspect and examine the Works; and
 - (ii) the Department may give notice to the Participant of any omission, fault or defect in the Works.
- (b) Despite the Department's right to inspect and examine the construction of the Works:
 - (i) the Department is not obliged to check the construction of the Works for any defect, fault or omission; and
 - (ii) the Participant is not relieved of responsibility for any defect, fault or omission in respect of the Works.

4.6 Rectification

Within 10 Business Days, or such longer time as may be agreed to in writing by the Department, having regard to the nature of the omission, fault or defect, after the receipt of a notice under

clause 4.5(a)(ii), the Participant must cause all matters specified in that notice to be rectified and must notify the Department when rectification has been effected.

4.7 Variations

- (a) The Participant must notify the Department in writing of all proposed variations to the Works that could or might reasonably be expected to have an effect on:
 - (i) the overall cost of the Works specified in the Project Budget;
 - (ii) without limiting clause 4.1(c), the nominated Milestones for completion of the Works;
 - (iii) the Date for Practical Completion;
 - (iv) the fitness of the Works for the purpose of the Designated Use;
 - (v) the accuracy of the Project Plan or the Project Budget; or
 - (vi) the Approvals obtained in relation to the Works.
- (b) The Participant must not vary the Works without the consent in writing of the Department, which will not be unreasonably withheld.

4.8 Practical Completion

- (a) In order to achieve Practical Completion:
 - (i) the Works must be:
 - (A) complete and free from errors, omissions and defects, except for errors, omissions or defects that:
 - (I) are of a minor nature;
 - (II) the immediate making good of which by the Participant is not reasonably practicable;
 - (III) the existence of which or the making good of which by the Participant will not significantly inconvenience users of the Property or the Works for the Designated Use; and
 - (IV) do not cause any legal or physical impediment to the use and occupation of the Property and the Works for the Designated Use; and
 - (B) fit for the Designated Use;
 - (ii) the Participant must have provided to the Department a copy of the Certificate of Occupancy in respect of the Works;
 - (iii) the Works must be available to be used for the Designated Use; and
 - (iv) the Participant must obtain from:
 - (A) its authorised representative; and
 - (B) a suitably qualified and independent person engaged for the purposes of inspecting the Works on their completion and determining whether, in the professional opinion of that person, the Works meet the requirements set out in clauses 4.8(a)(i)(A) and 4.8(a)(i)(B),

written certification that the Works meet the requirements set out in clauses 4.8(a)(i)(A) and 4.8(a)(i)(B), and provide each such written certification to the Department.
- (b) The Participant must achieve Practical Completion of the Works on or before the Date for Practical Completion.
- (c) The Department will extend the Date for Practical Completion by the period notified to the Participant in writing where:
 - (i) in the Department's reasonable opinion, the Participant has actually been delayed in reaching Practical Completion by the Date for Practical Completion as a direct result of:

- (A) a breach of this Agreement by the Department; or
- (B) an Unforeseen Event;
- (ii) the Participant has provided the Department with written notice of the delay within 5 Business Days of becoming aware of the cause of the delay arising; and
- (iii) the Participant has taken all reasonable steps to avoid the delay and to minimise its effects.
- (d) The Participant will only be entitled to an extension to the Date for Practical Completion under clause 4.8(c)(i) if it has complied with clauses 4.8(c)(ii) and 4.8(c)(iii).
- (e) The Participant's entitlement to an extension to the Date for Practical Completion under clause 4.8(c)(i) (if any) is the Participant's sole remedy in respect of any delay.
- (f) The Participant will not be entitled to an extension to the Date for Practical Completion under clause 4.8(c)(i) where more than one event causes concurrent delays and at least one of those events is not a cause described in clause 4.8(c)(i).
- (g) Notwithstanding that the Participant has not asked for an extension of time or complied with clauses 4.8(c)(ii) and 4.8(c)(iii), the Department may, in its sole discretion, at any time and from time to time and for any reason, extend the Date for Practical Completion by providing notice to the Participant in writing.
- (h) In exercising the discretion in clause 4.8(g), the Department is not required to exercise its discretion for the benefit of, or with regard to the interests of, the Participant.
- (i) The Participant must promptly rectify any defects, faults or omissions in the Works which:
 - (i) are the exceptions referred to in clause 4.8(a)(i)(A); or
 - (ii) otherwise become apparent within 12 months after the date of achievement of Practical Completion and which would, or would reasonably be expected to affect the fitness of the Works or the Property (or both as the case may be) for the purpose of the Designated Use. This clause 4.8(i)(ii) does not limit the Department's rights under this Agreement or otherwise at Law.

5. Subcontracting and subcontractor management

5.1 Subcontracting

- (a) The Participant must not enter into any arrangement with a contractor or subcontractor (**Contractor**) other than under an arrangement that facilitates compliance by the Participant with the requirements of this clause 5.
- (b) The Participant agrees that:
 - (i) it will not enter into an arrangement with a Contractor for the performance of any part of the Project (other than an arrangement for the building, design, construction or refit of any part of the Works) without the prior approval in writing of the Department;
 - (ii) the Contractors, if any, specified in Item 2.5 of Schedule 1 will perform work in relation to the Project in accordance with this Agreement and are approved by the Department to do so; and
 - (iii) it will not make payment of its Contractors conditional on the Participant's receipt of the Funds.
- (c) The Department may impose any terms and conditions it considers appropriate when giving its approval under clause 5.1(b)(i).
- (d) Subcontracting any part of the Works to a Contractor will not relieve the Participant of any of its obligations under this Agreement.

5.2 Department discretion

If the Department determines that a Contractor is unsuitable or inappropriate, the Participant must, if notified by the Department to do so, cease using that Contractor in relation to the performance of the Project.

5.3 Details of new Contracts

As part of each Acquittal Report, the Participant must provide the Department with a summary of all new contracts the Participant has entered into with Contractors in relation to the Project (**Contracts**) since the last Acquittal Report, including details of:

- (a) the identity of the Contractor;
- (b) the value of the Contract;
- (c) the subject matter of the Contract; and
- (d) the expected completion date for the Contract,

and, if requested by the Department, a copy of the full Contract.

5.4 Managing Contractor performance

- (a) The Participant must manage and administer each Contract in accordance with this Agreement, including by monitoring each Contractor's performance of, and compliance with, its contractual obligations.
- (b) The Participant must, to the extent it is legally able to do so, comply with any written direction of the Department concerning a Contract.

5.5 Terms and conditions of Contracts

- (a) In respect of all Contractors, the Participant must ensure that:
 - (i) the Contract contains provisions substantially the same as this Agreement including those relating to subcontracting, work, health and safety, intellectual property, audit and access, privacy, confidentiality, warranties and indemnities, disclosure, repayment of funds, fraud control and termination;
 - (ii) the Participant has a right to terminate the Contract immediately in the event of this Agreement being terminated;
 - (iii) the Contract contains obligations requiring the Contractor to:
 - (A) maintain records about the progress of the Project and provide progress reports to the Participant's satisfaction upon each progress claim, including to allow the Participant to comply with its obligations under clauses 14 and 15;
 - (B) manage the Funds paid by the Participant to the Contractor in a way that is not inconsistent with this Agreement;
 - (iv) the other party to the Contract acknowledges that:
 - (A) it may be considered a 'Commonwealth Participant' for the purposes of the *Ombudsman Act 1976* (Cth);
 - (B) it may be subject to investigation by the Ombudsman under that Act; and
 - (C) the Department will not be liable for the cost of any such investigation by the Ombudsman in connection with the Contract or this Agreement.
- (b) In any arrangement referred to in clause 5.1, the Participant agrees:
 - (i) to specify the purposes for which the Funds are being paid (**Specified Purposes**); and
 - (ii) to require the Contractor to repay to the Participant any Funds which are not properly acquitted, or which remain Unspent or not Committed (as if the definitions of Unspent and Committed in clause 1.1 referred to the Contractor instead of the Participant), or which have been spent for purposes other than the Specified Purposes, within one month after the termination or expiry of the Contract with that Contractor.

5.6 Recovery of Funds

- (a) The Participant must immediately notify the Department of any funds it recovers under clause 5.5(b). Any such funds recovered under clause 5.5(b) will constitute Funds under the terms of this Agreement and the Participant must deal with those Funds accordingly, or as otherwise directed in writing by the Department.
- (b) On receipt of notice under clause 5.6(a), the Department may by written notice to the Participant require the Participant to repay to the Department any or all of the recovered funds, and the Participant must repay to the Department the amounts specified in the notice within 20 Business Days of the date of the notice.

6. Assumption of risks for the Works

6.1 Participant responsible

The Participant is fully responsible for the performance of the Project and for ensuring compliance with the requirements of this Agreement and all Laws, and will not be relieved of that responsibility because of any:

- (a) involvement by the Department or any third party in the performance of the Project;
- (b) payment of the Funds made to the Participant on account of the Project; or
- (c) subcontracting of all or any part of the Works or the Project.

6.2 Participant accepts risk

The Participant accepts all risks in respect of, and the Department does not accept any risk for, the conduct of the Works, including all risks of, and associated with, the design, construction and commissioning of the Works, and the risk of the actual cost of the design, construction and commissioning of the Works being greater than anticipated.

Part C – Property, Security and Designated Use

7. Acquisition of a Property

7.1 Overview

This clause 7 only applies if Item 2.3 of Schedule 1 states that a property is to be acquired (including by way of purchase or lease) by the Participant prior to the Participant commencing any Works on that property.

7.2 Participant to identify suitable property

- (a) Where a specific property is not identified in Item 2.3 of Schedule 1, the Participant must identify a property that it considers would be suitable for the Project (**Proposed Property**) and seek the Department's approval to acquire an interest in that Proposed Property for the purpose of the Project.
- (b) When seeking the Department's approval to acquire an interest in the Proposed Property under clause 7.2(a), the Participant must provide to the Department:
 - (i) details of the interest the Participant proposes to acquire in the Proposed Property, including a title search of the Proposed Property identifying the registered proprietor of the Proposed Property;
 - (ii) details of the cost to the Participant of acquiring and holding its interest in the Proposed Property;
 - (iii) a report from a suitably qualified and independent person confirming that the Proposed Property meets the Property Requirements specified in clause 7.3(a);

- (iv) a valuation of the Proposed Property to be obtained by the Participant at the Participant's expense; and
- (v) any other information in relation to the Proposed Property that the Department reasonably requires.

7.3 Requirements for the Property

- (a) The Proposed Property must meet the following requirements:
 - (i) the Property meets the present and future needs of the Program Objectives, including the construction or development of emergency accommodation in accordance with the Aim of the Project;
 - (ii) the Property is appropriately zoned and can be used by the Participant for the Works and the Designated Use on terms and conditions satisfactory to the Department;
 - (iii) the Property meets the requirements, if any, specified in Item 2.3 of Schedule 1, including in relation to geographic or regional location; and
 - (iv) the Property is not subject to any heritage requirements or native title claims, (the **Property Requirements**).
- (b) When seeking the Department's approval to acquire an interest in a Proposed Property, the Participant must provide all necessary supporting information and documentation as required by the Department (in its discretion) to confirm that the Proposed Property meets the Property Requirements.

7.4 Acquiring the Property

- (a) The Participant must not expend any part of the Funds to acquire an interest in the Proposed Property until it has:
 - (i) obtained written approval from the Department to acquire an interest in that Proposed Property; and
 - (ii) complied with any conditions on the Department's approval of the Participant's acquisition of an interest in the Proposed Property given in accordance with clause 7.4(b).
- (b) The Department may grant, withhold or condition its approval of the Participant's acquisition of an interest in the Proposed Property in its discretion, however if the Department does not grant approval it must notify the Participant of the reasons for its decision.
- (c) Clause 7.4(a) does not prevent the Participant from:
 - (i) expending part of the Funds already received on activities preparatory to acquiring an interest in the Property; or
 - (ii) entering into a written agreement (**Acquisition Agreement**) with the registered proprietor of the Proposed Property to acquire an interest in the Proposed Property, provided that the Acquisition Agreement includes the following conditions (or conditions having the same effect):
 - (A) the Acquisition Agreement is subject to the Participant receiving approval from the Department to acquire an interest in the Property and can be rescinded by the Participant, if the Participant does not receive the approval from the Department to acquire an interest in the Property; and
 - (B) the Acquisition Agreement is subject to the Property being appropriately zoned for the Designated Use, and all necessary Approvals being obtained, on terms and conditions acceptable to the Department, for the Property to be used for the Designated Use and can be rescinded by the Participant, if the Property is not appropriately zoned for the Designated Use or all necessary Approvals cannot be obtained on terms and conditions acceptable to the Department.

8. The Property

8.1 Location of Project

The Project must be performed on the Property.

8.2 Participant warranties and representations

The Participant warrants and represents to the Department during the Project Period and the Designated Use Period that:

- (a) there are and will be no restrictive covenants, restrictions on use, easements, encumbrances, interests, mortgages, caveats, leases, rights and notifications affecting the Property other than those notified to the Department prior to:
 - (i) if clause 7 applies, the date on which the Acquisition Agreement in respect of the Property is entered into; or
 - (ii) if clause 7 does not apply, the Date of this Agreement;
- (b) the whole of the improvements on the Property are within the title boundaries of the Property and there are no encroachments by or upon the Property;
- (c) all necessary Approvals have been obtained in connection with the existing buildings and improvements on the Property and in connection with any alterations or additions to such buildings and improvements; and
- (d) the Designated Use of the Property is permitted by the currently applicable zoning of the Property and the Participant has obtained, or will obtain, the necessary Approvals on terms and conditions acceptable to the Department, from the Proper Authority to use the Property for the Designated Use.

8.3 Details relating to the Property

- (a) On or before:
 - (i) if clause 7 applies, as soon as reasonably possible (and no later than 20 Business Days) following the acquisition by the Participant of an interest in the Property; or
 - (ii) if clause 7 does not apply, the date specified in the Milestone Schedule, or, if no date is specified, within 20 Business Days of the Date of this Agreement;

the Participant must provide details of its interest in the Property, including a title search of the Property, confirming that the Participant is the registered proprietor of an interest in the Property.
- (b) The Participant is not entitled to receive, and the Department is not obliged to pay, any part of the Funds, and, if it has been paid Funds, no Funds are to be expended by the Participant, unless and until the Participant has complied with clause 8.3(a).

8.4 Department rights

On and from the later of:

- (a) the Date of this Agreement; or
- (b) where the Department has approved the Participant's acquisition of an interest in a Proposed Property in accordance with clause 7.4, the date the Participant becomes the registered proprietor of an interest in the Property,

the Participant irrevocably:

- (c) charges its rights, title and interest in and to the Property and the Works in favour of the Department;
- (d) agrees that the Department has the right to register and maintain a caveat against the title of the Property until such time as the conditions imposed under this Agreement have been fully satisfied or discharged; and
- (e) agrees to sign all consents, as required by the Department to the lodgement of caveats against the title of the Property in the form required by the Department from time to time to prevent the lapsing, or withdrawal, of any caveat.

9. Security

Note to Applicants: This clause 9 sets out the Department's minimum anticipated security requirements which vary depending on the total grant amount and the proportion of grant funding being provided by the Department relative to the total funding required for the Project. These requirements will be considered further by the Department in light of potential grant recipients' grant applications, including with reference to the total grant amount and financial viability of the potential grant recipient.

The Department anticipates deleting clause 9 in full (and inserting 'Not Used') where the value of the Funds are less than \$1 million (GST exclusive).

