

AGREEMENT

between

COMMONWEALTH OF AUSTRALIA

as represented by the Department of Sustainability, Environment,
Water, Population and Communities
ABN 34 190 894 983

and

INSERT NAME OF ORGANISATION

ABN **insert number**

October 2011 Version

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draft

This Agreement is made on

between

COMMONWEALTH OF AUSTRALIA, as represented by the Department of Sustainability, Environment, Water, Population and Communities ABN 34 190 894 983 (**the Commonwealth**)

and

[INSERT NAME OF ORGANISATION]

ABN **[insert number]** (**the Organisation**)

RECITALS

- A. The Commonwealth is undertaking the Building Better Regional Cities Program (**Program**) to relieve pressure on major cities and to help Australia grow sustainably.
- B. The Program's objective is to invest in local infrastructure projects that support an increase in the number of homes for sale and rent that are affordable for working families on ordinary incomes, in communities that are experiencing positive jobs and population growth that need more homes to be built.
- C. The funding delivered via the Program is to be used for the development of infrastructure including:
 - (a) connecting or trunk infrastructure such as water and sewerage headworks, upgrades or extensions to drains and sewers (including the augmentation or replacement of existing infrastructure, where this is needed to support infill or greenfield housing developments), and connecting roads and bridges; and
 - (b) community infrastructure such as parklands and open space; pedestrian and cycle paths; community centres, and recreation facilities.
- D. The Organisation is committed to helping to achieve the Program Objectives and the Project Aim through the conduct of the Project.
- E. The Organisation has been approved to receive funding from the Commonwealth to carry out the Project on the terms and conditions set out in this Agreement. In particular, the Commonwealth is providing the Funds to the Organisation to assist with **[Description to be inserted based on response by Organisation]**.
- F. In consideration of the Commonwealth providing the Funds to the Organisation, the Organisation has agreed to perform the Project in accordance with the terms and conditions of this Agreement.
- G. The Parties have relied on GSTR2011/2 in determining that no GST is payable in connection with this Agreement.

OPERATIVE PROVISIONS

1. Definitions and interpretation

1.1 Definitions

In this Agreement, unless the contrary intention appears:

Accounting Standards has the same meaning as it has in sections 9 and 334 of the *Corporations Act 2001* (Cth), and refers to the accounting standards made by the Australian Accounting Standards Board;

Agreement means this document and includes any Schedules or annexures;

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 that is:

- (a) a company auditor under the *Corporations Act 2001* (Cth) or a member of the Institute of Chartered Accountants in Australia, CPA Australia, or the National Institute of Accountants;
- (b) acting in a professional capacity as an auditor; and
- (c) not a principal, officer or employee of the Organisation;

Asset means:

- (a) the items identified in Item 7 (if any); and
- (b) any item of tangible property purchased or leased either wholly or in part with the use of the Funds with a value at the time of acquisition of five thousand dollars (\$5,000) or more, excluding GST,

but does not include the Works;

Audit means an audit carried out by the Approved Auditor in accordance with the Auditing Standards;

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;

Auditor's Report has the same meaning it has in the Auditing Standards;

Auditing Standards has the same meaning as it has in sections 9 and 336 of the *Corporations Act 2001* (Cth), and refers to the auditing standards made by the Australian Auditing and Assurance Standards Board;

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

BCII Act means the *Building and Construction Industry Improvement Act 2005* (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;

Code means the *National Code of Practice for the Construction Industry 1997*. The Code can be downloaded from deewr.gov.au/building;

Committed means expected expenditure backed by an agreement;

Commonwealth Material means any Material:

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

Commonwealth Project Contact means the Commonwealth person or position holder specified in Item 8;

Completion Date means the date specified in Item 3.3;

Confidential Information means information of, or provided by, the Commonwealth that:

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

but does not include information which:

- (a) is or becomes public knowledge, other than by breach of this Agreement or by any other unlawful means;
- (b) is in the possession of the Organisation without restriction in relation to disclosure before the date of receipt from the Commonwealth; or
- (c) has been independently developed or acquired by the receiving Party;

Conflict means any circumstance in which the Organisation or any of the Organisation's officers, employees, agents or subcontractors has an interest (whether financial or non-financial) or an affiliation that is affecting, will affect, or could be perceived to affect, the Organisation's ability to perform the Project, or its obligations under this Agreement, fairly and independently;

Date for Practical Completion means the date specified in Item 3.2 by which the Organisation must achieve Practical Completion of the Works or a specific part of the Works;

Date of this Agreement means the date this Agreement is executed by the Parties and, if executed on separate days, the date on which this Agreement is executed by the last Party to do so;

Department means the Commonwealth Department of Sustainability, Environment, Water, Population and Communities or such other department or agency as may be responsible from time to time for the administration of this Agreement;

Depreciation has the same meaning as it has in Australian Accounting Standard AASB 116 *Property, Plant and Equipment* (as amended);

Designated Use means the designated use specified in Item 1.5;

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;

Financial Report means a financial report relating to the Organisation's receipt, retention and expenditure of the Funds including, at a minimum:

- (a) a balance sheet, an income statement and a cash flow statement in relation to the Funds;
- (b) a statement identifying any Funds paid by the Commonwealth to the Organisation under this Agreement that were not spent or Committed by the end of the relevant financial year during the Term of this Agreement;
- (c) a detailed statement of revenue and expenditure in relation to the Funds received and receivable by the Organisation under this Agreement, which must include a definitive statement as to whether the Organisation's financial accounts in relation to the Funds are complete and accurate, and a statement of the balance of the bank account referred to in clause 9; and
- (d) notes, comprising a summary of significant accounting policies and other explanatory notes that are relevant to the Funds,

prepared in accordance with the Accounting Standards for the relevant financial year and audited by an Approved Auditor;

Freedom of Information Commissioner means the office of that name 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;

Funds means the amount payable by the Commonwealth under this Agreement;

Implementation Guidelines means the Australian Government Implementation Guidelines for the National Code of Practice for the Construction Industry August 2009. The Implementation Guidelines can be downloaded from deewr.gov.au/building;

Information Commissioner means the office of that name 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;

Infrastructure Works means the works described as the Infrastructure Works in Item 1.2;

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

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;

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

Milestone means a milestone set out in the Milestone Schedule;

Milestone Schedule means the milestone schedule set out in the table in Item 4.2;

Minister means the Commonwealth minister from time to time responsible for the Department;

Minister for Education, Employment and Workplace Relations means the Commonwealth minister from time to time responsible for the Commonwealth Department of Education, Employment and Workplace Relations or such other department or agency as may be responsible from time to time for the administration of the Code and the Implementation Guidelines;

Moral Rights has the meaning given under the *Copyright Act 1968* (Cth);

OHS Accreditation Scheme means the OHS accreditation scheme established under section 35 of the BCII Act and the *Building and Construction Industry Improvement (Accreditation Scheme) Regulations 2005*;

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;

Organisation Project Contact means the Organisation person or position holder specified in Item 8;

Party means a party to this Agreement;

Personal Information means information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about a natural person whose identity is apparent, or can reasonably be ascertained, from the information or opinion;

Practical Completion occurs when the requirements of clause 4.9 have been met;

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

Privacy Commissioner means the office of that name 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;

Program means the program referred to in Recitals A and B of this Agreement;

Program Objectives means the program objectives described in Item 1.1 and as set out in the Building Better Regional Cities Program Guidelines (as amended from time to time) as published by the Department;

Project means the project described in Item 1.2 and includes carrying out the Works;

Project Aim means the intended impact or result of the Project, including the objectives and outcomes of the Project, as specified in Item 1.3;

Project Budget means the budget attached at Annexure B of this Agreement detailing how the Organisation will expend the Funds, and identifying the Organisation's contributions and other contributions (if any) to the Project and the proposed expenditure of such amounts for the purposes of conducting the Project and otherwise performing obligations under this Agreement as amended from time to time in accordance with clauses 3.1(c) and 26.5;

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 Organisation under or in connection with this Agreement or otherwise relating to the Project or the Works, including those documents identified in Item 1.4;

Project Event means any promotional event conducted by the Organisation relating to the Project, including celebration of funding, all openings, ceremonies or other public events to mark the completion of any aspect of the Works or the Project and all other openings, ceremonies or public events which are related to the development of the infrastructure constructed as part of the Project;

Project Manager means an independent, suitably qualified project manager engaged by the Organisation to supervise the Works or a specific part of the Works who is not a principal, an employee or an officer of the Organisation;

Project Material means all Material including Reports:

- (a) brought into existence for the purpose 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);

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

Project Plan means the project plan attached at Annexure A of this Agreement detailing how the Organisation will conduct and complete the Project in accordance with this Agreement, including timeframes for completion of various stages of the Project as amended from time to time in accordance with clauses 3.1(c) and 26.5;

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, the Project, the Property or the Designated Use;

Property means the property on which the Works are to be undertaken that is detailed in Item 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;

Recitals means the recitals set out on page 1 of this Agreement;

Reports means the reports that the Organisation is required to produce and provide to the Commonwealth in accordance with clause 11.3;

Residential Works means the works described as the Residential Works in Item 1.2;

Schedule means a schedule to this Agreement;

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

Specified Personnel means a person occupying a Specified Personnel Position;

Specified Personnel Position means a position identified in Item 9;

Term of this Agreement has the meaning given in clause 2; and

Works means that part of the Project which relates to the design, construction, and related activities at the Property including the Infrastructure Works and the Residential Works, as contemplated by the Project Plan and also as described in Item 1.2.

1.2 Interpretation

In this Agreement, unless the contrary intention appears:

(a) headings are for convenience only and do not affect interpretation;

- (b) person includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (c) a reference to a Party includes that Party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or an additional trustee;
- (d) a reference to a document (including this Agreement) is to that document as varied, novated, ratified or replaced from time to time;
- (e) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (f) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (g) a reference to a clause, exhibit, attachment or annexure is a reference to a clause, exhibit, attachment or annexure to or of this Agreement;
- (h) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (i) **includes** in any form is not a word of limitation;
- (j) a reference to **\$** or **dollar** is to Australian currency; and
- (k) no provision of this Agreement is to be interpreted to the disadvantage of a Party because that Party (or its representative) drafted that provision.

2. Term of the Agreement

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 Project Budget and Project Plan

- (a) The Organisation warrants that the Project Plan and Project Budget have been prepared diligently, effectively and to a high professional standard and are consistent with the Project Aim.
- (b) The Organisation must ensure that the Project Plan and Project Budget will, if implemented in accordance with this Agreement, ensure that all timeframes arising under this Agreement are met and that the Works will meet all requirements of this Agreement and, in particular, will be fit for the Designated Use.

- (c) Subject to clause 3.1(d), the Organisation must perform the Project in accordance with the Project Plan and the Project Budget and must not make any amendments to the Project Plan or the Project Budget unless approved in writing by the Commonwealth.
- (d) The Organisation may transfer the Funds between categories of expenditure items within the Project Budget, without the consent of the Commonwealth, provided that such transfer does not exceed:
 - (i) 10% of the relevant expenditure item specified in the Project Budget for a financial year from which the amount of Funds is being transferred; or
 - (ii) \$50,000, if the amount in clause 3.1(d)(i) is greater than \$50,000.
- (e) For the avoidance of doubt, the Commonwealth's approval of any amendment to the Project Plan and the Project Budget do not in any way limit or affect the Organisation's obligations under this Agreement.
- (f) To the extent of any inconsistency between:
 - (i) the Project Plan and this Agreement (including the Milestone Schedule); or
 - (ii) the Project Budget and this Agreement (including the Milestone Schedule),
 this Agreement (including the Milestone Schedule) will prevail.