[Note to Applicants: Clause 9.1 describes the Department's anticipated security requirements where the total grant amount is \$1 million or more and the Department contribution is <50 per cent of the total project costs. In these circumstances, clauses 9.2 and 9.3 will be deleted.]

9.1 Securities generally

- (a) Without in any way limiting or affecting the Participant's obligations or the Department's rights under this Agreement or otherwise at Law, the Participant irrevocably agrees:
 - (i) to grant to the Department a restrictive covenant on the title of the Property, on terms acceptable to the Department, until expiry of the Designated Use Period; and
 - (ii) to do all things reasonably required by the Department relating to the grant, lodgement and registration of a restrictive covenant on the title of the Property in the form required by the Department from time to time, including signing documents.
- (b) During the Project Period, the details of any finance obtained by the Participant in respect of the Property or the Works, including the amount, any repayments of principal or interest and the details of the lender, must be set out in the Project Budget.

[Note to Applicants: Clause 9.2 describes the Department's anticipated security requirements where the value of the Funds is \$1 million or more and the Department's contribution is 50 per cent or more of the total project costs. In these circumstances, clause 9.1 will be deleted.]

9.2 Securities generally

- (a) Without in any way limiting or affecting the Participant's obligations or the Department's rights under this Agreement or otherwise at Law, the Participant irrevocably agrees:
 - (i) to grant to the Department a first registered mortgage over the Participant's interest in the Property for the duration of the Project Period;
 - (ii) to grant to the Department a restrictive covenant on the title of the Property, on terms acceptable to the Department, until expiry of the Designated Use Period; and
 - (iii) to do all things reasonably required by the Department relating to the grant, lodgement and registration of a restrictive covenant on the title of the Property in the form required by the Department from time to time, including signing documents.
- (b) During the Project Period, the Participant must not obtain finance, or further finance (including increasing the amount of borrowings secured under an existing loan approved by the Department), from a lender unless it has requested and obtained the Department's written approval.
- (c) If the Participant obtains the Department's written approval to obtain finance from a lender in accordance with clause 9.2(b), the Parties agree to vary this Agreement and enter into any other agreement (including with a lender) so that:
 - (i) the Participant agrees to grant to the lender a first ranking mortgage over only that part of the Property that is to be mortgaged in favour of the lender;
 - (ii) the Department agrees, subject to clause 9.2(c)(i), to surrender its priority as a first mortgagee over only that part of the Property that is to be mortgaged in favour of the lender, and become a second ranking mortgagee of that part of the Property;

- (iii) the loan money advanced by the lender to the Participant is recognised as taking priority over any moneys payable to the Department to the extent provided for above under this Agreement; and
 - (iv) the priority of the lender under the first ranking mortgage will be limited in amount and by condition as detailed in clause 9.2(d).
- (d) Where the Participant obtains the Department's written approval to obtain finance from a lender in accordance with clause 9.2(b):
- (i) the Participant must obtain the finance on terms satisfactory to the Department;
 - (ii) the details of the finance, including the amount, any repayments of principal or interests and the details of the lender, must be set out in an amended Project Budget approved by the Department in writing;
 - (iii) the Participant must enter into a priority agreement (**Deed of Priority**) with the Department and the lender, which is satisfactory to the Department and under which the lender recognises the Department's rights under this Agreement and recognises the loan money advanced by the lender to the Participant has priority over any moneys payable to the Department under this Agreement.
- (e) The Deed of Priority must contain provisions requiring:
- (i) that the lender not to Dispose of the Property without first obtaining the Department's consent in writing;
 - (ii) each party not to Dispose of its interest in the Property without first causing the party to whom the interest is being disposed (**Assignee**) to enter into a deed with each other party to the Deed of Priority by which the Assignee undertakes to be bound by the provisions of the Deed of Priority insofar as they relate to the party Disposing the interest to the Assignee; and
 - (iii) the lender not to provide any additional finance to the Participant without the prior approval in writing of the Department.

[Note to Applicants: The following clause 9.3 will be retained in all agreements, provided the value of the Funds is \$1 million or more.]

9.3 No encumbrances

- (a) The Participant must not permit, create or grant, or enter into any agreement to permit, create or grant, any restrictive covenants, restriction on use, easements, encumbrances, interests, mortgages, caveats, leases or rights affecting the Property or the Participant's interest in the Property after the Date of this Agreement, without first obtaining the written consent of the Department.
- (b) The Department must not unreasonably withhold or delay its consent to a matter referred to in clause 9.3(a).

10. Designated Use

10.1 Participant undertaking

The Participant undertakes:

- (a) for the Designated Use Period:
 - (i) to use the Property and the Works, or to ensure the Property and the Works are used, for the Designated Use;
 - (ii) except in the case of an Unforeseen Event, to ensure the Property and the Works are not left unused or unoccupied for a period in excess of four weeks without first obtaining the written consent of the Department; and
 - (iii) not to use the Property or the Works, or permit the Property or the Works to be used, for any purpose other than the Designated Use; and
- (b) at all times during the Project Period and until expiry of the Designated Use Period:

- (i) to safeguard the Property and the Works against loss, damage and unauthorised use;
- (ii) to maintain the Property and the Works in good condition;
- (iii) to reinstate the Property and the Works if they are damaged or destroyed; and
- (iv) not to grant or Dispose of any interest in the Property, or any part of the Property, without first:
 - (A) obtaining the Department's consent in writing (such consent may be withheld at the Department's discretion); and
 - (B) requiring the purchaser, transferee, lessee, licensee, mortgagee, chargee or other disponee, to enter into a deed of covenant with the Department, on terms acceptable to the Department under which the purchaser, transferee, lessee, licensee, mortgagee, chargee or other disponee covenants in favour of the Department to use the Property and the Works for the Designated Use until the expiry of the Designated Use Period.

10.2 Participant to repay

- (a) If within the Designated Use Period, the Department is satisfied on reasonable grounds that the Participant has failed to comply with any of its obligations under clause 10.1, the Department may by written notice to the Participant require the Participant to repay to the Department the relevant amount calculated in accordance with Item 10 of Schedule 1. The Participant must pay to the Department the amount set out in the notice, within 20 Business Days of the date of the Department's notice. If the Participant fails to make payment within 20 Business Days, the Department may recover the amount specified in its notice as a debt due from the Participant.
- (b) The Participant acknowledges and agrees that:
 - (i) the amounts payable by the Participant under clause 10.2(a) represent a genuine and reasonable pre-estimate of the loss to the Department; and
 - (ii) the Participant releases the Department from all claims arising out of or in connection with the Department's rights under clause 10.2(a).

10.3 Industry accreditation standards

The Participant must take all reasonable steps to ensure that any services provided during the Designated Use Period meet all relevant industry accreditation standards and any requirements to be registered and licensed.

11. Specialist Services

11.1 General

During the Designated Use Period, the Participant must:

- (a) maintain an arrangement with the Specialist Service Provider specified in Item 2.6 of Schedule 1 or other an Specialist Service Provider approved by the Department in writing from time to time; and
- (b) without limiting clause 32.1, comply with, and ensure its Personnel (including any Specialist Service Provider) comply with the requirements of clauses 11.2 and 11.3.

11.2 Vulnerable persons

- (a) In this clause 11.2:
 - (i) **Criminal or Court Record** means any record of any Other Offence;
 - (ii) **Other Offence** means, in relation to a person, a conviction, finding of guilt, on-the-spot fine for, or court order relating to:
 - (A) an apprehended violence or protection order made against the person;

- (B) the consumption, dealing in, possession or handling of alcohol, a prohibited drug, narcotic or other prohibited substance;
 - (C) violence against another person or the injury, but excluding the death, of another person; or
 - (D) an attempt to commit a crime or offence, or to engage in any conduct or activity, described in paragraphs (A) to (C);
- (iii) **Police Check** means a formal inquiry made to the relevant police authority in each State or Territory and designed to obtain details of an individual's criminal conviction or a finding of guilt in all places (within and outside Australia) that the Participant know the person has resided in;
- (iv) **Serious Offence** means:
- (A) a crime or offence involving the death of a person;
 - (B) a sex-related offence or a crime, including sexual assault (whether against an adult or child); child pornography, or an indecent act involving a child;
 - (C) fraud, money laundering, insider dealing or any other financial offence or crime, including those under legislation relating to companies, banking, insurance or other financial services; or
 - (D) an attempt to commit a crime or offence described in (A) to (C);
- (v) **Serious Record** means a conviction or any finding of guilt regarding a Serious Offence; and
- (vi) **Vulnerable Person** means an individual aged 18 years and above who is or may be unable to take care of themselves, or is unable to protect themselves against harm or exploitation for any reason, including age, physical or mental illness, trauma or disability, pregnancy, the influence, or past or existing use, of alcohol, drugs or substances or any other reason.
- (b) Before any person commences work on any part of the Specialist Services that involves working or contact with a Vulnerable Person, the Participant must:
- (i) obtain a Police Check for that person;
 - (ii) confirm that the person is not prohibited by any law from being engaged in a capacity where they may have contact with a Vulnerable Person;
 - (iii) comply with all State, Territory or Commonwealth laws relating the employment or engagement of persons in any capacity where they may have contact with a Vulnerable Person; and
 - (iv) ensure that the person holds all licences or permits for the capacity in which they are to be engaged, including any specified in the Grant Details, and the Participant must ensure that Police Checks and any licences or permits obtained in accordance with this clause 11.2 remain current for the duration of their involvement in the Specialist Services.
- (c) The Participant must ensure that a person does not perform work on any part of the Specialist Services that involves working or contact with a Vulnerable Person if a Police Check indicates that the person at any time has:
- (i) a Serious Record; or
 - (ii) a Criminal or Court Record and the Participant has not conducted a risk assessment and determined that any risk is acceptable.
- (d) In undertaking a risk assessment under clause 11.2(c), the Participant must have regard to:
- (i) the nature and circumstances of the offence(s) on the person's Criminal or Court Record and whether the charge or conviction involved Vulnerable Persons;
 - (ii) whether the person's Criminal or Court Record is directly relevant to, or reasonably likely to impair the person's ability to perform, the role that the person will, or is likely to, perform in relation to the Specialist Services;

- (iii) the length of time that has passed since the person's charge or conviction and his or her record since that time;
 - (iv) the circumstances in which the person will, or is likely to, have contact with a Vulnerable Person as part of the Specialist Services;
 - (v) any other relevant matter,
- and must ensure it fully documents the conduct and outcome of the risk assessment.
- (e) The Participant agrees to notify the Department of any risk assessment it conducts under this clause and agrees to provide the Department with copies of any relevant documentation on request.
 - (f) If during the term a person involved in performing work on any part of the Specialist Services that involves working or contact with a Vulnerable Person is:
 - (i) charged with a Serious Offence or Other Offence, the Participant must immediately notify the Department; or
 - (ii) convicted of a Serious Offence, the Participant must immediately notify the Department and ensure that that person does not, from the date of the conviction, perform any work or role relating to the Specialist Services.

11.3 Child Safety

- (a) In this clause 11.3:
 - (i) **Child** means an individual(s) under the age of 18 years and **Children** has a similar meaning;
 - (ii) **Child-Related Personnel** means officers, employees, contractors (including subcontractors), agents and volunteers of the Participant involved with the Specialist Services who as part of that involvement may interact with Children;
 - (iii) **Legislation** means a provision of a statute or subordinate legislation of the Commonwealth, or of a State, Territory or local authority;
 - (iv) **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;
 - (v) **Relevant Legislation** means Legislation in force in any jurisdiction where any part of the Specialist Services may be carried out;
 - (vi) **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.
- (b) The Participant must:
 - (i) comply with all Relevant Legislation relating to the employment or engagement of Child-Related Personnel in relation to the Specialist Services, including all necessary Working With Children Checks however described; and
 - (ii) ensure that Working With Children Checks obtained in accordance with this clause 11.3(b) remain current and that all Child-Related Personnel continue to comply with all Relevant Legislation for the duration of their involvement in the Specialist Services.
- (c) The Participant agrees in relation to the Specialist Services to:
 - (i) implement the National Principles for Child Safe Organisations;
 - (ii) ensure that all Child-Related Personnel implement the National Principles for Child Safe Organisations;
 - (iii) 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;

- (iv) 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 11.3(c);
- (v) provide training and establish a compliance regime to ensure that all Child-Related Personnel are aware of, and comply with:
 - (A) the National Principles for Child Safe Organisations;
 - (B) the Participant's risk management strategy required by this clause 11.3(c);
 - (C) Relevant Legislation relating to requirements for working with Children, including Working With Children Checks;
 - (D) Relevant Legislation relating to mandatory reporting of suspected child abuse or neglect, however described; and
- (vi) provide the Department with an annual statement of compliance with clauses 11.3(b) and 11.3(c), in such form as may be specified by the Department.
- (d) With reasonable notice to the Participant, the Department may conduct a review of the Participant's compliance with this clause 11.3.
- (e) The Participant agrees to:
 - (i) notify the Department of any failure to comply with this clause 11.3;
 - (ii) co-operate with the Department in any review conducted by the Department of the Participant's implementation of the National Principles for Child Safe Organisations or compliance with this clause 11.3; and
 - (iii) promptly, and at the Participant's cost, take such action as is necessary to rectify, to the Department's satisfaction, any failure to implement the National Principles for Child Safe Organisations or any other failure to comply with this clause 11.3.

Part D – Funding and Other Contributions

12. Funding for the Project

12.1 Payment of the Funds

- (a) Subject to Parliamentary appropriation and to the provisions of this Agreement, the Department agrees to pay to the Participant the amount of the Funds specified in Item 6.1 of Schedule 1 in accordance with Item 6.2 of Schedule 1, once the Participant has:
 - (i) provided to the Department's satisfaction:
 - (A) all deliverables set out in the Milestones Schedule for the relevant Milestone; and
 - (B) the Reports required by clause 15;
 - (ii) certified to the Department in the form of the Payment Certificate set out at Schedule 3 that:
 - (A) all work the Participant paid for using the Funds was properly required for the Project;
 - (B) the amounts of each payment made using the Funds represent the reasonable value of the work carried out or to be carried out (the value of work to be considered in light of the relevant industry);
 - (C) no Conflicts arose in making payments for work using the Funds that the Participant did not, or has not, declared to the Department; and
 - (D) no Conflicts arose in entering into any arrangements with Contractors (as such term is defined in clause 5.1(a)).

- (b) Despite any other provision of this Agreement:
 - (i) the Department may, at its discretion, defer, reduce or not make a payment of Funds;
 - (ii) the Participant is not entitled to receive, and the Department is not obliged to pay, any amount under this Agreement; and
 - (iii) if the Participant has received any Funds, the Participant is not entitled to spend those Funds,
 - if at any time:
 - (iv) the Department has insufficient Program funding available at the time the payment is due to the Participant;
 - (v) the Department has become entitled to terminate this Agreement under clause 23.1;
 - (vi) the Department forms the reasonable opinion that the full payment is not properly required by the Participant to carry out the Project or because of Project surpluses or underspends;
 - (vii) before the commencement of the Works, the Participant has not complied, to the reasonable satisfaction of the Department, with its obligations to:
 - (A) provide security as required by clause 9; or
 - (B) take out the insurances required by clause 22.2; or
 - (viii) the Participant has not complied with any provision of this Agreement which provides that the Participant will not be entitled to receive any Funds until that obligation has been complied with.

12.2 Participant to submit invoices

- (a) This clause 12.2 only applies where the Department notifies the Participant that it is unable to issue a recipient created tax invoice in accordance with clause 34.5.
- (b) The Participant must submit invoices for payment of the Funds for the Project in the manner specified in Item 6.3 of Schedule 1. The amount of the invoices will not exceed the amount of Funds properly required by the Participant for its use in relation to the performance of this Agreement up to the date of the next invoice.