3.2 Design of the Works

The Organisation is responsible for ensuring that the design of the Works:

- (a) is conducted with the level of skill and care of a prudent and competent design professional;
- (b) complies with the regulatory requirements of the relevant State or Territory and local government in the jurisdiction in which the Works are to be conducted;
- (c) will ensure that the Works are fit for the purpose of the Designated Use on and from the Date for Practical Completion; and
- (d) will, where relevant, ensure that a Certificate of Occupancy will be issued in respect of the Works on their completion.

3.3 Project Documents

- (a) The Organisation must develop, prepare and maintain copies of all documents necessary to complete the Works in accordance with this Agreement, including all documents that would be prepared by a prudent and competent design professional, in order to ensure the Works are, on completion, fit for use for the Designated Use.

- (b) The Organisation must deliver the Project Documents identified in Item 1.4 to the Commonwealth no later than the date specified in the Milestone Schedule.
- (c) Without limiting or affecting the Organisation's obligations under this Agreement, the Organisation must make copies of the Project Documents available to the Commonwealth for inspection and audit in accordance with clause 13.

3.4 Approvals

- (a) The Organisation must, or must ensure that, all Approvals for:
 - (i) the construction of the Works; and
 - (ii) the use of the Works for the Designated Use,are obtained in accordance with this Agreement and the Organisation must deliver a copy of each Approval to the Commonwealth promptly on request.
- (b) If the Organisation has not complied with clause 3.4(a) within the timeframes specified in the Milestone Schedule, the Commonwealth may in its absolute discretion terminate this Agreement for default in accordance with clause 17.1.

4. Conduct of the Project

4.1 Obligation to perform the Project

In consideration of the provision of the Funds, the Organisation must:

- (a) perform the Project in accordance with the terms and conditions set out in this Agreement;
- (b) complete each of the Milestones identified in Item 4.2 (by achieving the criteria for completion of the relevant Milestone specified in the Milestone Schedule, if any) on or before the relevant date for completion of that Milestone specified in the Milestone Schedule, with time being of the essence; and
- (c) ensure that all work undertaken under this Agreement is consistent with, and in furtherance of, the Program Objectives and the Project Aim.

4.2 Consortium arrangements

- (a) If the Organisation proposes to undertake the Project in conjunction with or in partnership with one or more other entities (**Consortium Members**), the Organisation must within 20 Business Days of the Date of this Agreement by written notice to the Commonwealth:
 - (i) provide details in relation to each of the Consortium Members including the full legal name, Australian Business Number (ABN), Australian Company Number (ACN) and principal place of business; and

- (ii) confirm that the Organisation has entered into binding legal arrangements with each of the Consortium Members.
- (b) If the details of the Consortium Members have not been inserted at Item 14 at the Date of this Agreement, the Organisation authorises the Commonwealth to insert the details of the Consortium Members at Item 14 after the Date of this Agreement in accordance with the details specified in the notice provided by the Organisation pursuant to clause 4.2(a).
- (c) The Organisation must not undertake this Project in conjunction with or in partnership with any entity other than the Consortium Members identified by the Organisation pursuant to clause 4.2(a) and listed at Item 14, without the Commonwealth's prior written consent.
- (d) The Organisation warrants that as and from the date that it enters into binding legal arrangements with each of the Consortium Members and for the remainder of the Term of this Agreement that:
 - (i) the legal arrangements in place between the Organisation and the Consortium Members enable the full performance of this Agreement by the Organisation and do not limit or otherwise affect the Organisation's ability to perform its obligations under this Agreement; and
 - (ii) each of the Consortium Members is financially viable and has the requisite expertise to enable the Organisation to perform the Project.
- (e) If the Organisation does not comply with clause 4.2(a), the Commonwealth:
 - (i) is not obliged to pay any Funds to the Organisation;
 - (ii) if Funds have been paid to the Organisation, the Organisation is not entitled to spend those Funds and the Organisation must repay all Funds paid to it to the Commonwealth; and
 - (iii) the Commonwealth may terminate this Agreement in accordance with clause 17.1(e).
- (f) The Organisation's entry into arrangements with Consortium Members will not:
 - (i) relieve the Organisation from, or alter or affect the Organisation's liabilities or responsibilities whether under this Agreement or otherwise; or
 - (ii) prejudice the Commonwealth's rights against the Organisation whether under this Agreement or otherwise.

4.3 Performance of the Works

- (a) The Organisation must:

- (i) if specified in Item 9, appoint in accordance with clause 4.4 a Project Manager to supervise the Works or a specific part of 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 or a specific part of the Works and the Project more generally; 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 the requirements and standards of all Laws applicable to the Works;
 - D. diligently, effectively and to a high professional standard; and
 - E. so as to ensure that the Works will be fit for purpose of the Designated Use.
- (b) For the avoidance of doubt, to the extent of any inconsistency between the timeframes (if any) specified in the Project Plan and the timeframes specified in Items 3 and 4.2, the timeframes specified in Items 3 and 4.2 will prevail.

4.4 Specified Personnel Positions

The Organisation 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 Commonwealth of the identity and qualifications of each person appointed to a Specified Personnel Position;
- (c) where requested to do so by the Commonwealth, promptly (and in all cases in the period (if any) required by the Commonwealth) replace a person occupying a Specified Personnel Position in circumstances where the Commonwealth considers it necessary to do so in order for the Organisation to properly comply with its obligations under this Agreement;
- (d) where a person ceases to perform a Specified Personnel Position for any reason, promptly notify the Commonwealth 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
- (e) promptly after appointment, notify the Commonwealth of the identity and qualifications of any person appointed to fill a vacant Specified Personnel Position.

4.5 Commencement of the Works

- (a) Without limiting the Organisation's obligations under clause 4.5(b), the Organisation must not commence the Works (or a specific part of the Works) or allow the Works (or a specific part of the Works) to commence until:
- (i) all relevant Approvals required under clause 3.4 that are necessary to enable the commencement of the Works (or a specific part of the Works) have been obtained;
 - (ii) all insurances required under clause 20.1(a) have been obtained; and
 - (iii) the Organisation has complied with its obligations pursuant to clauses 6.1 and 6.2,

and it has obtained written confirmation from the Commonwealth (which will not be unreasonably withheld) that the Commonwealth is satisfied that the Organisation has complied with the requirements set out in clauses 4.5(a)(i) to 4.5(a)(iii) (inclusive) above.

- (b) The Organisation must:
- (i) obtain written confirmation from the Commonwealth under clause 4.5(a); and
 - (ii) commence the Works,
- on or before the date specified for the commencement of the Works (or the relevant part of the Works) in Item 3.1, with time being of the essence.

4.6 Contracting and Subcontracting

- (a) The Organisation must, promptly on request by the Commonwealth, provide details in writing of all contractors or subcontractors that will be used or that are proposed to be used, in relation to the conduct of the Project whether appointed by the Organisation or otherwise.
- (b) The Organisation must not enter into a contract or subcontract under this Agreement if more than \$50,000 of the Funds will be applied under that contract or subcontract, unless the Organisation has obtained the Commonwealth's prior written approval.
- (c) In respect of all contracts and subcontracts the Organisation must ensure that:
- (i) the contract or subcontract facilitates compliance by the Organisation with its obligations under this Agreement;
 - (ii) the contract or subcontract will not conflict with or detract from the rights and entitlements of the Commonwealth under this Agreement;

- (iii) the other party to the contract or subcontract is financially viable, has the necessary relevant expertise and the appropriate types and amounts of insurance to perform the work in relation to the Project;
 - (iv) the contract or subcontract contains all the relevant terms of this Agreement including those relating to subcontracting, intellectual property, audit and access, privacy, security, confidentiality, warranties and indemnities, disclosure and termination and in particular that the Organisation has or will secure itself a right to terminate the subcontract on terms no less favourable than those accorded to the Commonwealth by clause 17, in the event of this Agreement being terminated; and
 - (v) the other party to the contract or subcontract acknowledges that it may be considered a 'Commonwealth service provider' for the purposes of the *Ombudsman Act 1976* (Cth) and subject to investigation by the Ombudsman under that Act, and that the Commonwealth will not be liable for the cost of any such investigation by the Ombudsman in connection with the subject matter of the subcontract or the subject matter of this Agreement.
- (d) The Organisation must not enter into a contract or subcontract under this Agreement with a contractor or subcontractor that is currently not complying with the *Equal Opportunity for Women in the Workplace Act 1999* (Cth).
- (e) If the Commonwealth notifies the Organisation that a contractor or subcontractor is:
- (i) failing to perform any aspect of the Infrastructure Works in accordance with the requirements of this Agreement or any Laws; or
 - (ii) not, in the Commonwealth's reasonable opinion, an appropriate person or entity to be performing any aspect of the Infrastructure Works,
- the Organisation must as soon as practicable cease using that contractor or subcontractor to perform the Infrastructure Works unless the Commonwealth directs that the contractor or subcontractor be removed immediately in which case the Organisation must comply with the direction.
- (f) If requested, the Organisation must promptly provide to the Commonwealth a copy of any contract or subcontract.

4.7 Inspection of Works

- (a) At all reasonable times during the construction of the Works upon giving notice of at least one Business Day and subject to the Organisation's reasonable requirements in relation to safety and security the Commonwealth or persons authorised by the Commonwealth may enter the Property to inspect the Works.

- (b) Despite the Commonwealth's right to inspect the construction of the Works:
 - (i) the Commonwealth is not obliged to check the construction of the Works for any defect, fault or omission; and
 - (ii) the Organisation is not relieved of responsibility for any defect, fault or omission in respect of the Works.

4.8 Variations to the Works

- (a) The Organisation must notify the Commonwealth in writing of all proposed variations to the Works that would or might reasonably be expected to have an effect on:
 - (i) the price of the Infrastructure Works;
 - (ii) the timeframes for completion of the Works, including the Date for Practical Completion;
 - (iii) the fitness of the Works for the purpose of the Designated Use;
 - (iv) the accuracy of the Project Plan;
 - (v) the accuracy of the Project Budget;
 - (vi) the scope of the Works; or
 - (vii) the Approvals obtained in relation to the Works.
- (b) If the Works must be varied to obtain any Approval, the Organisation must:
 - (i) notify the Commonwealth in writing of those variations (giving evidence of any variations required by a Proper Authority) and seek the Commonwealth's approval to those variations; and
 - (ii) ensure that the Works are not progressed unless and until the Commonwealth has granted its approval.

The Commonwealth will not withhold its approval under this clause provided that, in the Commonwealth's opinion, the variation required to obtain the Approval will not adversely affect the Project, the Works, the Project Aim or the use of the Works for the Designated Use.

- (c) In relation to any variation other than as described in clause 4.8(b), the Organisation must not vary the Works in a manner described in clause 4.8(a) without the consent in writing of the Commonwealth, which may be withheld at the Commonwealth's discretion.
- (d) The Commonwealth will be deemed to have provided its consent to any variation if the Commonwealth has not responded to the Organisation's notice within 10 Business Days after the Commonwealth, in writing, acknowledges receipt of that notice. For the avoidance of doubt the Commonwealth is not required to make a decision as to whether it will provide consent within this 10 Business

Day period and may, in its response to the Organisation, require further time to make a decision.

- (e) If the Commonwealth requires, the Organisation must provide to the Commonwealth any information in relation to proposed variations in such format as may be specified by the Commonwealth in writing from time to time.