12.3 Use of Funds

Funds provided under this Agreement:

- (a) must only be used for the performance of the Project and performing this Agreement;
- (b) must only be applied in accordance with the Project Budget;
- (c) are not to be applied towards administrative and other general costs of the Participant that are not directly associated with the performance of the Project (including the Participant's administrative costs in administering this Agreement) unless any such costs are expressly included in the Project Budget; and
- (d) must not, unless the prior written approval of the Department has been obtained, be used in a manner which is inconsistent with the Project Budget.

12.4 Maximum amount of Funds

The funding to be contributed by the Department will not exceed the maximum amount of Funds specified in Item 6.1 of Schedule 1. The Department accepts no liability for:

- (a) any debts incurred by the Participant;
- (b) any monies owing by the Participant to its officers, employees, agents, contractors or subcontractors;
- (c) any budget or cost overruns of the Works, the Property or the Project; or
- (d) insufficient monies to complete the Works or the Project (including purchasing the Property).

12.5 Sufficiency of amounts

The Participant warrants that the Funds together with all Other Contributions made or received by the Participant in relation to the Project, will be sufficient to ensure the due and proper completion of the Works and the Participant's obligations under this Agreement.

12.6 SOP Act

- (a) This clause 12.6 only applies if, and to the extent that, the SOP Act applies to this Agreement.
- (b) Capitalised terms in this clause 12.6 which are not otherwise defined in this Agreement have the meaning given by the SOP Act.
- (c) Business Day in this clause 12.6 has the same meaning as in the SOP Act.
- (d) The Participant acknowledges and agrees that:
 - (i) the Reference Dates for the purpose of this Agreement are each date on which the Participant achieves a Milestone as specified in the Milestone Schedule;
 - (ii) the Department must within 10 Business Days of receipt of a Payment Claim:
 - (A) determine the amount of the Participant's entitlement being the Department's assessment of the Funds then due and payable minus the amount of any debt due to the Department, or any claim by the Department against the Participant or any amount which the Department may otherwise be entitled to set off, withhold or deduct; and
 - (B) provide a Payment Schedule which:
 - (I) identifies the Payment Claim to which the Payment Schedule relates;
 - (II) indicates the amount of the payment the Department proposes to make; and
 - (III) if the amount the Department proposes to pay is less than the claimed amount, indicates why the amount proposed to be paid is less and (if it is less because the Department is withholding payment for any reason), the Department's reasons for withholding payment;
 - (iii) Progress Payments under this agreement become due and payable in accordance with Item 6.2 of Schedule 1; and
 - (iv) the value of work carried out under the Agreement is to be determined in accordance with Item 6.2 of Schedule 1, subject to Item 6.1(a) of Schedule 1.

13. Other Contributions

- (a) The Participant must:
 - (i) within 20 Business Days after the Date of this Agreement, provide to the Department satisfactory written evidence that the Other Contributions set out in Item 6.4 of Schedule 1 will be provided, including the person or entity providing the contribution, the nature and value of the contribution, the due dates for each of these contributions and the terms and conditions that apply.
 - (ii) if requested by the Department, promptly provide to the Department copies of any written arrangements entered into, or proposed to be entered into, in respect of the Other Contributions;
 - (iii) ensure that the terms on which any Other Contributions are provided to the Participant for, or in connection with, the Project are not inconsistent with the terms of this Agreement and do not in any way limit or affect the Participant's ability to comply strictly with its obligations, or the Department's ability to exercise its rights, under this Agreement; and
 - (iv) use the Other Contributions to undertake the Project.

- (b) If the Other Contributions are not provided or used in accordance with this clause, the Department may:
 - (i) suspend payment of the Funds until the Other Contributions are provided; or
 - (ii) terminate this Agreement in accordance with clause 23.1.

Part E – Managing the Agreement

14. Records

14.1 Records and accounts

The Participant must keep financial accounts and other records that:

- (a) detail and document the conduct and management of the Project (including relevant invoices);
- (b) identify the receipt and expenditure of the Funds and any Other Contributions separately within the Participant's accounts and records so that at all times the Funds are identifiable; and
- (c) enable all receipts and payments related to the Project to be identified and reported.

14.2 Participant must keep records

Without limiting clause 14.1, the Participant must keep comprehensive written records of the conduct of the Project including progress against the Milestones and the extent to which the Project is achieving the Aim of the Project and the Program Objectives.

14.3 Financial records

Without limiting clause 14.1, the Participant must keep financial records relating to the Project so as to enable:

- (a) all revenue and expenditure related to the Project to be identified in the Participant's accounts;
- (b) the preparation of financial statements in accordance with Australian Accounting Standards; and
- (c) the Audit of these records.

14.4 Provision of records to the Department

The Participant must:

- (a) produce reports (including Reports), information and other Material produced under or in connection with this Agreement and otherwise as reasonably required by the Department; and
- (b) provide all reports (including Reports), information and other material to the Department in accordance with the timeframes specified in this Agreement and otherwise promptly upon demand.

14.5 Retention of records and information

The Participant must retain its financial records and other information referred to in this clause 14 for a period of 7 years after its creation or such longer period as may be required by Law.

15. Reports

15.1 Reports

The Participant must provide all Reports:

- (a) at the times; and
- (b) in the format specified by the Department (if any); and
- (c) including the content specified in the Item 5 of Schedule 1.

15.2 Reporting during the Project Period

During the Project Period, the Participant must provide to the Department:

- (a) Progress Reports in accordance with Item 5.1 of Schedule 1; and
- (b) where applicable, notification in accordance with clause 4.1(c)(i).

15.3 Acquittal Report

During the Project Period, the Participant must provide Acquittal Reports in accordance with Item 5.2 of Schedule 1.

15.4 Final Report

- (a) The Participant must provide to the Department the Final Report in accordance with in Item 5.3 of Schedule 1.
- (b) The Final Report must include evidence of completion of all applicable deliverables and/or the documents set out in the Milestone Schedule for Milestone 4.

15.5 Designated Use Reports

- (a) During the Designated Use Period, the Participant must provide Designated Use Reports in accordance with Item 5.3 of Schedule 1.
- (b) A report provided by the Participant under clause 15.5(a) does not limit the Participant's obligations, or the Department's rights under clause 10.

15.6 Program Report

The Participant must participate, at its own cost and as reasonably required by the Department, in studies, evaluations and other activities intended to analyse the success of each Project in achieving the Project Objectives and the Aim of the Project, on terms required by the Department. Such participation may, where required by the Department, include:

- (a) allowing third parties access to the Property to undertake analysis and evaluation of the Program and the Project; and
- (b) making reports (including Reports), records and other information available to third parties for the purposes of evaluation and analysis.

15.7 Other Reports

- (a) The Department may at any time require the Participant to provide reports and other information in addition to the reports and information required under clauses 15.1 to 15.5 (**Additional Reports**).
- (b) Where the Department requires an Additional Report, it will issue a direction in writing to the Participant requiring the Participant to provide an Additional Report and specifying the Department's requirements in relation to the:
 - (i) format;
 - (ii) content;
 - (iii) information and substantiating documentation to be included; and
 - (iv) auditing or certification required (if any),for that Additional Report.

- (c) The Participant must, at its cost, comply with a direction of the Department under this clause 15.7 by providing the requested Additional Report:
 - (i) within 20 Business Days of receiving the Department's direction; or
 - (ii) within such longer period (if any) as the Department may allow.

16. Corrective action

- (a) The Participant must immediately notify the Department of a potential failure or failure to meet a Milestone or perform the Project and achieve the Program Objectives and the Aim of the Project (in this clause 16, a **Problem**).
- (b) If the Participant notifies the Department of a Problem, or if the Department notifies the Participant of a Problem, then:
 - (i) the Participant must, if requested by the Department, within 7 days prepare and submit to the Department a report identifying:
 - (A) the nature and extent of the Problem;
 - (B) the consequences of the Problem and in particular the Milestones and Program Objectives and the Aim of the Project that are likely to be affected; and
 - (C) steps the Participant will take to rectify the Problem, (the **Corrective Action Plan**).
 - (ii) the Department may comment on the Corrective Action Plan and the Participant must:
 - (A) amend the Corrective Action Plan to take account of the Department's comments, including the steps proposed to be taken by the Participant and the timeframe in which the steps are to occur; and
 - (B) resubmit the Corrective Action Plan to the Department within 10 Business Days.
 - (iii) If a Corrective Action Plan is rejected and resubmitted, the process described in this clause 16(c) will apply to the resubmitted Corrective Action Plan.
- (c) If the Department approves a Corrective Action Plan, the Participant must complete all of the steps and activities in the approved Corrective Action Plan within the timeframe specified in the approved Corrective Action Plan.
- (d) If the Department approves a Corrective Action Plan, the approved Corrective Action Plan will:
 - (i) not operate as a waiver of the obligations that the Participant may have under this Agreement; and
 - (ii) not limit the Department's rights or remedies it may have against the Participant in connection with the Problem (for example, to claim damages for breach or terminate this Agreement).
- (e) If the Participant does not submit a Corrective Action Plan that the Department is prepared to approve, or if the Participant does not comply with the requirements of any approved Corrective Action Plan, the Department may immediately terminate this Agreement.

17. Liaison

- (a) The Participant must liaise with and report to the Funding Arrangement Manager in relation to the Project, and as reasonably required by the Funding Arrangement Manager for the purposes of this Agreement.
- (b) Upon request, the Participant must within the time-frame specified in the request, or promptly if no time-frame is specified in the request, provide all information in relation to the Project or the Participant as requested by the Department for the purposes of this Agreement, including for monitoring and evaluation purposes.

- (c) The Participant must:
 - (i) provide accurate, informative and timely advice to the Department on any matters that could impact on the Aim of the Project and the Program Objectives; and
 - (ii) provide the Department with draft copies of all intended public communication materials as follows:
 - (A) printed materials (including data reports), at least 4 weeks prior to publication; and
 - (B) media releases with at least 2 Business Days' notice.

18. Access to premises and materials

- (a) The Participant must give the Auditor-General, the Privacy Commissioner, the Ombudsman, the Information Commissioner and the Freedom of Information Commissioner and their respective delegates, and persons authorised in writing by the Department (referred to in this clause 18 collectively as **'those permitted'**) access to premises at which records and Materials associated with this Agreement are stored or work in connection with the Project is undertaken.
- (b) The Participant must give to those permitted access to inspect and copy Materials, however stored, in the custody or under the control of the Participant, its employees, agents or subcontractors, for the purposes associated with this Agreement or any review of performance under this Agreement. The Participant must also give those permitted access to any Assets, wherever they may be located, and reasonable access to the Department Personnel for the same purpose.
- (c) The rights referred to in clause 18(a) are, wherever practicable, subject to:
 - (i) the provision of reasonable prior notice by the Department (except where the Department believes that there is an actual or apprehended breach of the Law);
 - (ii) access being sought during reasonable times (except where the Department believes that there is an actual or apprehended breach of the Law); and
 - (iii) the Participant's reasonable security procedures.
- (d) The Participant agrees to provide all assistance reasonably requested by the Department in respect of any inquiry into or concerning the Project, the Works, the Program or this Agreement. For these purposes an inquiry includes any administrative or statutory review, audit or inquiry (whether within or external to the Department), any request for information directed to the Department, and any inquiry conducted by Parliament or any Parliamentary committee.
- (e) The Participant must provide access to its computer hardware and software and equipment to the extent necessary for the Department to exercise its rights under this clause, and provide the Department with any reasonable assistance requested by the Department to use that hardware and software.
- (f) The Participant must ensure that any subcontract entered into for the purposes of this Agreement contains an equivalent clause allowing those permitted to have access as specified in this clause 18.

- (g) Nothing in this Agreement limits or restricts in any way any duly authorised function, power, right or entitlement of the Auditor-General, the Privacy Commissioner, the Ombudsman, the Information Commissioner or the Freedom of Information Commissioner, or their respective delegates. The rights of the Department under this Agreement are in addition to any other duly authorised power, right or entitlement of the Auditor-General, the Privacy Commissioner, the Ombudsman, the Information Commissioner or the Freedom of Information Commissioner or their respective delegates.

Part F – Managing the Project

19. Assets

19.1 Purchase of Assets

The Participant must not use Funds towards the purchase of Assets unless the Asset is identified in the Project Budget and is consistent with the Aim of the Project and Program Objectives.

19.2 Use of Assets

- (a) The Participant must not use Assets for any purpose other than the performance of the Project and the Designated Use unless it has obtained the prior written approval of the Department.
- (b) The Participant must:
 - (i) not Dispose of any Asset, or deal with or use any Asset other than in accordance with this Agreement, without having obtained the prior written approval of the Department;
 - (ii) hold all Assets securely and safeguard them against theft, loss, damage or unauthorised use;
 - (iii) maintain all Assets in good working order;
 - (iv) maintain all appropriate insurances in respect of any Assets;
 - (v) be fully responsible for, and bear all risks arising in relation to, the use or Disposal of any Asset;
 - (vi) maintain a register of all Assets, recording the date of purchase or lease, the purchase or lease price, Asset description including serial number, Asset location, the proportion of the Funds used to create or acquire the Asset, the Depreciated value of the Asset and (where approved under clause 19.2(b)(i)) details of Disposal of the Asset, including the sale price; and
 - (vii) as and when requested, provide copies of the register of Assets to the Department.

19.3 Disposing an Asset

- (a) During the Agreement Period, where the Depreciated value of an Asset is \$50,000 or more at the time of the proposed Disposal, the Participant must:
 - (i) obtain prior agreement in writing from the Department before Disposing of that Asset; and
 - (ii) at the option of the Department:
 - (A) pay to the Department within 20 Business Days of the date of the Disposal, an amount equal to the proportion of the value of the Asset following Depreciation that is equivalent to the proportion of the purchase price of the Asset that was funded from the Funds;
 - (B) pay to the Department within 20 Business Days of the date of the Disposal, the proceeds of the Disposal, less an amount equal to the sum of the Participant's proportionate contribution to the purchase price of the

Asset and the Participant's reasonable costs of sale or Disposal of the Asset; or

- (C) use the amount specified in clauses 19.3(a)(ii)(A) or 19.3(a)(ii)(B) above for a purpose approved in writing by the Department.
- (b) For clarity, the Participant does not need to obtain the Department's prior agreement to the Disposal of an Asset when the Depreciated value of that Asset is less than \$50,000.

19.4 Asset depreciation

- (a) If, on the expiration or early termination of this Agreement, an Asset has not been fully Depreciated the Participant must, at the option of the Department:
 - (i) pay to the Department within 20 Business Days after expiry or early termination of this Agreement, an amount equal to the proportion of the value of the Asset following Depreciation that is equivalent to the proportion of the purchase price of the Asset that was funded from the Funds;
 - (ii) sell the Asset for the best price reasonably obtainable and pay to the Department within 20 Business Days of the date of sale the proceeds of sale, less an amount equal to the sum of the Participant's proportionate contribution to the purchase price of the Asset and the Participant's reasonable costs of sale or Disposal of the Asset; or
 - (iii) use the Asset on such terms and conditions as may be approved in writing by the Department.
- (b) If the Participant fails to make a payment or use the amount as required by clauses 19.3 or 19.4:
 - (i) the Participant must pay the Department Interest on the relevant amount from the date it was due, for the period it remains unpaid; and
 - (ii) the relevant amount, and Interest owed under this clause 19.4(b) will be recoverable by the Department as a debt due to the Department from the Participant.