4.9 Practical Completion of the Works

In order to achieve Practical Completion in respect of the Works or a specific part of the Works:

- (a) the Works (or the specific part of the Works) must be:
 - (i) complete and free from errors, omissions and defects, except for errors, omissions or defects that:
 - A. are of a minor nature;
 - B. the immediate making good of which by the Organisation is not reasonably practicable;
 - C. the existence of which or the making good of which by the Organisation will not significantly inconvenience users of the Property or the Works for the Designated Use; and
 - D. which do not cause any legal or physical impediment to the use and occupation of the Property and the Works for the Designated Use; and
 - (ii) fit for the purpose of the Designated Use;
- (b) where relevant, the Organisation must have provided to the Commonwealth a copy of the Certificate of Occupancy in respect of the Works and, if applicable, each separate aspect of the Works; and
- (c) the Organisation must obtain from:
 - (i) its authorised representative; and
 - (ii) a suitably qualified and independent person engaged for the purposes of inspecting the Works (or the specific part of the Works) on their completion and determining whether, in the professional opinion of that person, the Works (or the specific part of the Works) meet the requirements set out in clauses 4.9(a)(i) and 4.9(a)(ii),

written certification that the Works (or the specific part of the Works) meet the requirements set out in clauses 4.9(a)(i) and 4.9(a)(ii), and provide each such written certification to the Commonwealth.

4.10 Date for Practical Completion

The Organisation must achieve Practical Completion of the Works (or the relevant part of the Works (if any)) on or before the relevant Date for Practical Completion, with time being of the essence.

4.11 Defects after Practical Completion

The Organisation must promptly rectify any defects, faults or omissions in the Works or ensure that such defects, faults or omissions in the Works are promptly rectified which:

- (a) are the exceptions referred to in clause 4.9(a)(i); or
- (b) otherwise become apparent after the Date for 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.

5. Assumption of risks for the Works

5.1 Responsibility for the Project

The Organisation 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 Commonwealth or any third party in the performance of the Project;
- (b) payment of the Funds made to the Organisation on account of the Project;
- (c) arrangement that the Organisation has entered into with a Consortium Member; or
- (d) contracting or subcontracting of all or any part of the Works or the Project.

5.2 Acceptance of risk

The Organisation accepts all risks in respect of, and the Commonwealth does not accept any risk for, the conduct of the Works and the Project 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.

6. The Property

6.1 Ownership of the Property

- (a) If the Organisation is not the owner of the Property or any part of the Property on which the Works are to be performed, the Organisation represents and warrants to the Commonwealth that, as at the date of this Agreement, the Organisation has executed a legally binding

agreement with the registered owner of the Property (or the relevant part of the Property) that allows the Organisation to fully comply with its obligations under this Agreement.

- (b) The Organisation acknowledges and agrees that the Commonwealth has relied, and will continue to rely, on the Organisation's representation and warranty in clause 6.1(a) in entering into this Agreement and in providing the Funding to the Organisation for the purposes of performing the Project, and to achieve the Project Aim and the Program Objectives.
- (c) If the Commonwealth requires, the Organisation must provide the Commonwealth with a copy of all legally binding agreements that it has entered into with the registered owner of the Property (or any part of the Property). Despite any clause to the contrary, the Commonwealth is not required to pay to the Organisation any part of the Funds if it is not satisfied that the terms and conditions of the legally binding agreement with the owner of the Property allows the Organisation to fully comply with its obligations under this Agreement.
- (d) For the avoidance of doubt, the Commonwealth's review of the arrangements between the Organisation and the owner of the Property and the payment of any part of the Funds does not in any way limit or affect the Organisation's obligations under this Agreement.

6.2 Performing the Project

- (a) The Organisation must perform the Project, including carrying out the Works, on the Property.
- (b) If the Organisation proposes to perform the Project on part only of the Property, the Organisation must identify the relevant part of the Property on which the Project is to be performed on or before the Date of this Agreement or within such other time as the Commonwealth may allow.
- (c) The Property must be suitable for the Designated Use. Where the Organisation proposes to perform the Project on part only of the Property, the relevant part of the Property must be suitable for the Designated Use and approved by the Commonwealth for the purposes of the Project.

6.3 The Property

The Organisation must promptly provide to the Commonwealth from time to time upon request:

- (a) details of the ownership of the Property including a title search of the Property identifying the registered proprietors of the Property; and
- (b) any other information the Commonwealth reasonably requires in relation to the Property.

6.4 Assignment of agreement or Disposal of Property

The Organisation must ensure that any legally binding agreement with the registered owner of the Property has a legal obligation not to:

- (a) assign its rights under the legally binding agreement with the Organisation; or
- (b) grant or Dispose of any interest in the Property, or any part of the Property other than in accordance with the Project Plan,

without requiring the assignee, purchaser, transferee, lessee, licensee, mortgagee, chargee or other disponent, to enter into a deed of covenant with the Organisation, under which the assignee, purchaser, transferee, lessee, licensee, mortgagee, chargee or other disponent covenants in favour of the Organisation to comply with the obligations of the owner of the Property with whom the Organisation has a legally binding agreement.

6.5 No encumbrances

- (a) Subject to clause 6.5(c), where the Organisation is the owner of the Property, the Organisation must not create or grant, or enter into any agreement to create or grant, any restrictive covenants, restrictions on users, easements, encumbrances, interests, mortgages, caveats, leases or rights affecting the Property or the Organisation's interest in the Property after the Date of this Agreement, without the Organisation first obtaining the written consent of the Commonwealth.
- (b) Subject to clause 6.5(c), where the Organisation is not the owner of the Property, the Organisation must ensure that the owner of the Property does not create or grant, or enter into any agreement to create or grant, any restrictive covenants, restrictions on users, easements, encumbrances, interests, mortgages, caveats, leases or rights affecting the Property that could adversely impact on the delivery , of the Project without first obtaining the written consent of the Commonwealth which will not be unreasonably withheld.
- (c) The Organisation is not required to obtain the consent of the Commonwealth where the restrictive covenants, restriction on users, easements, encumbrances, interests, mortgages, caveats, leases or rights affecting the Property or the Organisation's interest in the Property are granted in accordance with the Project Plan or otherwise do not adversely affect the ability of the Organisation to comply with its obligations under this Agreement.

7. Creation of Affordable Housing

7.1 Minimum amount to create affordable housing

The Organisation must ensure that the minimum amount specified in Item 4.3 is used in the manner specified in the Special Conditions at Item 10 to create affordable housing.

7.2 Repayment Amount

The Organisation acknowledges and agrees that if the Organisation does not comply with clause 7.1 by 30 June 2016, then the Commonwealth may, at any time after 30 June 2016 (until clause 7.1 has been satisfied) by written notice to the Organisation, require that an amount be repaid to the Commonwealth calculated in accordance with Item 11. The Organisation must pay to the Commonwealth the amount set out in the notice, within 20 Business Days of the date of the Commonwealth's notice or within such other period specified in the notice. If the Organisation fails to make payment within the required period, the Commonwealth may recover the amount specified in its notice as a debt due from the Organisation.

7.3 Organisation's acknowledgement

The Organisation acknowledges and agrees that:

- (a) the amounts payable by the Organisation under clause 7.2 represent a genuine and reasonable pre-estimate of the loss to the Commonwealth; and
- (b) the Organisation releases the Commonwealth from all claims arising out of or in connection with the Commonwealth's rights under clause 7.2.

8. The Funding

8.1 Payment of the Funds

- (a) Subject to Parliamentary appropriation and to the provisions of this Agreement, the Commonwealth agrees to pay to the Organisation the Funds specified in Item 4.1 in accordance with Item 4.2.
- (b) Notwithstanding any other clause of this Agreement:
 - (i) the Commonwealth may, at its absolute discretion defer, reduce or not make a payment of Funds; and
 - (ii) the Organisation is not entitled to receive, and the Commonwealth is not obliged to pay, any amount under this Agreement,

if at any time:
 - (iii) the Commonwealth has insufficient Program funding available at the time the payment is due to the Organisation;
 - (iv) the Commonwealth has become entitled to terminate this Agreement under clause 17.1;
 - (v) the Commonwealth forms the opinion on reasonable grounds that the full payment is not properly required by the Organisation to carry out the Project or because of Project surpluses or underspends;

- (vi) before the commencement of the Works, the Organisation has not complied, to the reasonable satisfaction of the Commonwealth, with its obligations to take out the insurances required by clause 20.1(a) or has not entered into an agreement with the Owner of the Property in accordance with clause 6.1 that is satisfactory to the Commonwealth; or
 - (vii) the Organisation has not complied with any provision of this Agreement which provides that the Organisation will not be entitled to spend or receive any Funds until that obligation has been complied with.
- (c) Notwithstanding any other clause of this Agreement, if the Organisation has received any Funds, the Organisation is not entitled to spend those Funds if the Commonwealth has notified the Organisation that one or more of the circumstances specified in clauses 8.1(b)(iii) to 8.1(b)(vii) (inclusive) applies.

8.2 Use of the Funds

- (a) Funds provided under this Agreement:
- (i) subject to clause 8.2(b), must only be used for the purposes of carrying out the Project and performing this Agreement;
 - (ii) must not be used to cover the cost of any Works carried out prior to the execution of this Agreement;
 - (iii) are not to be applied towards administrative and other general costs of the Organisation unless any such costs are approved in writing by the Commonwealth or expressly included in the Project Budget; and
 - (iv) must not, unless the prior written approval of the Commonwealth has been obtained, be used in a manner which is inconsistent with the Project Budget.
- (b) The Organisation acknowledges and agrees that the Funds may only be used for the purposes of the Infrastructure Works and that nothing in this Agreement should be construed as authorising the use of the Funds for any other purpose including for the purpose of the Residential Works.

8.3 Not to be used as security

- (a) The Organisation must not without the prior written consent of the Commonwealth use any of the following as any form of security for the purpose of obtaining or complying with any form of loan, credit, payment or other interest, or for the preparation of, or in the course of any litigation:
- (i) the Funds;
 - (ii) this Agreement or any of the Commonwealth's obligations under this Agreement; or

- (iii) any Assets or Intellectual Property Rights in Agreement Material.
- (b) This clause 8.3 does not prevent the Organisation:
 - (i) providing a copy of this Agreement to a prospective financier; or
 - (ii) indicating to prospective financiers that the Commonwealth has agreed to provide the funding set out in Schedule 1 for the purposes of the Project.

8.4 Amounts of Funds

The funding to be contributed by the Commonwealth in relation to the Project will not exceed the maximum amount of Funds specified in Item 4.1. The Commonwealth accepts no liability for:

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

8.5 Sufficiency of amounts

The Organisation warrants that the Funds, together with all other contributions made or received by the Organisation in relation to the Infrastructure Works, will be sufficient to ensure the due and proper completion of the Infrastructure Works and the Organisation's obligations under this Agreement. The Organisation must also ensure that any entity with whom the Organisation enters into an agreement to perform any aspect of the Works not funded by the Commonwealth has the capacity to complete the Works as required by this Agreement.

9. Management of Funds

The Organisation must:

- (a) maintain with a Bank a bank account which is controlled solely by the Organisation to hold all Funds under this Agreement;
- (b) immediately deposit all Funds received into that bank account and notify the Commonwealth Project Contact of the identifying details of that bank account;
- (c) ensure that the bank account does not, at any time during the Term of this Agreement, contain any monies other than the Funds and any interest earned on the Funds;
- (d) The Organisation must use and deal with any interest earned on the Funds as if the money earned were part of the Funds; and

- (e) every 6 months, commencing 3 months after the Date of this Agreement, until Practical Completion, provide to the Commonwealth a statement of the balance of the Funds in the bank account.