20. Step-in rights

Note to Applicants: It is anticipated that this clause will only be included where the value of the grant is \$1 million or more, the Works involves a new build and the Department contribution is 50 per cent or more of the total project costs.

In all other circumstances, it is anticipated that clause 20 will be deleted and 'Not Used' will be inserted.

20.1 Application of this clause

This clause 20 only applies if the Department has obtained all relevant Approvals (including any approval required in accordance with the *Lands Acquisition Act 1989* (Cth)) required for the Department to exercise the rights conferred on the Department under this clause 20.

20.2 Circumstances in which the Department can step-in

Subject to any applicable statutory stay on the exercise of rights, including sections 415D, 434J and 451E of the Corporations Act (as applicable), without prejudice to any other right or remedy that the Department may have under this Agreement, any Law or otherwise, if, in the Department's opinion, the Participant has breached, or is in breach of, any obligation under this Agreement, the Department may (either itself or through a nominee of the Department):

- (a) step-in and take control of management of part or the whole of the Project, including by performing any or all of the Participant's obligations under this Agreement which relate to the Project; or
- (b) make any other arrangements considered necessary or desirable by the Department to complete all or part of the Project or to otherwise ensure the completion of all of the Participant's obligations under this Agreement which relate to the Project.

20.3 Participant's obligations during step-in

The Participant must do everything necessary or desirable to give effect to the Department's rights under clause 20.2, in accordance with the directions of the Department, including:

- (a) novating or assigning to the Department or its nominee any contracts with subcontractors or other third parties relating to the Project;
- (b) novating this Agreement to a party nominated by the Department;
- (c) authorising the Department or its nominee to deal with all Funds held by the Participant, including authorising the Department or its nominee to act as a signatory to the Participant's Bank account in which Funds are held, or to be held;
- (d) assigning to the Department or a party nominated by the Department, any leases or licences relating to the Project that are, in the Department's opinion, required for the due and proper completion of the Project;
- (e) providing to the Department or a party nominated by the Department, unfettered access to the Property and any land, buildings or improvements on which, or in which, the Property is located for the purposes of exercising rights under clause 20.2;
- (f) without limiting clause 20.3(e), granting an irrevocable non-exclusive licence to the Department, or to a party nominated by the Department to:
 - (i) pass or repass over common areas in the Property or as is required for ready access to the Property, and that right shall extend to tenants and guests of the Works;
 - (ii) have full and free access to all utilities and other services in the Property (or in the building, facility or improvement within which the Property is located) as may be required for the Designated Use; and
 - (iii) have full and free access to car parking on the Property (or on or adjacent to the land in which the Property is located) as may be required from time to time; and
- (g) at the Department's discretion, repaying to the Department or its nominee, within the timeframes specified by the Department or, if no timeframes are specified, promptly, all Uncommitted Funds (in whole or in part) identified by the Department.

20.4 Charges and costs

Without limiting or affecting the Department's rights under this Agreement, the Department may recover all its costs associated with exercising its rights under this clause 20 (including costs associated with recovering any amount of Uncommitted Funds from the Participant) as a debt due from the Participant.

20.5 No liability

The Department will not be liable in any way to the Participant, its officers, employees, agents, subcontractors or any other third party in relation to any act or omission arising out of or in connection with the exercise of the Department's rights under this clause 20.

20.6 Participant indemnity

- (a) The Participant releases the Department from and indemnifies and will continue to indemnify the Department and its subcontractors and Personnel from and against all:
 - (i) loss, damage, costs and expenses suffered or incurred by the Department, including as the result of any claim made in relation to:
 - (A) loss of or damage to third party property; or
 - (B) the injury, illness or death of a third party;
 - (ii) loss of, or damage to, Department property; or
 - (iii) loss, damage, costs and expenses suffered or incurred by the Department in dealing with any claim against the Department, including legal costs and expenses on a solicitor/own client basis and the cost of time spent, resources used, or disbursements paid by the Department;

arising out of or in connection with the exercise of the Department's rights under this clause 20.

- (b) The Participant's liability to indemnify the Department under clause 20.6 will be reduced proportionately to the extent that any negligent or unlawful act or omission of, or wilful misconduct by, the Department, its subcontractors and Personnel contributed to the relevant loss, damage, cost, expense or liability.

20.7 Step-out

On the Department ceasing to exercise any of its rights under clause 20.2 the Participant must as soon as reasonably practicable recommence performance of those of the Participant's obligations suspended pursuant to clause 20.2.

Part G – Risk management

21. Indemnities

21.1 Participant indemnity

- (a) The Participant indemnifies the Department and its Personnel from and against any:
 - (i) loss of, or damage to, property of the Department;
 - (ii) claims by any person in respect of personal injury or death;
 - (iii) claims by any person in respect of loss of, or damage to, any property; and
 - (iv) costs and expenses incurred including the cost of defending or settling any claim referred to in clauses 21.1(a)(ii) or 21.1(a)(iii);

arising from:

- (v) any infringement, or alleged infringement, of the Intellectual Property Rights of any person, which occurred by reason of an act done by the Department in relation to any part of the Project;
 - (vi) any actual, likely or threatened breach of the Participant's or subcontractor's obligations relating to Confidential Information or Personal Information;
 - (vii) without limiting any other paragraphs of this clause 21.1, any breach of this Agreement by the Participant;
 - (viii) any negligence on the part of the Participant, its Personnel or subcontractors;
 - (ix) any wrongful or unlawful act or omission on the part of the Participant, its Personnel or subcontractors; or
 - (x) any breach by the Participant of its warranties under this Agreement.
- (b) The Participant's liability to indemnify those indemnified under clause 21.1(a) will be reduced proportionately to the extent that any negligent act or omission of those indemnified contributed to the relevant liability, loss, damage or expense.

21.2 Department's rights

The right of the Department to be indemnified under this clause 21 is in addition to, and not exclusive of, any other right, power, or remedy provided by Law.

22. Insurance

22.1 Insurance warranty

The Participant warrants that it has and its Contractors have taken out or will take out, and will maintain for the period specified in clauses 22.2, 22.3 or 22.4 as applicable, all appropriate types and amounts of insurance to cover the Participant's obligations under this Agreement, including those which survive its expiration or early termination.

22.2 Insurance coverage

The Participant must take out or have taken out, and ensure that its Contractors take out, for the period specified in clauses 22.3 and 22.4 (as the case may be):

- (a) on execution of this Agreement, workers compensation and public liability insurances as specified in Item 9.1 of Schedule 1;
- (b) where:
 - (i) clause 7 applies, on acquisition of an interest in the Property; or
 - (ii) clause 7 does not apply, on execution of this Agreement, the insurance specified in Item 9.2 of Schedule 1 and all other appropriate types and amounts of insurance to cover the Participant's activities and obligations under or in connection with this Agreement;
- (c) prior to commencement of the Works, all insurances as specified in Item 9.3 of Schedule 1 and all other appropriate types and amounts of insurance to cover the Participant's activities and obligations under or in connection with this Agreement; and
- (d) prior to commencement of the Designated Use Period, all insurances as specified in Item 9.4 of Schedule 1 and all other appropriate types and amounts of insurance to cover the Participant's activities and obligations under or in connection with this Agreement.

22.3 Claims made policy

If the Participant or a Contractor takes out a 'claims made policy', which requires all claims and any fact situation or circumstance that might result in a claim to be notified within the period of insurance, the Participant must, and where relevant, ensure that the Contractor:

- (a) in the case of insurance taken out as required by clause 22.2(a) maintain the policy (or a policy in like terms) during the Agreement Period and for a period of 7 years on and from the expiry or the early termination of this Agreement;
- (b) in the case of insurance taken out as required by clause 22.2(b), maintain the policy (or a policy in like terms) during the construction of the Works until Practical Completion and for a period of 7 years on and from Practical Completion having occurred or the early termination of this Agreement; and
- (c) in the case of insurance taken out as required by clause 22.2(d), maintain the policy (or a policy in like terms) during the Designated Use Period and for a period of 7 years on and from the expiry or the early termination of this Agreement.

22.4 Occurrence policy

If the Participant or a Contractor takes out an 'occurrence' policy, which requires the circumstances to which a claim relates to occur during the period of insurance whilst the notification of event can occur at any time subsequently, the Participant must, and, where relevant, must ensure that the Contractor, maintain the policy:

- (a) in the case of insurance taken out pursuant to clause 22.2(a) during the Agreement Period;
- (b) in the case of insurance taken out pursuant to clause 22.2(c), during the construction of the Works until the date of achievement of Practical Completion; and
- (c) in the case of insurance taken out pursuant to clause 22.2(d), during the Designated Use Period.

22.5 Evidence

The Participant must, on request, promptly provide to the Department any relevant insurance policies and certificates of currency for inspection.

22.6 Insurance proceeds

If during the Agreement Period:

- (a) the Works or the Property (or both as the case may be) are lost, damaged or destroyed by a risk against which the Participant is required under this Agreement to be insured; and
- (b) the payment of insurance moneys under the relevant insurance policy has not been refused in whole as a direct consequence of any act or omission of the Department in breach of this Agreement,

then the Participant must:

- (c) claim and obtain payment of any insurance moneys to which it is entitled under the relevant insurance policy in respect of the relevant loss, damage or destruction;
- (d) apply all relevant insurance proceeds in:
 - (i) if required by the Department, reinstating the Works or the Property (or both as the case may be); or
 - (ii) otherwise, paying the Department:
 - (A) an amount calculated in accordance with Item 10 of Schedule 1; or
 - (B) where the insurance proceeds are less than the amount calculated in accordance with Item 10 of Schedule 1, the total insurance proceeds.

Part H – Termination

23. Suspension and termination

23.1 Termination, suspension or reduction for cause

- (a) If:
 - (i) the Department does not accept the Draft Project Plan and Budget in accordance with clause 3.2 on or before the date specified in Item 3.4 of Schedule 1;
 - (ii) clause 7 applies and the Participant fails to identify a suitable property acceptable to the Department, in accordance with clause 7, for carrying out the Designated Use, within the timeframe specified in Item 3.5 of Schedule 1;
 - (iii) the Participant fails to provide evidence of the Participant having an interest in of the Property that is satisfactory to the Department within the timeframes specified in clause 8.3(a);
 - (iv) the Participant does not commence the Works within the timeframe specified in Item 3.1 of Schedule 1;
 - (v) the Participant fails to comply with any timeframe under this Agreement which is stated to be of the essence;
 - (vi) the Participant fails to remedy to the satisfaction of the Department any material breach of this Agreement (which in the opinion of the Department can be remedied) within 10 Business Days after the date on which the Department issues the Participant with a notice requiring the Participant to remedy the breach;
 - (vii) the Participant has regularly or persistently failed to meet any, some, or all requirements of this Agreement, which failures have the cumulative effect of constituting a material breach of this Agreement, whether or not the Department has required the Participant to remedy a breach under clause 23.1(a)(vi);

- (viii) the Participant materially breaches this Agreement and in the reasonable opinion of the Department the breach cannot be remedied;
- (ix) the Department is satisfied on reasonable grounds that any statement, representation or warranty made by the Participant is incorrect or incomplete in a way which would have affected the original decision to approve the Funds for the Project;
- (x) the Department is satisfied on reasonable grounds that a report (including a Report) given by the Participant is significantly misleading, or substantially incomplete or inaccurate;
- (xi) subject to any applicable statutory stay on the exercise of rights, including sections 415D, 434J and 451E of the Corporations Act (as applicable), an Insolvency Event occurs with respect to the Participant;
- (xii) the Participant fails to comply with any of the following provisions:
 - (A) clause 9 (Security);
 - (B) clause 11 (Specialist Services);
 - (C) clause 12.3 (Use of Funds);
 - (D) clause 25 (Intellectual Property Rights);
 - (E) clause 26 (Protection of Personal Information) ;
 - (F) clause 27 (Confidentiality);
 - (G) clause 37 (Fraud control);
 - (H) clause 38 (Warranties and representations); or
 - (I) clause 39.8 (Assignment);
- (xiii) the Participant breaches any term or condition of any other funding agreement (including a Related Agreement) between the Participant and the Department; or
- (xiv) the Participant, by notice in writing given to the Department, withdraws from this Agreement,

the Department may by written notice to the Participant, immediately require the Participant to suspend dealing with the Funds, in whole or in part, in relation to the Project or terminate this Agreement in its entirety (or both as the case may be).

- (b) If, in the Department's opinion:
 - (i) the Participant has breached, or is in breach of, any material obligation under this Agreement; and
 - (ii) the breach is capable of being remedied by the Participant,
 the Department must not terminate this Agreement in accordance with clause 23.1(a) without first:
 - (iii) giving the Participant notice of a Problem in accordance with clause 16(b); and
 - (iv) allowing the Participant a reasonable opportunity to comply with any approved Corrective Action Plan relating to the Problem.

23.2 Termination, suspension or reduction for convenience

In addition to any other rights the Department has under this Agreement, the Department may, at any time and at its discretion, subject to any applicable statutory stay on the exercise of rights, including sections 415D, 434J and 451E of the Corporations Act (as applicable), terminate this Agreement, wholly or in part, or reduce the scope of this Agreement for any reason, or require the Participant to immediately suspend dealings with the Funds, by providing a written termination notice to the Participant specifying a termination date.

23.3 Consequences of termination, suspension or reduction for convenience

- (a) If the Department exercises its right to:
 - (i) terminate this Agreement;

- (ii) reduce the scope of this Agreement; or
- (iii) require the Participant to immediately suspend dealings with the Funds,

in accordance with clause 23.2, the Department will only be liable for any reasonable costs (excluding, without limitation, loss of prospective income or profits which relate to a period after the date the termination, reduction in scope or suspension takes effect) unavoidably incurred by the Participant prior to the date of termination, reduction in scope or suspension, which are directly attributable to the termination, reduction in scope or suspension.

- (b) The Department will not be liable to pay any amount in excess of the amount of Funds remaining unpaid under this Agreement as at the date that the termination, reduction in scope or suspension takes effect.
- (c) Except as provided in this clause 23.3, the Department will not be liable to the Participant in any way for termination of this Agreement, reduction in scope or suspending dealings with Funds, in accordance with clause 23.2.

23.4 Dealing with the Funds on termination

- (a) On termination of this Agreement, reduction in scope of this Agreement or for the duration of any suspension of dealings with the Funds, the Participant must only deal with the Funds in accordance with the directions of the Department and must cease all other dealings with the Funds.
- (b) The Department may end the suspension of dealings with the Funds by written notice to the Participant, subject to such preconditions (including variations to this Agreement) which the Department may require.
- (c) Subject to clause 23.3, the Department will not be obliged to pay any part of the Funds to the Participant after the termination of this Agreement or during any period of suspension of dealings with the Funds.

23.5 No liability

Except as provided in clause 23.3, the Department will not come under any liability to the Participant for termination of this Agreement in accordance with this clause.

23.6 Deemed termination for convenience

If a purported termination for cause by the Department under any of clause 23.1 is determined by a competent authority not to be properly a termination for cause, then that termination by the Department will be deemed to be a termination for convenience under clause 23.2, which termination has effect from the date of the notice of termination referred to in clause 23.2.