10. Other Contributions

The Organisation must:

- (a) promptly notify the Commonwealth in writing of the amount and source of any funding or other contributions for the Project (other than Funds provided under this Agreement);
- (b) if requested by the Commonwealth, promptly provide to the Commonwealth copies of any written arrangements entered into, or proposed to be entered into, in respect of such other funding or contributions that are not subject to any preconditions capable of preventing the relevant funding or other contribution being provided to the Organisation;
- (c) ensure that the terms on which any other funding or contributions are provided to the Organisation 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 Organisation's ability to comply strictly with its obligations, or the Commonwealth's ability to exercise its rights, under this Agreement; and
- (d) promptly notify the Commonwealth if the total value of the Organisation's contributions or other contributions reduces, or if such a reduction is anticipated.

11. Records, Reports and Acquittals

11.1 Records and accounts

The Organisation must:

- (a) keep comprehensive and accurate accounts and records of its use of the Funds, that can be separately identified from other accounts and records of the Organisation; and
- (b) retain the accounts and records referred to in this clause 11 for the Term of this Agreement and a further period of 7 years from the expiry or termination of this Agreement or such longer period as may be required by Law.

11.2 Organisation must keep records

The Organisation must keep comprehensive written records of the conduct of the Project including progress against the Milestones and the achievements of the Project Aim and Program Objectives.

11.3 Provision of records to the Commonwealth

The Organisation 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 Commonwealth; and
- (b) provide all reports (including Reports), information and other material to the Commonwealth in accordance with the timeframes specified in this Agreement and otherwise promptly upon demand.

11.4 Financial records

The Organisation 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 Organisation's accounts;
- (b) the preparation of a Financial Report; and
- (c) the Audit of these records.

11.5 Reports

Without limiting the Organisation's other obligations under this Agreement, the Organisation must provide to the Commonwealth the Reports specified in Item 12 and Item 13:

- (a) at the times specified in Item 12 and Item 13 of respectively; and
- (b) in the format (if any) and including the content specified in Item 12 and Item 13 respectively, or in such other format specified by the Commonwealth in writing from time to time.

11.6 Additional Reports

In addition to clause 11.5 the Commonwealth may at any time, and from time to time, during the Term of this Agreement, require the Organisation to provide reports and other information in addition to the reports required under clause 11.5(a) (**Additional Reports**). Where the Commonwealth requires an Additional Report, it will issue a direction in writing to the Organisation requiring an Additional Report to be provided and specifying the Commonwealth's requirements in relation to the:

- (a) format;
- (b) content;
- (c) information and substantiating documentation to be submitted; and
- (d) auditing or certification (if any),

for that Additional Report. The Organisation must comply with a direction of the Commonwealth under this clause 11.6 by submitting the requested Additional Report which complies with all requirement of the Commonwealth as set out in its direction, within 5 Business Days of receiving the Commonwealth's direction or within such longer period (if any) as the Commonwealth may allow.

11.7 Audits

The Organisation must prepare a Financial Report at the end of each financial year in which the Organisation has received, expended or retained Funds pursuant to this Agreement. The Organisation must engage an Approved Auditor to Audit the Financial Reports of the Organisation and to prepare an Auditor's Report.

11.8 Acquittals

Within 60 Business Days of:

- (a) the end of each financial year in which the Organisation has received, expended or retained Funds pursuant to this Agreement; and
- (b) if requested by the Commonwealth:
 - (i) the date on which the Organisation has completed the Infrastructure Works; or
 - (ii) the earlier termination of this Agreement;

the Organisation must provide to the Commonwealth:

- (c) a certificate signed by a representative of the Organisation with the authority to make representations on behalf of the Organisation stating whether:
 - (i) the Funds have been used for the purpose for which they were provided; and
 - (ii) all terms and conditions of the Agreement were complied with; and
- (d) the Auditor's Report on the Financial Reports; and
- (e) the Financial Reports referred to in clause 11.7.

11.9 Participation in evaluations and analysis of the Project

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

- (a) attendance at relevant conferences and forums in which evaluations and analysis are being undertaken;
- (b) allowing third parties access to the Property to undertake analysis and evaluation of the Program and the Project; and
- (c) making reports (including Reports), records and other information available to third parties for the purposes of evaluation and analysis.

12. Liaison

12.1 Commonwealth's Project Contact

The Organisation must liaise with and report to the Commonwealth's Project Contact in relation to the Project, and as reasonably required by the Commonwealth's Project Contact for the purposes of this Agreement.

12.2 Provision of information

Upon request, the Organisation must within the timeframe stipulated in the request, or promptly if no timeframe is stipulated in the request, provide all information, in relation to the Project or the Organisation, as requested by the Commonwealth Project Contact for the purposes of this Agreement, including for monitoring and evaluation purposes.

13. Access to premises and records

13.1 Access to records and Materials

The Organisation acknowledges and agrees that the Commonwealth and any persons nominated by the Commonwealth may, at reasonable times and on giving reasonable notice to the Organisation:

- (a) access and inspect the Organisation's premises to the extent relevant to the performance of this Agreement;
- (b) access and inspect the Property and the Works. If the Organisation does not own the Property it must ensure that the Commonwealth is permitted to access and inspect the Property and the Works;
- (c) access and inspect any Assets, wherever they may be located;
- (d) require the Organisation (including its officers, employees, agents and subcontractors) to provide records, Project Documents and information relevant to the performance of this Agreement in a data format and storage medium accessible by the Commonwealth;
- (e) inspect and copy documentation, books and records, however stored, in the custody or under the control of the Organisation (including its officers, employees, agents and subcontractors) relevant to the performance of this Agreement; and
- (f) require assistance in respect of any inquiry into or concerning the Works, the Project, the Program or this Agreement. For the purpose of this clause 13.1(f), an inquiry includes any administrative or statutory review, audit or investigation (whether within or external to the Commonwealth), any request for information directed to the Commonwealth, any judicial or quasi-judicial inquiry, and any inquiry conducted by Parliament or any Parliamentary committee.

The Organisation must promptly comply with all requirements of the Commonwealth under this clause 13.1.

13.2 Access to hardware and software

The Organisation must provide the Commonwealth (including its nominees, officers, employees and agents) with access to the Organisation's computer hardware and software to the extent necessary for the Commonwealth to exercise its rights under clause 13.1, and must provide the Commonwealth with any reasonable assistance requested by it to use that hardware and software.

13.3 Costs

- (a) Subject to clause 13.3(b), each Party must bear its own costs of any inspections, reviews, audits and inquiries conducted pursuant to this clause 13.
- (b) If an audit, inspection, review or inquiry conducted pursuant to this clause 13 identifies a breach by the Organisation of this Agreement, the Commonwealth may recover its costs of conducting that inspection, review, audit or inquiry as a debt due from the Organisation.

13.4 Auditor-General, Ombudsman and Commissioners

Without limiting clause 13.1, the Commonwealth's rights under clauses 13.1 and 13.2 apply equally to the Auditor-General, the Ombudsman, the Information Commissioner, the Privacy Commissioner, the Freedom of Information Commissioner or their delegates, for the purpose of each performing their functions or activities (as the case may be).

13.5 Application of this clause

This clause 13 applies for the duration of the Term of this Agreement and for a period of 7 years from the termination or expiry of this Agreement.

13.6 Subcontracts

The Organisation must ensure that any subcontract entered into for the purposes of this Agreement contains a clause granting the Commonwealth access rights on terms equivalent to clauses 13.1 to 13.5 (inclusive).

14. Project Material and Intellectual Property

14.1 Ownership rights in Project Material

All rights in relation to Intellectual Property comprised in the Project Material created by the Organisation will vest, upon creation, in the Organisation.

14.2 Licensing of rights in Reports

The Organisation grants, and must ensure all third parties holding rights in relation to Intellectual Property comprised in Reports grant, to the Commonwealth a perpetual, irrevocable, royalty-free, worldwide, non-exclusive licence (including a right of sub-license) to use, reproduce, modify, adapt, communicate, publish, broadcast and exploit the Reports for Commonwealth purposes.

14.3 Licensing of rights in other Project Material

The Organisation grants, and must ensure all third parties holding rights in relation to Intellectual Property comprised in Project Material (other than the Reports) grant, to the Commonwealth a perpetual, irrevocable, royalty-free, worldwide, non-exclusive licence (including a right of sub-license) to use, reproduce, modify, adapt, communicate, publish and broadcast the Project Material (other than the Reports) for the purposes of the Project, the Program or for other purposes connected with the operation of this Agreement.

14.4 Project Material

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

14.5 Intellectual Property warranty

The Organisation warrants that anything done by the Organisation in the course of the Project, including in developing the Reports, will not infringe the Intellectual Property and Moral Rights of any person. The Organisation further warrants that the Commonwealth or its sublicensees will not, at any time, be infringing the Intellectual Property and Moral Rights of any person when undertaking an activity allowed for under this Agreement or using Project Material in a manner consistent with the licences granted, or to be granted, to the Commonwealth under this clause 14.

14.6 Commonwealth Material

Intellectual Property rights and title to, or in relation to, Commonwealth Material remains vested at all times in the Commonwealth. The Commonwealth grants the Organisation a royalty-free, world-wide, non-exclusive licence (including a right of sub-license to sub-license subcontractors) to use, reproduce and modify the Commonwealth Material for the purposes of the Project. The Organisation must ensure that all Commonwealth Material is used strictly in accordance with any conditions or restrictions specified by the Commonwealth from time to time.

14.7 Moral Rights

- (a) To the extent permitted by law, the Organisation must, unless otherwise agreed by the Commonwealth in writing, ensure that each person who:
- (i) has been involved in the performance of the Project; and
 - (ii) is or will be the author of any Project Material (including the Reports) that is to be licensed to the Commonwealth in accordance with this clause 14,

provides a written consent to the Commonwealth permitting the Commonwealth (including its officers, employees and other persons through it) to conduct any act which would otherwise infringe the Moral Rights held by that person.

- (b) The consent provided under clause 14.7(a) must be consistent with the Commonwealth being able to conduct any act it is licensed to conduct under this Agreement.

15. Acknowledgement and Publications

- (a) The Organisation must acknowledge the financial and other support it has received from the Commonwealth:
 - (i) in all publications, promotional and advertising materials, public announcements, signs or plaques displayed at the Property;
 - (ii) in all activities by it or on its behalf in relation to the Project;
 - (iii) if requested by the Commonwealth, with any products, processes or inventions developed as a result of the Project;
 - (iv) at, and by inviting representatives of the Commonwealth (including the Minister) to any Project Event;
 - (v) in respect of publications, promotional and advertising materials, public announcements (including media releases), signs or plaques in a form approved by the Commonwealth prior to its use; and
 - (vi) otherwise at the times and in the manner as the Commonwealth directs from time to time.
- (b) The Organisation must submit any documentation containing the required acknowledgment under clause 15(c) to the Commonwealth 2 Business Days prior to publication or announcement of the event specified in clause 15(a). If the Commonwealth requires amendments to the proposed form of document the Organisation must make the required amendment before allowing the document to be published.
- (c) The Organisation must
 - (i) invite the representatives of the Commonwealth (including the Minister) to all Project Events;
 - (ii) ensure that the Commonwealth representatives (including the Minister) receive at least 2 months notice of any Project Event;
 - (iii) propose at least three dates for each Project Event and ensure that the date for each Project Event is convenient for the Commonwealth representatives (including the Minister);
 - (iv) ensure that Project Events are not scheduled on Parliamentary sitting days; and
 - (v) ensure that the official proceedings in each Project Event allows for the Minister (or a delegate) to speak.

- (d) Once any arrangement has been confirmed in relation to clause 15(c), the arrangements and dates for the Project Event cannot be changed without the consent of the Commonwealth.
- (e) The Organisation must, if requested to do so by the Commonwealth, organise a Project Event in accordance with the requirements of the Commonwealth.

16. Assets

16.1 Purchasing of Assets

The Organisation must not use Funds towards the purchase of Assets unless the Asset is identified in the Project Budget.

16.2 Use of Assets

The Organisation 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 Commonwealth which will not be unreasonably withheld.

16.3 Obligations in relation to Assets

The Organisation must:

- (a) not Dispose of any Asset, or deal with any Asset other than in accordance with this Agreement, without having obtained the prior written approval of the Commonwealth which will not be unreasonably withheld;
- (b) maintain all Assets in good working order;
- (c) be fully responsible for, and bear all risks arising in relation to, the use or Disposal of any Asset;
- (d) maintain a register of all Assets, recording the date of purchase or lease, the purchase or lease price, Asset description, Asset location, the proportion of the Funds used to create or acquire the Asset, the carrying amount of the Asset and (where approved under clause 16.3(a)) details of Disposals of the Asset, including the sale price; and
- (e) as and when requested, provide copies of the register of Assets to the Commonwealth.

16.4 Disposal of Assets

The Organisation must obtain the prior written approval from the Commonwealth before Disposing of an Asset. If, at the time of the Disposal, the Asset has not been fully Depreciated the Organisation must, at the option of the Commonwealth:

- (a) pay to the Commonwealth 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 Commonwealth within 20 Business Days of the date of the Disposal, the proceeds of the Disposal, less an amount equal to the sum of the Organisation's proportionate contribution to the purchase price of the Asset and the Organisation's reasonable costs of Disposal of the Asset; or
- (c) use the amount payable to the Commonwealth under clause 16.4(a) or (b) (as the case may be) for a purpose (as is determined by the Commonwealth), and in accordance with conditions, approved in writing by the Commonwealth.

16.5 Interest

If the Organisation fails to make a payment or use the amount as required by clause 16.4(a), (b) or (c) (as the case may be):

- (a) the Organisation must pay the Commonwealth Interest on the relevant amount from the date it was due, for the period it remains unpaid; and
- (b) the relevant amount, and Interest owed under this clause 16.5(a) will be recoverable by the Commonwealth as a debt due from the Organisation.

17. Suspension and termination

17.1 Termination

If:

- (a) the Organisation fails to comply with any timeframe under this Agreement which is stated to be of the essence;
- (b) the Organisation fails to remedy its failure to comply with any term or condition of this Agreement within 10 Business Days of receiving a notice (or such longer period as the Commonwealth may at its sole and unfettered discretion specify in the notice) from the Commonwealth requiring the Organisation to do so;
- (c) the Commonwealth is satisfied on reasonable grounds that any statement, representation or warranty made by the Organisation is incorrect or incomplete in a way which would have affected the original decision to approve the Funds for the Project;
- (d) the Commonwealth is satisfied on reasonable grounds that a report (including a Report) given by the Organisation is significantly misleading, or substantially incomplete or inaccurate;
- (e) the Organisation fails to comply with clause 4.2(a);
- (f) the Organisation:
 - (i) becomes or is likely to become insolvent;
 - (ii) makes an assignment of its estate for the benefit of creditors or enters into any arrangement or composition with its creditors or

has a receiver, manager or administrator appointed on behalf of debenture holders or creditors; or

- (iii) suffers any execution against its assets which has or will have an adverse effect on its ability to perform the Agreement;
- (g) the Organisation breaches any term or condition of any other funding agreement between the Organisation and the Commonwealth;
- (h) the Organisation, by notice in writing given to the Commonwealth, withdraws from this Agreement; or
- (i) the Commonwealth considers it appropriate for any other reason,

the Commonwealth may by written notice to the Organisation, require the Organisation to immediately suspend dealings with the Funds (in whole or in part), or terminate this Agreement in its entirety (or both as the case may be).

17.2 Potential Default

- (a) For the purposes of this clause '**Potential Default**' means any event, thing or circumstance which likely would:
 - (i) give rise to a right of termination pursuant to clause 17.1 (other than pursuant to clause 17.1(i)) with the giving of notice or the passage of time; or
 - (ii) result in the Organisation not being able to achieve a Milestone within the timeframe specified in accordance with the Milestone Schedule.
- (b) The Organisation must notify the Commonwealth immediately upon becoming aware of a Potential Default and must include the following information in its notice to the Commonwealth:
 - (i) the nature of and reason for the Potential Default;
 - (ii) how the Organisation proposes to rectify the Potential Default;
 - (iii) the date on which the Organisation proposes that the Potential Default will be rectified; and
 - (iv) any expected impact that the Potential Default may have on the Project Budget.
- (c) If the Commonwealth becomes aware of a Potential Default either through the receipt of notice from the Organisation under clause 17.2(b) or by any other means, the Commonwealth may provide the Organisation with a written notice setting out the nature of the Potential Default (**Notice of Potential Default**) and any requirements the Commonwealth has in relation to the rectification of the Potential Default.
- (d) On receipt of a Notice of Potential Default the Organisation must remedy the Potential Default or, where the Potential Default is not capable of being remedied, prepare a plan for the Commonwealth's

approval of the actions that the Organisation proposes to take to deal with the Potential Default (**Potential Default Plan**).

- (e) If the Commonwealth is not satisfied with the Potential Default Plan or the Organisation subsequently fails to comply with the Potential Default Plan the Commonwealth may by written notice to the Organisation, require the Organisation to immediately suspend dealings with the Funds (in whole or in part), or terminate this Agreement in its entirety (or both as the case may be).
- (f) At any time while a Potential Default subsists, the Commonwealth may appoint insolvency practitioners or other experts (**Investigating Experts**), to investigate and report on the affairs and financial position of the Organisation and the Organisation:
 - (i) authorises, and agrees to give all reasonable assistance to, the Investigating Experts to undertake the investigation, and must pay the Investigating Experts' costs on demand by the Commonwealth; and
 - (ii) authorises the disclosure to the Commonwealth and its advisers of all information and documentation in connection with the investigation by the Investigating Experts.
- (g) No action taken by the Commonwealth pursuant to this clause 17.2 will:
 - (i) relieve the Organisation from, or alter or affect, the Organisation's liabilities or responsibilities whether under the Agreement or otherwise according to law; or
 - (ii) prejudice the Commonwealth's rights against the Organisation whether under this Agreement or otherwise according to law.

17.3 Liability of the Commonwealth

- (a) If this Agreement is terminated in accordance with clause 17.1(i), the Commonwealth will only be liable for any reasonable costs (excluding, without limitation, loss of prospective income or profits) unavoidably and properly incurred by the Organisation prior to the date of termination, which are directly attributable to the termination.
- (b) Without limiting any other right the Commonwealth may have under this Agreement, any Law or in equity, including rights to recover the Funds, the Commonwealth will not be liable to pay any amount in excess of the amount of Funds remaining unpaid under this Agreement as at the date of termination.
- (c) Except as provided in this clause 17.3, the Commonwealth will not be liable to the Organisation in any way for termination of this Agreement in accordance with clause 17.1 or clause 17.2.

17.4 Dealing with Funds on termination

- (a) On termination of this Agreement, or for the duration of any suspension of dealings with the Funds, the Organisation must only

deal with the Funds in accordance with the directions of the Commonwealth and must cease all other dealings with the Funds. The directions of the Commonwealth may be given at any time after the termination or during any period of suspension. If the Commonwealth does not provide any directions the Organisation must not deal with the Funds.

- (b) The Commonwealth may end the suspension of dealings with the Funds by written notice to the Organisation, subject to such preconditions (including variations to this Agreement) which the Commonwealth may require.
- (c) The Commonwealth will not be obliged to pay any part of the Funds to the Organisation during any period of suspension of dealings with the Funds or, subject to clause 17.3, after the termination of this Agreement.

17.5 Deemed termination for convenience

If a purported termination for cause by the Commonwealth under any of clauses 17.1(a) to 17.1(h) (inclusive) or 17.2 is determined by a competent authority not to be properly a termination for cause, then that termination by the Commonwealth will be deemed to be a termination for convenience under clause 17.1(i), which termination has effect from the date of the notice of termination referred to in clause 17.1, and the Organisation's sole rights in such circumstances will be only those set out in clause 17.3.

18. Repayment of Funds

18.1 Repayment of Funds

If:

- (a) on expiry or on any earlier termination of this Agreement, any or all of the Funds:
 - (i) have not been spent or Committed in accordance with this Agreement; or
 - (ii) cannot, by reconciliation between the accounts and records maintained by the Organisation and the Project Budget, be shown to the reasonable satisfaction of the Commonwealth to have been spent or Committed in accordance with this Agreement; or
- (b) at any time the Commonwealth forms the reasonable opinion that any Funds have been used, spent or Committed by the Organisation other than in accordance with this Agreement;

the Commonwealth may by written notice to the Organisation:

- (c) require the Organisation to repay that part of the Funds, and the Organisation must repay to the Commonwealth 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 Organisation pursuant to this Agreement or from any other amounts payable to the Organisation under any other agreement with the Commonwealth; or
- (e) require the Organisation to use all or part of those Funds as the Commonwealth in its sole and unfettered discretion sees fit.

18.2 Failure to provide Reports

If the Organisation fails to provide a Report in accordance with clause 11.5 of this Agreement within the required timeframe or within any further timeframe permitted by the Commonwealth, the Commonwealth may by written notice to the Organisation at its discretion:

- (a) require the Organisation to repay the full amount of the last payment paid to the Organisation by the Commonwealth pursuant to this Agreement, and the Organisation must repay to the Commonwealth the amount set out in the notice, within 20 Business Days of receipt of the notice; or
- (b) deduct an equivalent amount from any Funds payable to the Organisation pursuant to this Agreement or from any other amounts payable to the Organisation under any other agreement with the Commonwealth.

18.3 Failure to repay Funds

- (a) If the Organisation fails to repay the Funds in accordance with a notice issued under clause 18.1(c) or 18.2(a) or fails to use the Funds as directed under clause 18.1(e) (as the case may be):
 - (i) the Organisation must pay the Commonwealth Interest on the amount set out in the notice from the date it was due, for the period it remains unpaid; and
 - (ii) the amount set out in the notice, and Interest owed under this clause 18.3(a), will be recoverable by the Commonwealth as a debt due from the Organisation.
- (b) The Organisation acknowledges that Interest payable under clause 18.3(a)(i) represents a reasonable pre-estimate solely in respect of the loss incurred by the Commonwealth 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.