24. Repayment of Funds

24.1 Remaining Funds

If:

- (a) on the expiry of the Project Period or on any earlier termination or reduction in scope of this Agreement, any of the Funds:
 - (i) are Unspent; or
 - (ii) cannot, by reconciliation between the accounts and records maintained by the Participant (as reported to the Department by the Participant in any of the financial statements referred to in clause 14) and the Project Budget, be shown to the reasonable satisfaction of the Department to have been spent or Committed in accordance with this Agreement; or
- (b) at any time the Department forms the reasonable opinion that any Funds have been used, spent or Committed by the Participant other than in accordance with this Agreement,

the Department may by written notice to the Participant:

- (c) require the Participant to repay that part of the Funds, and the Participant must repay to the Department the amount set out in the notice, within 20 Business Days of receipt of the notice;
- (d) deduct an equivalent amount from the Funds payable to the Participant pursuant to this Agreement or from any other amounts payable to the Participant under any other agreement with the Department; or
- (e) require the Participant to use all or part of those Funds as directed by the Department.

24.2 Failure to repay the Funds

If the Participant fails to repay the Funds in accordance with a notice issued under clause 24.1(c) or fails to use the Funds as directed under clause 24.1(e):

- (a) the Participant must pay the Department Interest on the amount set out in the notice from the date it was due, for the period it remains unpaid; and
- (b) the amount set out in the notice, and Interest owed under this clause 24, will be recoverable by the Department as a debt due from the Participant.

24.3 Interest

The Participant acknowledges that Interest payable under clause 24.2 represents a reasonable pre-estimate of the loss incurred by the Department as a result of the loss of investment opportunity for, or the reasonable cost of borrowing money in place, of the amount which should have been repaid.

Part I – General requirements

25. Intellectual Property Rights

25.1 Project Material

All Intellectual Property Rights in the Project Material vest in the Participant on creation.

25.2 Licensing of rights in Reports

The Participant grants to, and must ensure all third parties holding Intellectual Property Rights in the Reports grant to the Department, a perpetual, irrevocable, royalty-free and licence fee-free, world-wide, non-exclusive licence (including a right of sub-licence) to use, reproduce, modify, adapt, communicate and exploit the Reports for Commonwealth purposes.

25.3 Licensing of rights in other Project Material

The Participant grants to, and must ensure all third parties holding Intellectual Property Rights in Project Material (other than the Reports) grant to the Department, a perpetual, irrevocable, royalty-free and licence fee-free, world-wide, non-exclusive licence (including a right of sub-licence) to use, reproduce, modify, adapt, publish, perform, broadcast, communicate, commercialise and exploit that Project Material for the purposes of the Project, the Program and any other purpose connected with the operation of this Agreement.

25.4 Project Material

On termination or expiry of this Agreement, or earlier if requested by the Department, the Participant must deliver a copy of all Project Material then in existence to the Department in an agreed format, or as otherwise directed by the Department.

25.5 Subcontractors

The Participant must ensure that, in any subcontracts it enters with a third party for the purposes of performing this Agreement, it secures for the Department, equivalent rights to those set out in clauses 25.2 and 25.3.

25.6 Intellectual Property warranty

The Participant warrants that:

- (a) anything done by the Participant in the course of the Project, including in developing the Reports, will not infringe the Intellectual Property Rights or Moral Rights of any person;
- (b) it has the necessary rights to vest the Intellectual Property Rights and grant the licences as provided for in this clause 25; and
- (c) the Department will not, at any time, be infringing the Intellectual Property Rights of any person when it undertakes an activity allowed for under this Agreement or uses Project Material in a manner consistent with the licences granted, or to be granted, to the Department under this clause 25.

25.7 Moral Rights

- (a) In this clause 25, the 'Specified Acts' means:
 - (i) falsely attributing the authorship of any Project Material, or any content in the Project Material (including without limitation literary, dramatic, artistic works and cinematograph films within the meaning of the *Copyright Act 1968* (Cth) (**Copyright Act**);
 - (ii) materially altering the style, format, colours, content or layout of the Project Material and dealing in any way with the altered Project Material or infringing copies (within the meaning of the Copyright Act);
 - (iii) reproducing, communicating, adapting, publishing or exhibiting any Project Material, including dealing with infringing copies, within the meaning of the Copyright Act, without attributing the authorship; and
 - (iv) adding any additional content or information to the Project Material.
- (b) To the extent permitted by applicable Laws and for the benefit of the Department, the Participant must:
 - (i) give, where the Participant is an individual; and
 - (ii) use its best endeavours to ensure that each of the Participant Personnel used in the production or creation of the Project Material gives, genuine consent in writing, in a form acceptable to the Department, to the Specified Acts, even if such an act would otherwise be an infringement of the Moral Rights of the consenting individual.

25.8 Department Material

- (a) Intellectual Property Rights and title to, or in relation to, the Department Material remains vested at all times in the Department.
- (b) The Department grants to the Participant a royalty-free and licence fee-free, world-wide, non-exclusive licence (including a limited right of sub-licence to sub-license to a subcontractor specified in Item 2.5 of Schedule 1 or approved by the Department under clause 5) to use, reproduce and modify the Department Material for the purposes of the Project. The Participant must ensure that all Department Material is used strictly in accordance with any conditions or restrictions specified by the Department from time to time.

26. Protection of Personal Information

26.1 Application of the clause

This clause 26 applies only where the Participant deals with Personal Information when, and for the purpose of, performing the Project and for the period of the Designated Use, but does not derogate from any obligation the Participant may have under Law or under this Agreement in relation to the protection of Personal Information.

26.2 Definitions

In this clause 26:

- (a) **agency** has the meaning given in the Privacy Act;
- (b) **Australian Privacy Principles** or **APPs** has the meaning given in the Privacy Act;
- (c) **Privacy Commissioner** and **Information Commissioner** have the meanings given in the *Australian Information Commissioner Act 2010* (Cth);
- (d) **Privacy Incident** means any actual, apparent, suspected or anticipated:
 - (i) misuse or loss of, interference with or unauthorised access to, modification of or disclosure of Personal Information;
 - (ii) breach of clause 26; or
 - (iii) request, complaint or enquiry made by a regulatory authority or individual to whom the Personal Information relates in relation to the handling of Personal Information, and includes an 'eligible data breach' as defined in the Privacy Act; and
- (e) **registered APP code** has the meaning given in the Privacy Act.

26.3 Obligations

The Participant acknowledges that it may be treated as a 'contracted service provider' within the meaning of section 6 of the Privacy Act, and agrees:

- (a) to use or disclose Personal Information obtained during the course of performing the Project or otherwise under or in connection with this Agreement, only for the purposes of this Agreement;
- (b) to maintain reasonable safeguards against loss, unauthorised access, use, modification or disclosure and other misuse of Personal Information held in connection with this Agreement;
- (c) not to do any act or engage in any practice that would breach an APP, if done or engaged in by an agency;
- (d) to carry out and discharge the obligations contained in the APPs and comply with any directions, rules, guidelines, determinations or recommendations of the Information Commissioner or the Privacy Commissioner, to the extent that they are not inconsistent with the requirements of this clause 26;
- (e) to immediately notify the Department if the Participant becomes aware of a breach or possible breach of any of the obligations contained in, or referred to in, this clause 26, whether by the Participant or any subcontractor; and
- (f) not to disclose any Personal Information held in relation to this Agreement to an overseas recipient, without the written prior consent of the Department.

26.4 Privacy Incidents

Without limiting any other term of this Agreement, if a Privacy Incident occurs, then the Participant must:

- (a) immediately notify the Department; and
- (b) do all things required by the Department in relation to that Privacy Incident.

26.5 Data breach investigations

If:

- (a) the Department becomes aware, or suspects, that a Privacy Incident has occurred; or
- (b) the Participant has (or ought to have) notified the Department of a Privacy Incident in accordance with clause 26.4,

then the Participant must:

- (c) immediately disclose to the Department all information relevant to that actual or suspected Privacy Incident (including all relevant information about the processes, procedures, protocols, and security practices and procedures used in the performance of the Project);
- (d) co-operate with the Department in investigating whether a Privacy Incident has occurred and the circumstances surrounding the Privacy Incident; and
- (e) provide the Department with access to and copies of relevant records.

26.6 Subcontracts

The Participant must ensure that any subcontract entered into for the purpose of fulfilling its obligations under this Agreement contains provisions to ensure that the subcontractor has the same awareness and obligations as the Participant has under this clause 26, including the requirement in relation to subcontracts.

26.7 Indemnity

The Participant agrees to indemnify the Department in respect of any Loss suffered or incurred by the Department which arises directly or indirectly from a breach of any of the obligations of the Participant under this clause 26, or a subcontractor under the subcontract provisions referred to in clause 26.6.

27. Confidentiality

27.1 Confidential Information not to be disclosed

- (a) The Participant must not, in marking information supplied to the Department, misuse the term 'Confidential Information' or the Participant's equivalent. The marking of information as 'Confidential Information' or equivalent is not determinative as to whether the information is Confidential Information for the purposes of this Agreement.
- (b) Subject to clause 27.4, a Party must not, and must ensure its Personnel do not, without the prior written consent of the other Party, disclose any Confidential Information of the other Party to a third party.

27.2 Conditions on disclosure

In giving written consent to disclose Confidential Information, a Party may impose such conditions it considers appropriate and the other Party agrees to comply with those conditions.

27.3 Written undertakings

- (a) The Department may at any time require the Participant to arrange for:
 - (i) its Advisers;
 - (ii) its Personnel and other employees and subcontractors engaged in the provision activities under or in connection with this Agreement; or
 - (iii) any other third party, to whom Confidential Information may be disclosed pursuant to clause 27.4(a) or 27.4(b),
 to give a written undertaking relating to the non-disclosure of the Department's Confidential Information substantially in a form approved by the Department.
- (b) If the Participant receives a request under this clause 27.3, the Participant must promptly arrange for all requested undertakings to be given.

27.4 Exceptions to obligations

The obligations on the Participant under this clause 27 will not be taken to have been breached to the extent that Confidential Information:

- (a) is disclosed by a Party to its Advisers or 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 Department to the responsible Minister or another Minister of State for the Commonwealth or any State or Territory;
- (d) is disclosed by the Department, in response to a request by a House of a Committee of the Parliament of the Commonwealth;
- (e) is shared by the Department within the Department's organisation, or with another Government Agency where this serves the Commonwealth'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 27.

27.5 Obligation on disclosure

Where a Party discloses Confidential Information to another person:

- (a) pursuant to clauses 27.4(a) or 27.4(b), the disclosing Party must:
 - (i) notify the receiving person that the information is Confidential Information; and
 - (ii) not provide the information unless the receiving person agrees to keep the information confidential, including, if requested by the Department, the receiving person giving the Department a legally binding undertaking to that effect substantially in a form approved by the Department; or
- (b) pursuant to clauses 27.4(c), 27.4(d) or 27.4(e), the disclosing Party must notify the receiving Party that the information is Confidential Information.

27.6 Period of confidentiality

In relation to any information which the parties agree is Confidential Information for the purposes of this Agreement, the obligations under this clause 27 continue, notwithstanding the expiry or termination of this Agreement.

27.7 No reduction in privacy and security obligations

Nothing in this clause 27 derogates from any obligation which either Party may have either under Law, or under this Agreement, in relation to the protection of Personal Information and security.

28. Acknowledgement and publications

The Participant must acknowledge the financial and other support it has received from the Department:

- (a) in all publications, promotional and advertising materials, public announcements, signs or plaques displayed at the Property, and activities by it or on its behalf in relation to the Project, or any products, processes or inventions developed as a result of the Project;
- (b) by inviting representatives of the Commonwealth (including the Minister) to any formal public opening of the Works; and
- (c) in respect of publications, promotional and advertising materials, public announcements, signs, plaques, website use or as otherwise directed by the Department, the acknowledgement must be in the form specified in Item 11 of Schedule 1 or if not specified in Item 11 of Schedule 1, then in a form, and include content, approved by the Department.

29. Work health and safety

29.1 Definitions

In this clause 29, Inspector, Notifiable Incident, Regulator, WHS Entry Permit Holder and Worker have the meanings given in the WHS Act.

29.2 General obligations

- (a) The Participant must ensure the Services are performed in a safe manner.

- (b) Where the health and safety of any person may be affected by the performance of the Works, the Participant must consult, cooperate and coordinate with the Department in relation to the health and safety issue.
- (c) The Participant must, and must ensure that Participant Personnel in carrying out the Works comply with WHS Laws.

29.3 Notifying the Department

- (a) The Participant must notify the Department as soon as practicable of any concern the Participant has regarding work health and safety in relation to the Works.
- (b) The Participant must immediately notify the Department of any:
 - (i) breach or suspected breach of the WHS Laws in relation to the Works;
 - (ii) cessation of work on the Works, or direction to cease work on the Works from any person having authority under the WHS Laws to do so, due to unsafe work;
 - (iii) entry by a WHS Entry Permit Holder or Inspector to any place where the Works are being performed; or
 - (iv) proceedings against, decision by the Regulator in relation to, or request from the Regulator to, the Participant or Participant Personnel under the WHS Laws.
- (c) The Participant must provide to the Department a copy of any notice issued to the Participant under the WHS Laws in relation to the Works as soon as possible and in any event within 24 hours after receipt.
- (d) If the Participant is required by the WHS Laws to report a Notifiable Incident to the Regulator in relation to Works, the Participant must:
 - (i) as soon as is practicable in the circumstances, notify the Department of the Notifiable Incident and, if requested by the Department, provide a copy of any written notice given to the Regulator; and
 - (ii) if requested by the Department, provide within the timeframe specified by the Department a report on the Notifiable Incident, the results of any investigations into its cause, and any recommendations for prevention in the future.

29.4 Relationship to other obligations

- (a) If there is any inconsistency between this clause 29 and the WHS Laws, the WHS Laws prevail to the extent of the inconsistency.
- (b) The Participant acknowledges that it is responsible for:
 - (i) complying with its obligations under WHS Laws; and
 - (ii) performing the Works in accordance with this Agreement,and will not be relieved of that responsibility because of:
 - (iii) anything in this clause 29 or in any policy or procedure referred to in this clause 29;
 - (iv) any instruction or direction or failure to give an instruction or direction under this clause 29;
 - (v) any exercise of, or failure to exercise, the Department's rights under this clause 29; or
 - (vi) any notice or other document or communication from the Participant under this clause 29.
- (c) To the extent permitted by Law, the Department is not liable to the Participant for any losses in connection with work health and safety in relation to the Works.

29.5 Non-compliance

- (a) If, during the performance of any work under this Agreement, the Department notifies the Participant that the Department is satisfied that the Participant is:
 - (i) not performing the work in compliance with the Participant's work health and safety plan, work health and safety management procedures or relevant legislation; or
 - (ii) performing the work in such a way as to endanger the health and safety of the Participant,the Participant must promptly remedy that breach of health and safety.
- (b) Without limiting clause 23.1, the Department may direct the Participant to suspend the work until such time as the Participant satisfies the Department that the work will be resumed in conformity with applicable work health and safety provisions. During periods of suspension referred to above, the Department will not be required to make any payment whatsoever to the Participant.

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

Note to Applicants: The Building Code applies to indirectly funded 'building work', funded by the Commonwealth through a grant or other program, in circumstances in which the funding for the building work is an explicit component of the grant or program, and for which:

the value of the Commonwealth's contribution to the project that includes the building work is at least \$5,000,000 and represents at least 50% of the total construction project value; or

the Commonwealth's contribution to the project that includes the building work is at least \$10,000,000 (irrespective of its proportion of the total construction project value).

If the Building Code applies to an applicant's proposed project, it will be required to comply with the Building Code and the requirements set out in this clause 30.