19. Indemnities

19.1 Organisation agrees to release and indemnify the Commonwealth

The Organisation releases the Commonwealth from, and indemnifies and continues to indemnify the Commonwealth against, all:

- (a) loss, damage, costs and expenses suffered or incurred by the Commonwealth, including as the result of any claim made in relation to:
 - (i) loss of or damage to third party property; or
 - (ii) the injury, illness or death of a third party;
- (b) loss of or damage to Commonwealth property; or
- (c) loss, damage, costs and expenses suffered or incurred by the Commonwealth in dealing with any claim against the Commonwealth, including legal costs and expenses on a solicitor/own client basis and the cost of time spent, resources used, or disbursements paid by the Commonwealth;

arising from:

- (d) any act or omission by the Organisation (including any of its officers, employees, agents or subcontractors) in connection with this Agreement, where there was fault on the part of the person whose conduct gave rise to that liability, loss, damage, cost or expense;
- (e) any breach by the Organisation (including any of its officers, employees, agents or subcontractors) of its obligations or warranties under this Agreement;
- (f) any use or disclosure by the Organisation (including its officers, employees, agents or subcontractors) of Personal Information or Confidential Information (or both, as the case may be) held or controlled in connection with this Agreement; or
- (g) the use by the Commonwealth of the Project Material, including the Intellectual Property and Moral Rights comprised in the Project Material.

19.2 Proportional reduction of liability

The Organisation's liability to indemnify the Commonwealth under clause 19.1 will be reduced proportionately to the extent that any fault on the part of the Commonwealth (including its officers and employees) contributed to the relevant loss, damage, expense, cost or liability.

19.3 Commonwealth's right to be indemnified is additional to other rights

The Commonwealth's right to be indemnified under clause 19.1 is in addition to, and not exclusive of, any other right, power, or remedy provided by law or in equity, but the Commonwealth is not entitled to be compensated in excess of the amount of the relevant loss, damage, expense, cost or liability.

19.4 Definition of fault

In this clause 19, **fault** means any negligent or unlawful act or omission, or wilful misconduct.

20. Insurance

20.1 Obligation to take out and maintain insurance

- (a) The Organisation must take out or have taken out for the period specified in clause 20.1(b) or 20.1(c) (as the case may be):
 - (i) on execution of this Agreement, workers compensation and public liability insurances as specified in Item 6.1; and
 - (ii) prior to commencement of the Works, all insurances as specified in Item 6.2 and all other appropriate types and amounts of insurance to cover the Organisation's activities and obligations under or in connection with this Agreement.
- (b) If the Organisation takes out a 'claims made policy', which requires all claims and any fact situation or circumstance that might result in a claim to be notified within the period of insurance, the Organisation must:
 - (i) in the case of insurance taken out as required by clause 20.1(a)(i) maintain the policy (or a policy in like terms) during the Term of this Agreement and for a period of 7 years on and from the expiry or the early termination of this Agreement; and
 - (ii) in the case of insurance taken out as required by clause 20.1(a)(ii), 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.
- (c) If the Organisation takes out an 'occurrence' policy, which requires the circumstances to which a claim relates to occur during the period of insurance whilst the notification of event can occur at any time subsequently, the Organisation must maintain the policy:
 - (i) in the case of insurance taken out pursuant to clause 20.1(a)(i) during the Term of this Agreement; and
 - (ii) in the case of insurance taken out pursuant to clause 20.1(a)(ii), during the construction of the Works until Practical Completion.
- (d) The Organisation must ensure that any contract or subcontract entered into by the Organisation in relation to this Agreement places on the contractor or subcontractor, in respect of the contractor's or subcontractor's activities, the same or similar obligations about insurances, as this clause 20 places on the Organisation.
- (e) The Organisation must ensure that any agreement entered into by the Organisation with the owner of the Property:
 - (i) places on the owner of the Property, in respect of the owner of the Property's activities; and

- (ii) requires the owner of the Property to ensure that any subcontracts entered into by the owner of the Property in relation to the performance of the Project, places on the subcontractor in respect of the subcontractor's activities,

the same or similar obligations about insurances, as this clause 20 places on the Organisation.

20.2 Copies of insurance

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

20.3 Proceeds of Insurance

If during the Term of this Agreement:

- (a) the Works or the Property (or both as the case may be) are lost, damaged or destroyed by a risk against which the Organisation 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 Commonwealth in breach of this Agreement,

then the Organisation 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 Commonwealth, reinstating the Works or the Property (or both as the case may be); or
 - (ii) otherwise, paying the Commonwealth an amount equal to:
 - A. where the loss, damage or destruction affects the entire Works, the Funds paid under this Agreement or where the insurance proceeds are less than the amount of Funds paid, the total insurance proceeds; or
 - B. where the loss, damage or destruction affects a portion of the Works, an amount equivalent to the proportion that the Funds paid under this Agreement bear to the other contributions (exclusive of GST) made to the Organisation and third parties as specified in the Project Budget.
- (e) ensure that the owner of the Property:
 - (i) obtains payment of any insurance moneys to which it is entitled under the relevant insurance policy in respect of the relevant loss, damage or destruction; and

- (ii) applies all relevant insurance proceeds in, if required by the Commonwealth or the Organisation, reinstating the Works or the Property (or both as the case may be).

21. Confidential Information

21.1 Organisation not to disclose

- (a) The Organisation must not disclose to any person other than the Commonwealth any Confidential Information without prior approval in writing from the Commonwealth.
- (b) The Commonwealth may at any time by notice or in writing to the Organisation, require the Organisation to give, and to arrange for its officers, employees, agents and subcontractors undertaking activities under or in connection with the performance of this Agreement to give, written undertakings, in a form required by the Commonwealth relating to the non-disclosure of Confidential Information. The Organisation must promptly comply with all such requirements of the Commonwealth.

21.2 Commonwealth disclosure

The Organisation acknowledges and agrees that the Commonwealth may disclose all information relevant to this Agreement that is confidential to the Organisation to any person:

- (a) to the extent required by Law or by a lawful requirement of any Proper Authority;
- (b) if required in connection with legal proceedings;
- (c) for public accountability reasons, including disclosure on request to other government agencies, and a request for information by Parliament, a Parliamentary Committee or a Commonwealth minister; or
- (d) for any other requirement of the Commonwealth relevant to the administration of this Agreement.

22. Personal Information

22.1 When does this clause apply?

This clause 22 applies only if the Organisation deals with Personal Information when it conducts the Project.

22.2 Other definitions relating to Personal Information

In this clause 22, the terms **agency** and **Information Privacy Principles** (or **IPPs**) have the same meaning as they have in section 6 of the Privacy Act, and **subcontract** has the same meaning it has in section 95B(4) of the Privacy Act.

22.3 Organisation's obligations about Personal Information

The Organisation agrees that:

- (a) if it obtains Personal Information while conducting the Project or otherwise performing its obligations under this Agreement it will use or disclose that Personal Information only for the purposes of this Agreement;
- (b) it will comply with the IPPs as if the Organisation were an agency under the Privacy Act; and
- (c) it will otherwise comply with the Privacy Act.

22.4 Subcontractors

The Organisation must ensure that any subcontract entered into by it in relation to this Agreement places the same obligations about Personal Information on the subcontractor as this clause 22 places on the Organisation.

23. Compliance with Laws and policies

23.1 Obligations

- (a) The Organisation must, in carrying out this Agreement, comply with:
 - (i) the provisions of any Law including the *Crimes Act 1914* (Cth), *Criminal Code Act 1995* (Cth), *Racial Discrimination Act 1975* (Cth), *Sex Discrimination Act 1984* (Cth), *Disability Discrimination Act 1992* (Cth), *Equal Opportunity for Women in the Workplace Act 1999* (Cth), *Age Discrimination Act 2004* (Cth), *Ombudsman Act 1976* (Cth) and *Auditor-General Act 1997* (Cth); and
 - (ii) any policies notified to the Organisation by the Commonwealth in writing.
- (b) The Organisation acknowledges that under section 137.1 of the Schedule to the *Criminal Code Act 1995* (Cth), giving false or misleading information to the Commonwealth is a serious offence.
- (c) Without limiting the effect of clause 4.4, the Organisation must comply with, and require Specified Personnel to comply with, the behaviours specified in the Code of Conduct in section 13 of the *Public Service Act 1999* (Cth).
- (d) Subject to clauses 15, 21 and 22 no right or obligation in this Agreement is to be read or understood as limiting the Organisation's rights to enter into public debate or criticism of the Commonwealth, its agencies, officers, employees or agents.

23.2 BCII Act and OHS Accreditation Scheme

- (a) The provisions of this clause 23.2 only apply if the total amount of the Funds is:

- (i) \$10 million or more; or
 - (ii) \$5 million or more and represents at least 50% of the total construction value of the Infrastructure Works,
- unless the Commonwealth otherwise specifies.
- (b) In the performance of the Infrastructure Works, the Organisation must comply, and must ensure that the Project Parties comply, with the Code and the Implementation Guidelines.
 - (c) The Organisation must ensure that:
 - (i) all requests for tender, expressions of interest, submissions and invitations to join common use arrangements in relation to the Infrastructure Works made by it or any of the Project Parties contain the commitment to apply the Code and the Implementation Guidelines set out in the model tender documents referred to in the Implementation Guidelines; and
 - (ii) all contracts entered into in relation to the Infrastructure Works by it, or any of the Project Parties, contain the commitment to apply the Code and the Guidelines as set out in the model contract clauses referred to in the Implementation Guidelines.
 - (d) The Organisation must ensure that all head contracts for building work in relation to the Infrastructure Works that are valued at three million dollars (\$3,000,000) or more are:
 - (i) notified to the Office of the Federal Safety Commissioner at the earliest possible opportunity (that is, when approaching the market); and
 - (ii) contain a requirement that the builder:
 - A. is accredited under the OHS Accreditation Scheme;
 - B. maintains the OHS Accreditation Scheme accreditation for the life of the contract; and
 - C. complies with all conditions of the OHS Accreditation Scheme.
 - (iii) For the purpose of this clause:
 - A. **building work** has the same meaning given in section 5 of the BCII Act; and
 - B. **builder** has the same meaning as given in section 35(8) of the BCII Act.
 - (e) The Organisation must maintain adequate records of compliance by it and each of the Project Parties with the Code, the Implementation Guidelines and the OHS Accreditation Scheme in relation to the Infrastructure Works.

- (f) The Organisation must permit, the Commonwealth and those authorised by the Commonwealth, including a person occupying a position in the Office of the Australian Building and Construction Commissioner full access to the premises and records of the Organisation and the Project Parties to:
- (i) inspect any work, material, machinery, appliance, article or facility;
 - (ii) inspect and copy any record relevant to the Works, the Project or this Agreement; and
 - (iii) interview any person;
- as is necessary to monitor compliance with the Code and the Implementation Guidelines.
- (g) The Organisation undertakes that it, and each of the Project Parties, will agree to a request from the Commonwealth, including a person occupying a position in the Office of the Australian Building and Construction Commissioner to produce a specified document within a specified period in person, by fax or by post.
- (h) The Commonwealth and those persons authorised by it may publish or otherwise disclose information in relation to compliance by the Organisation and the Project Parties, with the Code and the Implementation Guidelines. The Organisation must obtain the consent of the Project Parties to the publication or disclosure of information under this clause.
- (i) The Organisation must not appoint a contractor, subcontractor or consultant in relation to the Project where:
- (i) the appointment would breach a sanction imposed by the Minister for Education, Employment and Workplace Relations or;
 - (ii) the contactors, subcontractor or consultant has had a judicial decision against them relating to employee entitlements, not including decisions under appeal, and has not paid the claim.
- (j) While acknowledging that value for money is the core principle underpinning decisions on Government procurement, when assessing tenders the Organisation may preference contractors, subcontractors and consultants that have a demonstrated commitment to:
- (i) adding and/or retaining trainees and apprentices;
 - (ii) increasing the participation of women in all aspects of the industry; or
 - (iii) promoting employment and training opportunities for Indigenous Australians in regions where significant indigenous populations exist.

- (k) The Organisation must ensure that all subcontracts in respect of the Infrastructure Works impose obligations on the subcontractors equivalent to the obligations under this clause 23.2.

24. Disputes

24.1 Dispute resolution

- (a) Subject to clause 24.2, the Parties agree not to commence any legal proceedings in respect of any dispute arising under this Agreement, which has not been resolved by informal discussion, until the procedure provided by this clause 24 has been followed.
- (b) The Parties agree that any dispute arising during the course of this Agreement will be dealt with as follows:
- (i) the Party claiming that there is a dispute will send the other a written notice setting out the nature of the dispute;
 - (ii) the Parties will try to resolve the dispute through direct negotiation, including by referring the matter to persons who have the authority to intervene and direct some form of resolution; and
 - (iii) if within 30 Business Days from the date of the notice issued under clause 24.1(b)(i):
 - A. there is no resolution of the dispute;
 - B. there is no agreement on submission of the dispute to mediation or some alternative dispute resolution procedure; or
 - C. there is a submission to mediation or some other form of alternative dispute resolution procedure, but there is no resolution within 15 Business Days of the submission, or within such further extended time as the Parties may agree to extend in writing before the expiration of the 15 Business Days,then, either Party may commence legal proceedings.

24.2 When clause 24.1 does not apply

Clause 24.1 does not apply where:

- (a) either Party commences legal proceedings for urgent interlocutory relief;
- (b) action is taken by the Commonwealth under, or purportedly under, clauses 8, 13, 17 or 18; or
- (c) an authority of the Commonwealth, a State or Territory (including a Proper Authority) is investigating a breach or suspected breach of the Law by the Organisation.

24.3 Obligations continue

- (a) Despite the existence of a dispute, both Parties must continue to perform their respective obligations under this Agreement, unless directed otherwise by the Commonwealth in accordance with clause 24.3(b).
- (b) If directed and notified in writing by the Commonwealth to do so, the Organisation must cease performing the obligations of the Organisation under this Agreement which are specified in the Commonwealth's notice until the Commonwealth issues a further written notice to the Organisation directing it to resume performance of those obligations.

25. Taxes, duties and government charges

25.1 Definitions

In this clause 25, **Consideration**, **GST**, **Input Tax Credits**, **Tax Invoice** and **Taxable Supply** have the meaning given to those terms in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

25.2 Responsibility for Taxes

Subject to this clause 25, all taxes, duties and government charges (**Taxes**) imposed or levied in Australia or overseas in connection with this Agreement or the payment of the Funds must be paid by the Organisation, or as the Organisation might arrange.

25.3 Funds exclude GST

The Organisation acknowledges and agrees that any Consideration for a Taxable Supply made under this Agreement is exclusive of any GST imposed on the supply.

25.4 Input Tax Credits

- (a) Subject to clause 25.4(b), if one party (the supplier) makes a Taxable Supply to the other party (the recipient) under this Agreement, on receipt of a Tax Invoice from the supplier, the recipient will pay without setoff an additional amount to the supplier equal to the GST imposed on the supply in question.
- (b) No party may claim or retain from the other party an amount in relation to a supply made under this Agreement for which the first party can obtain an Input Tax Credit or decreasing adjustment.

25.5 Payment specifically covered by an appropriation

On the basis that the Funding paid under this Agreement is of a funding nature, is paid to a 'government related entity' for GST purposes, is sourced from an appropriation, and is to be used for the purposes stated in this Agreement, the

parties rely on GSTR2011/2 for the Funding not being Consideration for any Taxable Supply and for no GST being imposed by reference to it.

26. General

26.1 Notices

- (a) A Party giving notice under this Agreement must do so in writing, that is:
 - (i) directed to the other Party's contact person and address as specified in Item 8; and
 - (ii) hand delivered, sent by pre-paid post or facsimile to that address.
- (b) A notice given in accordance with clause 26.1(a) is received:
 - (i) if hand delivered, on delivery;
 - (ii) if sent by pre-paid post on the third Business Day after the date of posting; and
 - (iii) if sent by facsimile, at the time the sender receives notification that the notice has been transmitted satisfactorily.

26.2 Survival of provisions

Termination or expiry of this Agreement for any reason does not extinguish or otherwise affect:

- (a) any rights of either Party against the other which:
 - (i) accrued prior to the time of termination or expiry; or
 - (ii) otherwise relate to or may arise at any future time from any breach of non-observance of obligations under this Agreement which arose prior to the time of termination or expiry; and
- (b) the provisions of this Agreement which by their nature survive expiry or termination, including clauses 4, 7, 11, 13, 16.4, 16.5, 17.3, 17.4, 18, 19, 20, 22 and 26.8.

At any time after 30 June 2016, the Commonwealth may, by written notice to the Organisation, release the Organisation from its obligations to continue to comply with any of the provisions of this Agreement referred to in clause 26.2(b).

26.3 Jurisdiction

This Agreement is to be interpreted in accordance with the Laws of the jurisdiction in which the Project is undertaken. Each party irrevocably submits to the non-exclusive jurisdiction of the courts of the Australian Capital Territory.

26.4 Entire Agreement

To the extent permitted by Law:

- (a) this Agreement represents the entire understanding of the Parties, and constitutes the entire agreement between the Parties in relation to its subject matter; and
- (b) supersedes any prior written or other agreement between the Parties.

26.5 Variation and Waiver

- (a) This Agreement may only be varied by a document signed by each Party, other than variations to the Project Plan and Project Budget which may be made in accordance with clause 3.1(c).
- (b) A failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise of enforcement of, a right, power or remedy provided by Law, in equity or under this Agreement by a Party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by Law or under this Agreement.
- (c) A waiver, approval or consent given by a Party under this Agreement is only effective and binding on that Party if it is given or confirmed in writing by that Party.
- (d) No waiver of a breach of a term or condition of this Agreement operates as a waiver of another breach of that term or condition, or as a waiver of a breach of any other term or condition of this Agreement.

26.6 Illegality

If, at any time, any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under the Law in any jurisdiction, that will not affect or impair the legality, validity or enforceability of any other provision of this Agreement, or the legality, validity or enforceability of that provision or any other provision of this Agreement in any other jurisdiction.

26.7 Novation and assignment

Except as expressly provided for under this Agreement, a Party cannot assign, novate or otherwise transfer any of its rights or obligations under this Agreement without the prior consent of the other Party.

26.8 Negation of employment, partnership and agency

- (a) The Organisation is not by virtue of this Agreement, or for any purpose, an officer, employee, partner or agent of the Commonwealth, or invested with any power or authority to bind or represent the Commonwealth.
- (b) The Organisation 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

Commonwealth, or as otherwise able to bind or represent the Commonwealth.

26.9 Management of Conflicts

- (a) The Organisation warrants that at the Date of this Agreement that no Conflict exists or is likely to arise in the performance of the Organisation's obligations under this Agreement.
- (b) If during the Term of this Agreement, a Conflict arises, or appears likely to arise the Organisation must:
 - (i) immediately notify the Commonwealth in writing of the Conflict making a full disclosure of all relevant information relating to the Conflict and setting out the steps the Organisation proposes to take to resolve or otherwise deal with the Conflict; and
 - (ii) take such steps as the Commonwealth may reasonably require to resolve or otherwise deal with that Conflict.

27. Organisation to comply with all special conditions

The Organisation must comply with each special condition set out in Item 10. A breach by the Organisation of a special condition constitutes a fundamental breach of this Agreement.

28. Warranties and representations

28.1 Organisation warranties and representations

The Organisation represents and warrants to the Commonwealth 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 Organisation;
- (d) this Agreement constitutes valid and legally binding obligations on it and is enforceable against it by the Commonwealth 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) 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;
- (g) 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 which, if adversely decided, could have an adverse effect on its ability to perform its obligations under this Agreement;
- (h) unless otherwise disclosed in this Agreement, it is not entering into this Agreement as trustee of any trust or settlement;
- (i) it has not made any false declaration in respect of any current or past dealings with the Commonwealth or any Proper Authority, including in any tender or application process or in any agreement;
- (j) it has had no significant deficiency in the performance of any substantive requirement or obligation under any prior agreement with the Commonwealth or any Proper Authority which would adversely affect its ability to perform this Agreement;
- (k) it has, and will continue to have and to use, the skills, qualifications and experience, including Specified Personnel, to perform the Project in an efficient and controlled manner with a high degree of quality and responsiveness and to a standard that complies with this Agreement;
- (l) it has and will continue to have skilled, qualified and experienced Specified Personnel who are capable of performing the Project in accordance with this Agreement; and
- (m) it has and will continue to have the necessary resources to perform the Project and will use those resources to perform the Project.

28.2 No restriction

The interpretation of any statement contained in any representation or warranty will not be restricted by reference to or inference from any other statement contained in any other representation or warranty.

28.3 Organisation acknowledgement

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

draft

Schedule 1 – Particulars

1. Project

1.1 Program Objectives

The Building Better Regional Cities Program Objectives are to invest in local infrastructure projects that support an increase in the number of homes for sale and rent that are affordable for working families on ordinary incomes, in communities that are experiencing positive jobs and population growth that need more homes to be built.

1.2 The Project

The Project consists of:

[A description of the Project is to be inserted having regard to the Organisation's response. The Project will consist of the construction of the Infrastructure Works, the construction of the Residential Works and the use of the minimum amount specified to create affordable housing]

The Organisation must carry out, or arrange for the carrying out of the following Works:

(a) **Infrastructure Works**

[A description of the Infrastructure Works is to be inserted having regard to the Organisation's response.]; and

(b) **Residential Works**

[A description of the Residential Works is to be inserted having regard to the Organisation's response].

in order to achieve the Program Objectives as outlined in the submission from the Organisation to the Building Better Regional Cities Program dated **[To be inserted]**.

1.3 Project Aim

The Project Aim is to deliver the objectives and outcomes of the Program, through:

[The Project Aim is to be inserted having regard to the Organisation's response]

1.4 Project Documents

The Organisation must provide the following Project Documents:

[The Project Documents required will depend on the specific nature of the Works being conducted. This item is to be completed by the Commonwealth based on the Organisation's response.]

1.5 Designated Use

[A description of the Designated Use is to be included based on the Organisation's response and the nature of the Project. Depending on the nature of the Project and the Works it may be necessary to have separate Designated Uses for the separate elements of the works, for example, the Infrastructure Works and the Residential Works]

2. The Property

[Option A] The Property is a parcel of land commonly known as **insert street address, suburb and state/territory if new construction or a purchase** being **[insert title reference]**

[Option B] The Property is that area within the parcel of land commonly known as **insert street address, suburb and state/territory if new construction or a purchase** being **[insert title reference]** as shown on the annexure to this Agreement

3. Time frames

3.1 Commencement of the Works

The Organisation must commence the Infrastructure Works within **[insert]** months after the Date of this Agreement.

The Organisation must commence the Residential Works by **[insert]**.

3.2 Date for Practical Completion

The Date for Practical Completion is:

- (a) **[insert date]** for the Infrastructure Works **[Note this date must be on or prior to 31 March 2014]**; or
- (b) **[insert date]** for the Residential Works and any Works other than the Infrastructure Works **[Note this date must be on or prior to 30 June 2016]**,

or such date or dates as varied in accordance with clause 4.8.