30.1 Definitions

In this clause 30, the following terms have the following meanings:

- (a) **ABCC** means the body referred to in subsection 29(2) of the Act;
- (b) **Act** means the *Building and Construction Industry (Improving Productivity) Act 2016* (Cth);
- (c) **Building Code** means the Code for the Tendering and Performance of Building Work 2016, which is available at <https://www.legislation.gov.au/Details/F2017C00668>;
- (d) **Building Contractor** has the same meaning as in the Act;
- (e) **Building Industry Participant** has the same meaning as in the Act;
- (f) **Building Work** has the same meaning as in subsection 3(4) of the Building Code;
- (g) **Commonwealth Funded Building Work** means Building Work in items 1-8 of Schedule 1 of the Building Code;
- (h) **Contractor** means a Building Contractor or Building Industry Participant who the Participant has entered, or proposes to enter, into a contract with to undertake any of the Works;
- (i) **Exclusion Sanction** has the same meaning as in subsection 3(3) of the Building Code;
- (j) **Funding** means the funding provided by the Commonwealth to the Participant;
- (k) **Related Entity** has the same meaning as in subsection 3(2) of the Building Code; and
- (l) **Works** means Commonwealth Funded Building Work that is being indirectly funded by the Commonwealth through the provision of the Funding to the Participant.

30.2 Building Code requirements

- (a) The Participant must ensure that:
 - (i) tender processes and calls for expressions of interest (howsoever described) in respect of Commonwealth Funded Building Work are conducted in a manner consistent with the Building Code; and
 - (ii) respondents are only permitted to participate in tender processes where the respondent is not subject to an Exclusion Sanction.
- (b) The Participant must ensure that any request for expressions of interest or request for tender (howsoever described) for Commonwealth Funded Building Work requires a respondent:
 - (i) to confirm that the respondent and any related entity will comply with the Building Code when undertaking the Commonwealth Funded Building Work;
 - (ii) 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 obliged to do so);
 - (iii) to confirm that it is not subject to an Exclusion Sanction at the time of lodging an expression of interest or tender;

- (iv) 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;
- (v) to include details of the number of current apprentice and trainee employees and the number and 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;
- (vi) to advise whether the respondent has, within the preceding 3 year period:
 - (A) 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*;
 - (B) 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
 - (C) owed any unsatisfied judgement debts (including such debts owed by any related entity) to a Building Contractor or Building Industry Participant.
- (c) 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 Participant must:
 - (i) ensure the requirement to have a Workplace Relations Management Plan (**WRMP**) for the Works approved by the ABCC is included in all expression of interest and tender documents; and
 - (ii) on behalf of the funding entity:
 - (A) apply to the ABCC to have a WRMP for the Works approved;
 - (B) 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 ABC Commissioner;
 - (C) ensure that the proposed WRMP for the Works is accompanied by any supporting evidence required by the ABCC; and
 - (iii) 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.

31. WHS Accreditation Scheme

31.1 Definitions

In this clause 31 the following terms have the following meanings:

- (a) **Act** means the *Building and Construction Industry (Improving Productivity) Act 2016* (Cth);
- (b) **Building Work** has the meaning given to it by section 6 of the Act;
- (c) **Office of the Federal Safety Commissioner** means the office of the Federal Safety Commissioner within the meaning of the Act; and
- (d) **Scheme** means the Scheme described at section 43 of the Act.

31.2 WHS Accreditation Scheme

Subject to the exclusions specified in section 26 of the *Building and Construction Industry (Improving Productivity) (Accreditation Scheme) Rules 2019* the Participant must ensure that all contracts the Participant enters into for the provision Building Work in respect of the Project that are valued at \$4 million or more:

- (a) are notified to the Office of the Federal Safety Commissioner at the earliest possible opportunity; and
- (b) contain a requirement that the builder of the Building Works:
 - (i) is accredited under the Scheme;
 - (ii) maintains Scheme accreditation for the life of the contract; and
 - (iii) must comply with all conditions of the Scheme accreditation.

32. Compliance with Laws and policies

32.1 Compliance with laws and policies

The Participant must at all times and at its own cost, comply with, and require its Personnel to comply with:

- (a) all Laws;
- (b) the Department Policies;
- (c) requirements of any Commonwealth, State, Territory or local authority (including any Proper Authority); and
- (d) any guidelines (including the Guidelines) and policies notified to the Participant in writing from time to time by the Department.

32.2 Criminal Code

The Participant acknowledges that under section 137.1 of the Schedule to the *Criminal Code Act 1995* (Cth), giving false or misleading information to the Department is a serious offence.

33. Disputes

33.1 No arbitration or court proceedings

The Parties agree not to commence any arbitration or court proceedings in respect of any dispute arising under this Agreement (except proceedings for urgent interlocutory relief), which has not been resolved by informal discussion, until the procedure provided by this clause 33 has been followed. After a party has sought or obtained any urgent interlocutory relief, that party must follow this clause 33.

33.2 Parties to resolve dispute

The Parties agree that any dispute arising during the Agreement Period will be dealt with as follows:

- (a) the Party claiming that there is a dispute must give the other a written notice setting out the nature and details of the dispute;
- (b) the Parties must use reasonable efforts to try to resolve the dispute through direct negotiation, including by referring the matter to persons who have authority to intervene and direct some form of resolution;
- (c) the Parties have 10 Business Days from the date a notice is given under clause 33.2(a) (or longer period if the Parties agree) to reach a resolution or to refer the dispute to a mediator if one of them requests.

33.3 Appointment of mediator

If the parties to the dispute cannot agree on a mediator within seven days after a request under clause 33.2(c), the chairperson of the Resolution Institute or the chairperson's nominee will appoint a mediator.

33.4 Role of mediator and obligations of parties

The role of a mediator is to assist in negotiating a resolution of the dispute. A mediator may not make a binding decision on a party to the dispute except if the party agrees in writing. Unless

agreed by the mediator and parties, the mediation must be held within 21 days of the request for mediation in clause 33.2(c). The parties must attend the mediation and act in good faith to genuinely attempt to resolve the dispute.

33.5 Confidentiality

Any information or documents disclosed by a party under this clause 33:

- (a) must be kept confidential; and
- (b) may only be used to attempt to resolve the dispute.

33.6 Costs

Each party to a dispute must pay its own costs of complying with this clause 33.

33.7 Termination of process

A party to a dispute may terminate the dispute resolution process by giving notice to each other party after it has complied with clauses 33.1 to 33.4. Clauses 33.5, 33.6, 33.9 and 33.10 survive termination of the dispute resolution process.

33.8 Breach of this clause

If a party to a dispute breaches clauses 33.1 to 33.7, the other party does not have to comply with those clauses in relation to the dispute.

33.9 No limitation

Nothing in this clause 33 limits, prevents or otherwise affects the Department's rights under clauses 20, 23 or 24.

33.10 Obligations continue

The Department and the Participant must continue to perform their respective obligations under this Agreement pending the resolution of a dispute.

34. GST, taxes, duties and Government charges

34.1 Defined terms

In this clause 34:

- (a) unless the context otherwise requires, a word or expression defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (**GST Act**) has the meaning given to it in that Act;
- (b) a reference to a GST liability or input tax credit entitlement of a party includes a GST liability or input tax credit entitlement of the representative member of any GST group of which that Party is a member;
- (c) any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 34; and
- (d) any reference to GST payable by, input tax credit entitlements of or adjustments for an entity includes any notional GST, input tax credit or adjustments arising in accordance with Division 177 of the GST Act or any relevant State legislation confirming the imposition of GST on State entities.

34.2 Consideration GST exclusive

Any consideration to be paid or provided for a supply made under or in connection with this Agreement, unless specifically described in this Agreement as 'GST inclusive', does not include an amount on account of GST.

34.3 Gross up

If a Party (**Supplier**) makes a supply to another party (**Recipient**) under or in connection with this Agreement in respect of which GST is payable (not being a supply the consideration for which is specifically described in this Agreement as 'GST inclusive'):

- (a) the consideration payable or to be provided for that supply under this Agreement but for the application of this clause (**GST exclusive consideration**) is increased by, and the Recipient must pay to the Supplier, an additional amount equal to the GST payable on the supply (**GST Amount**); and
- (b) subject to clause 34.5, the GST Amount must be paid to the Supply Maker by the Recipient at the same time as the first part of any of the GST exclusive consideration is payable or to be provided.

34.4 Reimbursement

If a Party must reimburse or indemnify another Party for a loss, cost or expense, the amount to be reimbursed or indemnified is first reduced by any input tax credit the first Party is entitled to for that loss, cost or expense, and then increased in accordance with clause 34.3.

34.5 Recipient Created Tax invoices

- (a) The parties acknowledge and agree that unless the Department notifies the Participant otherwise:
 - (i) the Department will issue tax invoices (recipient created tax invoices) to the Participant for all supplies made by the Participant to the Department under or in connection with this Agreement;
 - (ii) the Participant will not issue tax invoices for the supplies made by the Participant to the Department under or in connection with this Agreement;
 - (iii) the Department and the Participant are registered for GST and will remain so registered for the term of this Agreement;
 - (iv) notwithstanding 34.5(a)(iii), a Party will immediately notify the other in writing if it ceases to be registered for GST at any time; and
 - (v) the Participant indemnifies the Department for any loss, cost or expense (including any denied input tax credits) arising if the Participant fails to comply with this clause 34.5;
- (b) Except where the clause 34.5(a) applies, a Party need not pay a GST Amount under this Agreement until it receives a tax invoice from the Supply Maker for the supply to which the payment relates.

34.6 Exclusion of GST from calculations

If a payment under this Agreement is calculated by reference to or as a specified percentage of another amount or revenue stream, that payment will be calculated by reference to or as a specified percentage of the amount or revenue stream exclusive of GST.

34.7 Adjustments

- (a) If the GST payable by a Supplier on any supply made under or in connection with this Agreement varies from the GST Amount paid by the Recipient under clause 34.3, then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient so that the correct GST Amount has been paid.
- (b) Any payment, credit or refund under this clause is deemed to be a payment, credit or refund of the GST Amount payable under clause 34.3.
- (c) If an adjustment event occurs in relation to a supply, the Supplier must issue an adjustment note to the Recipient in relation to that supply within 14 days after becoming aware of the adjustment.

34.8 Other Taxes

Subject to this clause 34, all taxes, duties and government charges (**Taxes**) imposed or levied in Australia or overseas in connection with this Agreement must be paid by the Participant.

35. Notices

35.1 Service of notices

A notice, demand, consent, approval or communication under this Agreement must be in writing, in English and signed by a person duly authorised by the sender. A notice or other communication is properly given or served by a party if that party:

- (a) delivers it by hand;
- (b) posts it;
- (c) transmits it by electronic mail; or
- (d) transmits it by any other electronic means,

to the recipient's address for notices specified in Item 12 of Schedule 1, as varied by any notice given by the recipient to the sender.

35.2 Effective on receipt

A notice given in accordance with clause 35.1 takes effect when taken to be received (or at a later time specified in it), and is taken to be received:

- (a) if delivered by hand, when the party who sent the notice holds a receipt for it, signed by a person employed by the intended recipient at the physical address for receipt of notices;
- (b) if sent by post from and to an address within Australia and correctly addressed, after three Business Days;
- (c) if sent by post from or to an address outside Australia and correctly addressed, after 10 Business Days;
- (d) if sent by electronic mail, only in the event that the other party acknowledges receipt by any means in person, by phone or by a message which has been generated by the intended recipient and not purely by a machine; or
- (e) if sent by any other electronic means, only in the event that the other party acknowledges receipt in person, by phone or by message which has been generated by the intended recipient and not purely by a machine, or by other means agreed by the parties,

and if the delivery, receipt or transmission of the notice is not on a Business Day or is after 5.00pm on a Business Day, at 9.00am on the next Business Day.

35.3 Notice of Changes

The Department may, by issue of a Notice of Change, advise the Participant of changes to the Agreement that are minor or of an administrative nature, provided that any such changes do not increase the Participant's obligations under this Agreement. Such changes, while legally binding, are not variations for the purpose of clause 39.4.

36. Conflicts of interest

36.1 Warranty that there is no conflict

The Participant 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 obligations under this Agreement by the Participant or its Personnel.

36.2 Notification of a conflict

- (a) If during the Agreement Period, a conflict of interest arises, or appears likely to arise, the Participant must:
 - (i) immediately notify the Department in writing of the Conflict making a full disclosure of all relevant information relating to the Conflict and setting out the steps the Participant proposes to take to resolve or otherwise deal with the Conflict; and

- (ii) take such steps as have been proposed by the Participant, and/or take such steps as the Department may reasonably require to resolve or otherwise deal with the Conflict.
- (b) If the Participant fails to notify the Department under this clause 36, or is unable or unwilling to resolve or deal with the Conflict as required, the Department may terminate this Agreement.

36.3 Participant to avoid Conflict

The Participant agrees that it will not, and will use its best endeavours to ensure that any Participant Personnel do not, engage in any activity or obtain any interest during the Agreement Period that is likely to Conflict with or restrict the Participant in performing the Project fairly and independently.

37. Fraud control

The Participant must:

- (a) implement appropriate policies and processes that reduce the likelihood of consequences of fraud occurring in its organisation, that are in accordance with the *Commonwealth Fraud Framework* (see <https://www.ag.gov.au/Integrity/FraudControl/Pages/default.aspx>) and relevant Australian industry standards (as amended from time to time); and
- (b) notify the Department immediately upon becoming aware of any occurrence of fraud within its organisation, or any circumstances that indicate the likely occurrence of fraud within its organisation, and provide a description of the circumstances of the fraud or potential occurrence of fraud, the nature of the loss or damage, the date the Participant became aware of the loss or damage and the steps being taken to investigate the circumstances of the fraud or potential occurrence of fraud.

38. Warranties and representations

38.1 Participant representations and warranties

The Participant represents and warrants to the Department during the Agreement Period that:

- (a) if it is a body corporate, it is duly incorporated in accordance with the Law of its place of incorporation, validly exists under that Law and has the capacity to sue or be sued in its own name and to own its property and conduct its business as it is being conducted;
- (b) it has full power and authority to enter into, perform and observe its obligations under this Agreement;
- (c) the execution, delivery and performance of this Agreement has been duly and validly authorised by the Participant;
- (d) this Agreement constitutes valid and legally binding obligations on it and is enforceable against it by the Department in accordance with its terms;
- (e) each authorisation from, and filing and registration with, a government agency necessary to enable it to unconditionally execute and deliver and comply with its obligations under this Agreement and carry on its principal business or activity has been obtained, effected and complied with;
- (f) it will promptly notify and fully disclose to the Department in writing any event or occurrence actual or threatened arising during the Agreement Period which could have an adverse effect on the Participant's ability to perform any of its obligations under this Agreement;
- (g) it will promptly notify and fully disclose to the Department in writing if an Insolvency Event occurs with respect to it;
- (h) the unconditional execution and delivery of, and compliance with its obligations by it under this Agreement do not:

- (i) contravene any Law to which it or any of its property is subject or any order or directive from a Proper Authority binding on it or any of its property;
 - (ii) contravene its constituent documents;
 - (iii) contravene any agreement or instrument to which it is a party;
 - (iv) contravene any obligation of it to any other person; or
 - (v) require it to make any payment or delivery in respect of any financial indebtedness before the scheduled date for that payment or delivery;
- (i) no litigation, arbitration, mediation, conciliation or administrative proceedings are taking place, pending, or to the knowledge of any of its officers after due inquiry, are threatened against the Participant which, could have an adverse effect on the Participant's capacity to perform its obligations under this Agreement or the Participant's reputation;
 - (j) unless otherwise disclosed in this Agreement, it is not entering into this Agreement as trustee of any trust or settlement;
 - (k) it has not made any false declaration in respect of any current or past dealings with the Department, the Commonwealth or any Proper Authority, including in any tender or application process or in any agreement;
 - (l) it has had no significant deficiency in the performance of any substantive requirement or obligation under any prior agreement with the Department, the Commonwealth or any Proper Authority;
 - (m) it has, and will continue to have and to use, the skills, qualifications and experience, including the Participant Personnel occupying a Specified Personnel position, to perform each Project in an efficient and controlled manner with a high degree of quality and responsiveness and to a standard that complies with this Agreement;
 - (n) it has and will continue to have skilled, qualified and experienced people in Specified Personnel positions who are capable of performing each Project in accordance with this Agreement; and
 - (o) it has and will continue to have the necessary resources to perform each Project and will use those resources to perform each Project.

38.2 Department reliance

The Participant acknowledges that the Department in entering into this Agreement is relying on the warranties and representations contained in this Agreement.

39. General provisions

39.1 Survival

Any term by its nature intended to survive termination or expiry survives termination or expiry of this Agreement, including:

- (a) clause 4.6 (Rectification);
- (b) clause 4.8(c) (Practical Completion);
- (c) clause 5 (Subcontracting and subcontractor management);
- (d) clause 8.2 (Participant warranties and representations);
- (e) clause 9 (Security);
- (f) clause 10 (Designated Use);
- (g) clause 14 (Records);
- (h) clause 15 (Reports);
- (i) clause 18 (Access to premises and materials);
- (j) clause 19 (Assets);
- (k) clause 20 (Step-in rights);

- (l) clause 21 (Indemnities);
- (m) clause 22 (Insurance);
- (n) clause 23 (Suspension and termination);
- (o) clause 24 (Repayment of Funds);
- (p) clause 25 (Intellectual Property Rights);
- (q) clause 26 (Protection of Personal Information);
- (r) clause 27 (Confidentiality);
- (s) clause 28 (Acknowledgement and publications);
- (t) clause 33 (Disputes);
- (u) clause 34 (GST, taxes, duties and Government charges);
- (v) clause 35 (Notices);
- (w) clause 38 (Warranties and representations); and
- (x) clause 39.1 (Survival).

39.2 Governing law and jurisdiction

This Agreement is governed by, and is to be construed in accordance with, the law in force in the Australian Capital Territory and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of that jurisdiction.

39.3 Entire agreement

This Agreement records the entire agreement between the Parties in relation to its subject matter and supersedes all previous agreements or understandings between the parties in connection with its subject matter.

39.4 No variation

Subject to clauses 3.3 and 35.3, no variation of this Agreement is binding unless agreed in writing and signed by both the Parties.

39.5 Severance

A term or part of a term of this Agreement that is illegal or unenforceable may be severed from this Agreement. Any reading down or severance of a particular provision does not affect the other provisions of this Agreement.

39.6 Waiver

- (a) A waiver of any provision of this Agreement must be in writing.
- (b) No waiver of a term or condition of this Agreement will operate as a waiver of another breach of the same or of any other term or condition contained in this Agreement.
- (c) If a Party does not exercise, or delays in exercising, any of its rights under this Agreement or at Law, that failure or delay does not operate as a waiver of those rights.
- (d) A single or partial exercise by a Party of any of its rights under this Agreement or at Law does not prevent the further exercise of any right.

39.7 Relationship

- (a) The Participant must not represent itself, and must ensure that its officers, employees, agents and subcontractors do not represent themselves as being an officer, employee, partner or agent of the Department, or as otherwise able to bind or represent the Department.
- (b) This Agreement does not create a relationship of employment, agency, joint venture or partnership between the Parties.

39.8 Assignment

The Participant must not assign any of its rights, or novate any of its rights or obligations, under this Agreement without prior approval in writing from the Department.

39.9 Costs

Each Party must pay its own costs and expenses of negotiating, preparing and executing this Agreement.

39.10 Counterparts

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

39.11 Further acts

The Participant must do, at its own expense, everything reasonably necessary (including executing documents) to give full effect to this Agreement and any transaction contemplated by it.

Schedule 1 – Agreement Details

Note to Applicants: This Schedule 1 will be further developed for each successful applicant in light of that applicant's grant application and the Guidelines.

1. General

1.1 Program Objectives

- (a) Increased the supply of emergency and crisis accommodation to provide additional safe places for women and children experiencing domestic and family violence. It could also fund renovations and repurposing of buildings, where it creates new emergency accommodation.
- (b) In relation to those women and children experiencing domestic and family violence, increase the proportion of women and children housed in a safe place due to the provision of additional emergency accommodation.

1.2 Aim of the Project

To deliver the Program Objectives through by delivering new additional emergency accommodation.

These dwellings must be made available, during the Designated Use Period, as emergency accommodation to provide additional safe places to women and children experiencing domestic and family violence.

1.3 Guidelines

Safe Places Emergency Accommodation Grant Opportunity Guidelines.

2. Project

2.1 Project description

Note to Applicants: This Item 2 will be developed in light of each successful applicant's grant application in light of requirements set out in the Guidelines.

Applicants should note that the dwellings will be required to meet minimum requirements under the Livable Housing Design Guidelines (silver level) published by Livable Housing Australia from time to time (see <http://www.livablehousingaustralia.org.au/>).

2.2 Works

The Works required to carry out the Project in accordance with the Project Plan and otherwise comply with the requirements of this Agreement, including (without limitation) the design, construction, modification, expansion, refurbishment or fit-out (as the case may be) of dwellings on the Property.

2.3 Property

The Participant must acquire suitable real property (in accordance with the requirements of this Agreement) for development in accordance with clause 7 of this Agreement.

2.4 Project Documents

The Participant must provide the Department with the following Project Documents where relevant:

- (a) drawings and specifications for the Works which contain sufficient details and definition to enable a competent builder to construct the Works without further determination as to form, quality or quantity;
- (b) a site plan including ingress and egress arrangements for pedestrians and motor vehicles;

- (c) development Approval;
- (d) land owner approval;
- (e) design brief;
- (f) design specifications;
- (g) design drawings;
- (h) equipment specifications and suppliers;
- (i) list of proposed head contractors to be invited to tender;
- (j) tender acceptance report;
- (k) certification of equipment delivered to site and commissioned;
- (l) accreditation (as required) for training offered; and
- (m) evidence of certification as required by clause 4.8(a)(iv) of this Agreement.

2.5 Contractors

[insert]

2.6 Specialist Service Providers

[insert]

3. Project time frames

3.1 Commencement of the Works

The Participant must commence the Works on or before [insert date].

3.2 Date for Practical Completion

The Date for Practical Completion is 30 June 2022.

3.3 Project Period

The Project Period commences on the Date of this Agreement and ends on the date on which the Participant achieves Practical Completion of the Works.

3.4 Approval of Draft Project Plan and Budget timeframe (clause Error! Reference source not found.)

[insert]

3.5 Timeframe for identifying a suitable property (clauses 7 and 23.1(a)(i))

[insert]

4. Designated Use (clause 10)

4.1 Designated Use Period

The Designated Use Period is the period commencing on the date that the Participant achieves Practical Completion of the Works and expiring on the date that is 15 years after that date.

4.2 Designated Use

- (a) The provision of emergency accommodation in accordance with the Guidelines.
- (b) Making Specialist Services available to those women and children in accordance with clause 11 of this Agreement and the Guidelines.

5. Reports (clause 15)

5.1 Progress Reports (clause 15.2(a))

- (a) Progress Reports are required in respect of Milestones 2 and 3 only.
- (b) Each Progress Report must include:
 - (i) evidence of completion of all applicable deliverables and/or the documents set out in the Milestone Schedule for the applicable Milestone;
 - (ii) the Funds received for the period and total to date;
 - (iii) expenditure (period to date); and
 - (iv) any amendments to the Project Plan or the Project Budget.

5.2 Acquittal Report (clause 15.3)

- (a) Each Acquittal Report must include:
 - (i) an Audited detailed statement of receipts and expenditure in respect of the Funds for the Project prepared by an Approved Auditor in compliance with the Australian Auditing Standards which must include:
 - (A) a definitive statement as to whether the financial accounts are complete and accurate;
 - (B) a copy of the Approved Auditor's letter to management; and
 - (C) a statement of the balance of the Funds for the Project;
 - (ii) a certificate provided by the Chief Executive Officer or Chief Financial Officer of the Participant, or a person authorised by the Participant to execute documents and legally bind the Participant by their execution, confirming that:
 - (A) the Funds and Other Contributions received for the Project were spent for the purpose of the Project and in accordance with this Agreement and that the Participant has complied with this Agreement;
 - (B) salaries and allowances paid to persons involved in the Project are in accordance with any applicable award or agreement in force under any relevant Law on industrial or workplace relations; and
 - (C) at the time the Acquittal Report is provided to the Department, the Participant is able to pay all its debts as and when they fall due;
 - (iii) a version of the Project Material and Reports for the Project produced to the date of the Acquittal Report;
 - (iv) the information required under clause 5.3 of this Agreement;; and
 - (v) any other requirements notified by the Department in writing.
- (b) In preparing the certificate required under Item 5.2(a)(ii) of this Schedule 1, the Participant should have regard to:
 - (i) clause 32.2 of this Agreement: and
 - (ii) any other requirements notified by the Department in writing
- (c) The Participant must provide a copy of the Assets register as at the time the Acquittal Report is provided to the Department.

Timetable for provision of Acquittal Report, unless otherwise agreed in writing between the Department and the Participant, noting that an Acquittal Report is only required for the year/s funding is received.

Report	Reporting period	Due date
2020-21 Acquittal Report	Commencement of Project Period to 30 June 2021	30 September 2021
2021-22 Acquittal Report	1 July 2021 to end of the Project Period.	30 September 2022 or three (3) months after the end of the Project Period]

5.3 Final Report (clause 15.4)

The Final Report must include:

- (a) a comprehensive report on actual performance against the Milestones, the Guidelines and the Aim of the Project and Program Objectives, including whether the Aim of the Project and Program Objectives were achieved and, if not, why not;
- (b) certificate of occupancy;
- (c) a certificate provided by a person authorised by the Participant, confirming that the Specialist Service Provider has commenced delivery of the Specialist Services in accordance with Item 4.2 of Schedule 1, including that those Personnel delivering Specialist Services comply the requirements set out in clauses 11.2 and 11.3 of this Agreement .

Timetable for provision of the Final Report, unless otherwise agreed in writing between the Department and the Participant

Report	Reporting period	Due date
Final Report	Duration of the Project Period	Within 30 days of the Participant achieving Practical Completion.

5.4 Designated Use Report (clause 15.5)

Each Designated Use Report must:

- (a) be provided by the Chief Executive Officer of the Participant (or equivalent);
- (b) describe the way in which the Works have been used in the reporting period, including evidence of compliance with clause 10.1, 10.3 and 11 of this Agreement;
- (c) confirm whether or not the Property and the Works have been used for the Designated Use in the reporting period; and
- (d) include a statement of how many women and children were housed in a safe place in the reporting period due to the Works.

Report	Reporting period	Due date
Designated Use Report	Commencement of Designated Use Period – 30 June 2023 and each financial year thereafter for the duration of the Designated Use Period	15 August annually from the commencement of the Designated Use Period

6. Funds and Milestones (clauses 4, 12 and 13)

6.1 Funds

Maximum amount of Funds: The maximum amount of Funds payable by the Department under this Agreement will be **[insert amount]** (exclusive of GST).

6.2 Milestone Schedule

The proportion of the Funds specified in respect of each Milestone in the Milestone Schedule will be paid to the Participant in accordance with the Milestone Schedule within 30 days of the Participant achieving the Milestone to the satisfaction of the Department and after receipt by the Department of a correctly rendered invoice and any Reports required under clause 15 of this Agreement. The Department may revise the Milestone Schedule by notice to the Participant.

6.3 Invoice requirements (clause 12.2)

A correctly rendered invoice is one that:

- (a) identifies the name of the Project;
- (b) sets out the name of the Funding Arrangement Manager;
- (c) contains a claim for the amount of the Funds properly required; and
- (d) is a tax invoice.

6.4 Other Contributions

[Note to Applicants: The below table will be populated based on a successful applicant's grant application.]

Contributor	Nature of Contribution	Amount (GST exclusive)	Timing
[insert name of entity providing the Other Contribution (this may be the Participant)]	[insert description of contribution, e.g., cash, access to equipment, secondment of personnel etc]	[\$[insert]]	[insert date or Milestone to which the Other Contribution relates]

7. Contact Officer and address (clauses 1.1 and 17)

7.1 Funding Arrangement Manager

The Funding Arrangement Manager is available at the following address:

Community Grants Hub
GPO Box 9820
Hobart TAS 7001

and available on the following telephone number and email address:

Phone: 1800 044 584 (Choose Option 2 for Capital Grants team)

Email: capital@dss.gov.au

7.2 Participant Contact Officer

The Participant Contact Officer is the person occupying the position of [insert]. This position is currently occupied by [insert] available at the following address:

[insert] and available on the following telephone number and email address:

Phone: [insert]

Email: [insert]

8. Specified Personnel Positions (clause 4.3)

The Specified Personnel Positions are as set out in the Project Plan.

9. Insurance (clause 22)

9.1 On execution of this Agreement:

- (a) To the extent required by Law, workers compensation insurance in respect of the Participant's liability for any loss or claim by a person employed or otherwise engaged, or deemed to be employed or otherwise engaged, by the Participant in connection with the Project; and
- (b) Public liability policy covering legal liability (including liability assumed under contract) for loss or damage to property or injury or death to persons arising out of or in connection with carrying out the Works, for the sum of twenty million dollars (\$20,000,000) per claim, or per occurrence giving rise to a claim.

9.2 On acquisition of an interest in the Property or execution of this Agreement (as applicable):

- (a) If the Property is not owned by the Participant, property damage insurance for the full reinstatement value of all fixtures, structures, improvements, fittings, plant, equipment, vehicles and other articles in or on the area leased or licensed to the Participant and which are the property of the Participant including any Asset; and
- (b) If the Property is owned by the Participant, building insurance (including plate glass) for its full reinstatement or replacement value (including architects, surveyors and other professional fees, the cost of debris removal, demolition, site clearance, any works that may be required by any Law and incidental expenses) at the time of loss or damage, against loss or damage from fire, lightning, flood, storm and tempest, earthquake, water damage (including sprinkler leakage and rain water), explosion or concussion from explosion, impact by vehicles or aircraft or articles dropped from aircraft, riots, strikes, civil commotion, malicious damage, terrorism, radiation and fusion and such other risks (present or future) against which a building owner would ordinarily insure.

9.3 On commencement of the Works:

- (a) Contract works policy covering loss or damage to the Works and any temporary work including materials stored off site or in transit, for the full reinstatement and replacement cost of the Works including:
 - (i) the full amount of the cost to the Participant to construct the Works (**Works Cost**);
 - (ii) an amount reasonably providing for additional costs of demolition and of removal of debris (to be not less than 10% of the Works Cost);
 - (iii) a further amount reasonably sufficient for consultants' fees (to be not less than 5% of the Works Cost); and
 - (iv) an amount providing for escalation costs incurred including those costs as may be incurred (during any period of reinstatement or replacement) during the period up to the date of achievement of Practical Completion,and the Participant must ensure that the policy specified in this Item 9.3 of Schedule 1 notes the interest of the Department;
- (b) Products liability policy covering legal liability (including liability assumed under contract) for loss or damage to property or injury or death to persons arising out of or in connection with carrying out the Works, for the sum of twenty million dollars (\$20,000,000) per claim, or per occurrence giving rise to a claim;
- (c) If asbestos decontamination work is required as part of the Works, an asbestos liability policy in respect of the risks associated with asbestos decontamination work, for the sum of twenty million dollars (\$20,000,000) per claim, or per occurrence giving rise to a claim;
- (d) Professional indemnity insurance, covering liability for any act, error or omission arising out of or in any way connected with the design elements of the Project. The professional indemnity insurance policy must have a limit of indemnity for an amount of not less than one million dollars (\$1,000,000) per claim, or occurrence giving rise to claim. The policy must:

- (i) cover claims under the *Competition and Consumer Act 2010* (Cth) (including Schedule 2 - The Australian Consumer Law) and any similar legislation in any other State or Territory; and
 - (ii) include at least one (1) automatic right of reinstatement of the sum insured; and
- (e) The Participant must ensure that each professional Participant identified in the table below, holds a professional indemnity policy in the amount specified in respect of that professional Participant in the table below, to cover its liability for breach of professional duty (if applicable) arising out of any negligence, whether in relation to errors in design, documentation, supervision or other professional duties. Such cover must extend to liability for personal injury, illness or death of anyone in connection with the provision of professional services or as a result of breach of professional duty:

Professional Participant	Professional indemnity coverage
Architect	\$10 million
Builder	\$20 million
Fire Services	\$2 million
Electrical	\$10 million
Hydraulic	\$5 million
Civil	\$10 million
Mechanical	\$10 million
Building Code of Australia	\$5 million

9.4 On commencement of the Designated Use Period:

- (a) To the extent required by Law, workers compensation insurance in respect of the Participant's liability for any loss or claim by a person employed or otherwise engaged, or deemed to be employed or otherwise engaged, by the Participant in connection with the Project;
- (a) Public liability policy covering legal liability (including liability assumed under contract) for loss or damage to property or injury or death to persons arising out of or in connection with carrying out the Works, for the sum of twenty million dollars (\$20,000,000) per claim, or per occurrence giving rise to a claim;
- (b) Where the Property is not owned by the Participant, property damage insurance for the full reinstatement value of all fixtures, structures, improvements, fittings, plant, equipment, vehicles and other articles in or on the area leased or licensed to the Participant and which are the property of the Participant including any Asset; and
- (c) Where the Property is owned by the Participant, building insurance (including plate glass) for its full reinstatement or replacement value (including architects, surveyors and other professional fees, the cost of debris removal, demolition, site clearance, any works that may be required by any Law and incidental expenses) at the time of loss or damage, against loss or damage from fire, lightning, flood, storm and tempest, earthquake, water damage (including sprinkler leakage and rain water), explosion or concussion from explosion, impact by vehicles or aircraft or articles dropped from aircraft, riots, strikes, civil commotion, malicious damage, terrorism, radiation and fusion and such other risks (present or future) against which a building owner would ordinarily insure.

10. Repayment amount (clause 10.2)

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

- (a) Within the first six years of the Designated Use Period, all Funds paid by the Department to the Participant will need to be repaid.
- (b) In the sixth year of the Designated Use Period, 90 per cent of all Funds will need to be repaid.
- (c) In the seventh year of the Designated Use Period, 80 per cent of all Funds will need to be repaid.
- (d) In the eighth year of the Designated Use Period, 70 per cent of all Funds will need to be repaid.
- (e) In the ninth year of the Designated Use Period, 60 per cent of all Funds will need to be repaid.
- (f) In the tenth year of the Designated Use Period, 50 per cent of all Funds will need to be repaid.
- (g) In the eleventh year of the Designated Use Period, 40 per cent of all Funds will need to be repaid.
- (h) In the twelfth year of the Designated Use Period, 30 per cent of all Funds will need to be repaid.
- (i) In the thirteenth year of the Designated Use Period, 20 per cent of all Funds will need to be repaid.
- (j) In the fourteenth year of the Designated Use Period, 10 per cent of all Funds will need to be repaid.
- (k) Following expiry of the Designated Use Period, none of the Funds need to be repaid

11. Acknowledgement and copies of publications (clause 28)

The Participant must acknowledge the Department's contribution in all written forms of communication, in the following form:

'This project received grant funding from the Australian Government.'

12. Notices (clause 35)

12.1 Department

Director – Community Grants Hub

Department of Social Services

71 Athllon Drive, Greenway, ACT, 2900

GPO Box 9820, Canberra, ACT, 2601

Phone: 1800 044 584 (Choose Option 2 for Capital Grants team)

Email: capital@dss.gov.au

12.2 Participant

[insert]

[insert entity name]

[insert address]

Phone: **[insert]**

Email: **[insert]**

Schedule 2 – Milestone Schedule

Note to Applicants: The below Milestones are indicative only. To be further developed during negotiations as between the Department and successful applicants.

Milestone	Milestone description and requirements for achievements of Milestone	Date for completion of Milestone	Amount of Funds payable on achievement of Milestone
1.	<p>The Department has received to its satisfaction, on terms acceptable to the Department:</p> <ul style="list-style-type: none"> • A Draft Project Plan and Budget in accordance with clause 3.1; • Delivery of the Project Documentation in accordance with clause 3.5 of this Agreement and Item 2.4 of Schedule 1; • [Certificate of title for the Property/a copy of the lease agreement for the Property;] [Note to Applicants: Required as part of this Milestone where clause 7 does not apply. Where clause 7 applies, this deliverable will be moved to a later Milestone.] • [Where the Funds are \$1 million or more and an interest in the Property has been acquired by the Participant as at the Date of this Agreement, a restricted covenant relating to the use of the Property, duly executed and in registrable form.] [Note to Applicants: Required as part of this Milestone where clause 7 does not apply. Where clause 7 applies, this deliverable will be moved to a later Milestone.] • [Where the Funds are \$1 million or more, an interest in the Property has been acquired by the Participant as at the Date of this Agreement, and the Funds are 50 per cent or more of the anticipated total Project costs: [Note to Applicants: Required as part of this Milestone where clause 7 does not apply. Where clause 7 applies, this deliverable will be moved to a later Milestone.] <ul style="list-style-type: none"> • a restricted covenant relating to the use of the Property; and • a first registered mortgage over the Participant's interest in the Property, each duly executed and in registrable form.] • If relevant, written confirmation that the Participant has complied, to the Department's satisfaction, with any 	Date of this Agreement	5 per cent

Milestone	Milestone description and requirements for achievements of Milestone	Date for completion of Milestone	Amount of Funds payable on achievement of Milestone	
	<p>conditions on the Department's approval of the Participant's acquisition of an interest in the Property given in accordance with clause 7.4(b) of this Agreement.</p>			
2.	<p>Evidence acceptable to the Department that the following has been achieved:</p> <ul style="list-style-type: none"> • Confirmation that all relevant Contractors are compliant with the Building Code and accredited under the Australian Government Building and Construction WHS Accreditation Scheme (if required); and • 20 per cent of the Project is completed and certified by the Project Manager or an independent quantity surveyor. 	[insert]	15 per cent	
3.	<p>Evidence acceptable to the Department that the following has been achieved:</p> <ul style="list-style-type: none"> • Confirmation that all relevant Contractors are compliant with the Building Code and accredited under the Australian Government Building and Construction WHS Accreditation Scheme (if required); and • 60 per cent of the project is completed and certified by the Project Manager or an independent quantity surveyor. 	[insert]	50 per cent	
4.	<p>Evidence acceptable to the Department that Practical Completion of the Project has been achieved.</p> <p>Letter from an authorised officer of the Participant stating that the Works are suitable for the Designated Use.</p>	[insert]	30 per cent	
Total				\$(insert)

Schedule 3 – Payment Certificate Template

Commonwealth of Australia

STATUTORY DECLARATION

Statutory Declarations Act 1959

1. Insert the name, address and occupation of person making the declaration

I,¹

make the following declaration under the *Statutory Declarations Act 1959* as required by the Capital Works Funding Agreement for the Safe Places Emergency Accommodation program _____ 2019 between **[insert entity name] (Participant)** and the Commonwealth of Australia represented by the Department of Social Services (**Department**) (**Funding Agreement**).
2. Set out matter declared to in numbered paragraphs

2

 1. All work the Participant has paid for using the funds payable by the Department under the Funding Agreement and any interest earned on those funds (**Funds**) was properly required for the 'Project' as it is defined in the Funding Agreement; and
 2. The amounts of each payment the Participant has made using the Funds represent the reasonable price for the value of the work carried out or to be carried out in light of the price for similar work undertaken in the relevant industry marketplace.
 3. No 'Conflicts' (as defined in the Funding Agreement) arose in the Participant making payments for work using the Funds that the Participant did not, or has not, declared to the Department; and
 4. No 'Conflicts' (as defined in the Funding Agreement) arose in the Participant entering into any Contracts (as they are defined under [clause 5.3] of the Funding Agreement).
 5. All Funds that the Participant has spent have been used for the purpose for which they were provided.
 6. To the best of my information, knowledge and belief, the Participant has complied with all material terms and conditions of the Funding Agreement.

I understand that a person who intentionally makes a false statement in a statutory declaration is guilty of an offence under section 11 of the *Statutory Declarations Act 1959*, and I believe that the statements in this declaration are true in every particular.
3. Signature of person making the declaration

3

Full name of person making declaration:
4. Place

Declared at ⁴ on ⁵ of ⁶

1. Insert the name, address and occupation of person making the declaration I,¹
make the following declaration under the *Statutory Declarations Act 1959* as required by the Capital Works Funding Agreement for the Safe Places Emergency Accommodation program _____ 2019 between **[insert entity name] (Participant)** and the Commonwealth of Australia represented by the Department of Social Services (**Department**) (**Funding Agreement**).
5. Day Before me,
6. Month and year
7. Signature of person before whom the declaration is made (*see over*) 7
8. Full name, qualification and address of person before whom the declaration is made (*in printed letters*) 8

Note 1 A person who intentionally makes a false statement in a statutory declaration is guilty of an offence, the punishment for which is imprisonment for a term of 4 years – see section 11 of the *Statutory Declarations Act 1959*.

Note 2 Chapter 2 of the *Criminal Code* applies to all offences against the *Statutory Declarations Act 1959* – see section 5A of the *Statutory Declarations Act 1959*.

A statutory declaration under the *Statutory Declarations Act 1959* may be made before:

1. a person who is currently licensed or registered under a law to practise in one of the following occupations:

Architect	Chiropractor	Dentist
Financial adviser	Financial Planner	Legal practitioner
Medical practitioner	Midwife	Migration agent registered under Division 3 of Part 3 of the <i>Migration Act 1958</i>
Nurse	Occupational therapist	Optometrist
Patent attorney	Pharmacist	Physiotherapist
Psychologist	Trade marks attorney	Veterinary surgeon
2. a person who is enrolled on the roll of the Supreme Court of a State or Territory, or the High Court of Australia, as a legal practitioner (however described); or
3. a person who is in the following list:
 - Agent of the Australian Postal Corporation who is in charge of an office supplying postal services to the public
 - Australian Consular Officer or Australian Diplomatic Officer (within the meaning of the *Consular Fees Act 1955*)

- Bailiff
- Bank officer with 5 or more continuous years of service
- Building society officer with 5 or more years of continuous service
- Chief executive officer of a Commonwealth court
- Clerk of a court
- Commissioner for Affidavits
- Commissioner for Declarations
- Credit union officer with 5 or more years of continuous service
- Employee of the Australian Trade and Investment Commission who is:
 - (a) in a country or place outside Australia; and
 - (b) authorised under paragraph 3 (d) of the Consular Fees Act 1955; and
 - (c) exercising the employee's function at that place
- Employee of the Commonwealth who is:
 - (a) at a place outside Australia; and
 - (b) authorised under paragraph 3 (c) of the Consular Fees Act 1955; and
 - (c) exercising the employee's function at that place
- Fellow of the National Tax Accountants' Association
- Finance company officer with 5 or more years of continuous service
- Holder of a statutory office not specified in another item in this list
- Judge of a court
- Justice of the Peace
- Magistrate
- Marriage celebrant registered under Subdivision C of Division 1 of Part IV of the *Marriage Act 1961*
- Master of a court
- Member of Chartered Secretaries Australia
- Member of Engineers Australia, other than at the grade of student
- Member of the Australasian Institute of Mining and Metallurgy
- Member of the Australian Defence Force who is:
 - (a) an officer
 - (b) a non-commissioned officer within the meaning of the Defence Force Discipline Act 1982 with 5 or more years of continuous service
 - (c) a warrant officer within the meaning of that Act
- Member of:
 - (a) the Parliament of the Commonwealth
 - (b) the Parliament of a State
 - (c) a Territory legislature
 - (d) a local government authority of a State or Territory
- Minister of religion registered under Subdivision A of Division 1 of Part IV of the *Marriage Act 1961*
- Notary public
- Permanent employee of the Australian Postal Corporation with 5 or more years of continuous service who is employed in an office providing postal services to the public
- Permanent employee of:
 - (a) the Commonwealth or a Commonwealth authority
 - (b) a State or Territory or a State or Territory authority
 - (c) a local government authority
 with 5 or more years of continuous service who is not specified in another item of this list
- Person before whom a statutory declaration may be made under the law of the State or Territory in which the declaration is made
- Police officer
- Registrar, or Deputy Registrar, of a court
- Senior Executive Service employee of:

- (a) the Commonwealth or a Commonwealth authority
- (b) a State or Territory or a State or Territory authority
- Sheriff
- Sheriff's officer
- Teacher employed on a full-time at a school or tertiary education institution

draft

Schedule 4 – Notice of Change

[insert entity name]

[insert address]

[if applicable, insert email or other address details]

Dear [Name of Participant Contact Officer]

Notice of Change in relation to Capital Works Funding Agreement – Safe Places Emergency Accommodation

The Commonwealth of Australia, represented by the Department of Social Services has a Capital Works Funding Agreement with [insert entity name] (the **Participant**) under the Safe Places Emergency Accommodation program, dated [insert date the Agreement was executed] (the **Agreement**).

This Notice of Change is to advise the Participant of [enter details of what is being altered e.g. a correction to date for submission of the Final Report 1 January to 30 June 2018 which was previously noted as due on 30 September 2017 but should read 30 September 2018; indexation amounts; change in bank details].

This is a legally binding change that does not vary the Participant's existing obligations under the Agreement, and, in accordance with clause 35.3 of the Agreement, does not require a formally executed variation.

The Department and the Participant agree that the only change/s effected by this Notice of Change are those specified within.

If you have any questions, please contact [Contact Name] on [Contact phone number] or by email [contact email address].

Yours sincerely,

[Signature of Delegate]

[Delegate Name]

[Delegate Position]

Department of Social Services

[Date]

Attachment A – Project Plan

[Note to Applicants: The Project Plan approved by the Department will be inserted prior to execution of the Agreement with successful applicants.]

draft

Attachment B – Project Budget

[Note to Applicants: The Project Budget approved by the Department will be inserted prior to execution of the Agreement with successful applicants.]

draft

Signing page

EXECUTED as an agreement.

Signed for and on behalf of the
**Commonwealth of Australia as
represented by the Department of Social
Services** by an authorised officer:

Signature of authorised officer ←

Name of authorised officer (print)

Date

Witness ←

Name of witness (print)

**Executed by [insert entity name]
ACN [insert]** in accordance with Section 127 of
the *Corporations Act 2001* (Cth):

Signature of director

Name of director (print)

Date

Signature of director/company secretary
(Please delete as applicable)

Name of director/company secretary
(Print)