3.3 Completion Date

The Completion Date is the earlier of:

- (a) 1 Business Day after the Commonwealth has received the report referred to in Item 12.2 and all deliverables required under this Agreement (subject to clause 26.2(b)); or
- (b) 30 June 2016 (subject to clause 26.2(b)).

4. Funds

4.1 Maximum Amount of Funds

The maximum amount of Funds payable by the Commonwealth under this Agreement will be \$[insert amount] (exclusive of GST) or the lesser amount required to complete the Project.

4.2 Milestone Schedule

The proportion of the Funds specified in respect of each Milestone in the table below will be paid to the Organisation in accordance with the table below within [twenty-five (25)] Business Days of the Organisation achieving the Milestone to the satisfaction of the Commonwealth and after receipt by the Department of a correctly rendered invoice.

A correctly rendered invoice is one that:

- (a) identifies the name of the Project;
- (b) sets out the name of the Commonwealth Project Contact;
- (c) contains a claim for the amount of the Funds properly required; and
- (d) is a Tax Invoice.

[Note: The Milestone Schedule is specific to each Project and will be inserted having regard to the Organisation's response and the nature of the Project. Below is an example of the types of milestones that may be included in a milestone schedule.]

| Milestone | Description | Date for delivery | Payment Amount |
|-----------|--|--|----------------|
| 1. | Execution of Agreement | TBA | TBA |
| 2. | Finalisation of Infrastructure Works Design | TBA | TBA |
| 3. | All Approvals for the commencement of the Infrastructure Works have been obtained | TBA | TBA |
| 4. | Commencement of Infrastructure Works | TBA | TBA |
| 5 | All approvals to enable commencement of the Residential Works has been obtained | TBA | Nil |
| 6 | Completion of the Infrastructure Works and certification in accordance with clause 4.9 | TBA [This date must be on or prior to 31 March 2014] | TBA |

| Milestone | Description | Date for delivery | Payment Amount |
|-----------|---|--|----------------|
| 7 | Completion of the Residential Works and certification in accordance with clause 4.9 | TBA [<i>This date must be on or prior to 30 June 2016</i>] | Nil |

4.3 Minimum Amount

The minimum amount for the purposes of clause 7.1 is an amount of \$[*to be inserted*].

[The amount to be specified in this clause is to reflect the amount of the Funds to be provided to the Organisation under this Agreement]

5. Other contributions

The total amount of the Organisation's contribution must be fully set out in the Project Budget.

The Project Budget must set out details of all other contributions the Organisation will make or receive from a third party.

6. Insurance

6.1 On execution of this Agreement:

- (a) to the extent required by Law, workers compensation insurance in respect of the Organisation's liability for any loss or claim by a person employed or otherwise engaged, or deemed to be employed or otherwise engaged, by the Organisation 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.

6.2 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 Organisation to construct the Works (**Works Cost**);
 - (ii) an amount reasonably providing for additional costs of demolition and of removal of debris (to be not less than 10% of the Works Cost);
 - (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 Practical Completion,

and the Organisation must ensure that the policy specified in this Item 6.2(a) notes the interest of the Commonwealth;

- (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)*, *Fair Trading (Australian Consumer Law) Act 1992 (ACT)* 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 Organisation must ensure that each professional service provider identified in the table below, holds a professional indemnity policy in the amount specified in respect of that professional service provider 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 Service Provider | 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 |

| | |
|-------------------------------|---------------------------------|
| Professional Service Provider | Professional indemnity coverage |
| Building Code of Australia | \$5 million |

[Please note insurance amounts and types of insurance are by way of an example and may vary depending on the nature of the individual Project.]

7. Assets

The Organisation must acquire the following Assets with the Funds:

[List any assets worth less than \$5,000 that clause 16 is to apply to, or if none, the words "None specified"]

8. Project Contact and address

Commonwealth Project Contact

The Commonwealth Project Contact is the person occupying the position of Director, Building Better Regional Cities Program, available at the following address:

[insert name of Branch]
[insert name of Division] Department of Sustainability, Environment,
 Water, Population and Communities
 PO Box 787
 Canberra ACT 2601
 Fax: (02) **[insert fax]**

and available on the following telephone number and email address:

Email: BBRC@environment.gov.au
 Phone: (02) **[insert phone]**

Organisation Project Contact

The Organisation Project Contact is the person occupying the position of **insert title of position**. This position is currently occupied by **insert name of person** available at the following address:

insert postal and street address
 Fax: **insert fax number**

and available on the following telephone numbers and email address:

Email: **insert email address**
 Phone: **insert number**

9. Specified Personnel Positions

The Specified Personnel Positions are:

- (a) Project Manager

If no position is to be stated, please delete "(a) Project Manager" and insert "None required". If a Project Manager is required, please have "(a) Project Manager" remain. Add other positions if required.

10. Special conditions

The following special conditions apply for the purposes of this Agreement:

[Insert relevant special conditions to cover specific issues or important matters of a particular nature. The manner in which the Organisation will ensure that the minimum amount (referred to in clause 7.1 and Item 4.3) will be used to create affordable housing will be addressed by way of special conditions specified in this Item 10. The special conditions will be prepared having regard to the Organisations response on this issue.]

11. Repayment amount

[The Repayment amount will be included by the Commonwealth having regard to the Organisation's response. The repayment amount is to be an amount that represents any proportion of the Funds paid which has not been demonstrated, to the Commonwealth's satisfaction, to have been passed on to assist in achieving the objective of affordable housing through the mechanism to be described in Item 10]

12. Infrastructure Works Reports

12.1 Quarterly Reports during the Infrastructure Works phase

The Organisation must provide quarterly Reports until Practical Completion occurs in respect of the Infrastructure Works. The first quarterly Report is to be provided for the period of three months following execution of this Agreement. The quarterly Reports must be approved by a Senior Executive Officer of the Organisation, be submitted by the 10th Business Day of the month following the quarter to which the Report relates and must include the matters listed in the table below and documentation to support the information provided:

| Minimum Report contents | Supporting documentation required |
|--|--|
| Cost and contributions: the original Project cost; the forecast Project cost; expenditure as at the end of the reporting period; the source of the Funds including co-contributions; | (i) the amount of the Funds paid by the Commonwealth to the Organisation under this Agreement that has been expended on, and/or Committed towards the Project to date; (ii) the amount of any other contributions required for the Project that have been expended and/or committed towards the Project to date, including those from the |

| | |
|---|--|
| | <p>Organisation, if applicable;</p> <p>(iii) sufficient details to show that the Funds received have been spent and/or committed for the purpose of the Project and in accordance with this Agreement (including against the Project Budget at Annexure B), and that the Organisation has complied with this Agreement;</p> <p>(iv) evidence that the amount of Funds payable for the relevant Milestone in accordance with the Milestone Schedule at Item 4.2 is properly required for performance of the Project, due to the expenditure or commitment of those Funds for performance of the Project;</p> <p>(v) details of the expenditure of the Funds for the purposes of the Project and how the Project Aim and Program Objectives are being supported by the undertaking of the Works; and</p> <p>(vi) a statement of the balance of the bank account referred to in clause 9;</p> |
| <p>Scheduling: the Date for Practical Completion and Milestones as specified in Items 3.2 and 4.2; progress to date against the Milestones; current forecast for Practical Completion to be achieved; Milestones expected in the next reporting period; and remedial action (if applicable).</p> | <p>(i) sufficient detail to indicate whether the Works are being completed in accordance with the Project Plan;</p> <p>(ii) copies of any third party certifications of the Works provided to the Organisation that verify that the Works are being completed in accordance with the Project Plan; and</p> <p>(iii) a version of the Project Material produced to the date of the progress Report that has not already been provided;</p> |
| <p>Compliance with building contract milestones: the dates on which milestones in any contract in respect of the Works (Building Contract Milestones) are proposed to occur and the relationship between the Building Contract Milestones and the Milestones; the progress to date against each of those Building Contract Milestones including any proposed or actual variation to the Building Contract Milestones; and whether any variation to the Building</p> | <p>(i) sufficient detail to indicate whether the Works are being completed in accordance with the Building Contract Milestones;</p> <p>(ii) copies of any third party certifications of the Works provided to the Organisation that verify that the Works are being completed in accordance with the Building Contract Milestones; and</p> <p>(iii) sufficient detail to indicate how changes in respect of the Building Contract Milestones (if any) will impact on the</p> |

| | |
|---|---|
| Contract Milestones will affect any Milestones | Milestones; |
| Scope: the scope of the Project as specified in Item 1.2; the current scope of the Project | (i) details about whether the Project Aim is being achieved and if not, why not; and (ii) details of any matters that have arisen which could impact on the achievement of the Project Aim or the Program Objectives, and how the Organisation proposes to resolve these matters; |
| Compliance: a statement of compliance with all applicable Commonwealth, State, Territory or local authority Laws and requirements; and remedial action being taken to address any non-compliance (if applicable). | (i) a statement confirming that the Works are being completed in accordance with the requirements under clause 23, including the Code, the Implementation Guidelines and the Industry Guidelines; (ii) copies of any requests for tender, expressions of interest, submissions, invitations to join common use arrangements and all contracts entered into in relation to the Works; (iii) copies of any notifications to the Office of the Federal Safety Commissioner; (iv) copies of any approvals or certificates in relation to the Project; (v) copies of any notices of breaches of any Commonwealth, State, Territory or local authority Laws or requirements; (vii) details on the numbers of staff, by broad occupation, employed as part of the Project; (viii) updated certificates of currency for the insurances required under clause 20 and Item 6, which cover at least the period of the next financial year in which the Project will be undertaken. |
| Risk: an analysis of the forecast risks to the Project | |

12.2 Report on Practical Completion of the Infrastructure Works

- (a) The Organisation must provide a final Infrastructure Works report in relation to the completion of the Infrastructure Works, against the Project Plan and Project within three months after the date that the Organisation achieves Practical Completion of the Infrastructure Works in accordance with clause

4.9. The final Infrastructure Works report must be submitted under a covering letter signed by a Senior Executive Officer of the Organisation and must include the following information:

- (i) a statement confirming that the Infrastructure Works were completed in accordance with the Code, the Implementation Guidelines and the Industry Guidelines;
 - (ii) where relevant, a copy of the Certificate of Occupancy for the Infrastructure Works;
 - (iii) if requested by the Commonwealth, a complete copy of the Project Material (as per clause 14) that exists as at the date of the final Infrastructure Works report;
 - (iv) a Financial Report (as per clauses, 11.7 and 11.8), which must also include:
 - (A) details of the expenditure of the Funds for the purposes of the Project and how the Project Aim and Program Objectives have been supported by the completion of the Infrastructure Works; and
 - (B) a certificate provided by the Chief Executive of the Organisation, or a person authorised by the Organisation to execute documents and legally bind it by their execution, confirming that:
 - 1) the Funds and Other Contributions received were spent for the purpose of the Infrastructure Works and in accordance with this Agreement (including against the Project Budget), and that the Organisation has complied with this Agreement insofar as it relates to the Infrastructure Works; and
 - 2) salaries and allowances paid to persons involved in the Infrastructure Works are in accordance with any applicable award or agreement in force under any relevant Law on industrial or workplace relations.
- (b) The Commonwealth will inform the Organisation if these content requirements are to be amended together with the details of the changes to be made, and the Organisation agrees to put into effect such arrangements as necessary to ensure that it can comply with the amended reporting requirements within the required timeframes.

12.3 Report at 31 March 2014

- (a) If the Organisation has not provided a report in accordance with Item 12.2 before 31 March 2014, the Organisation must provide a report to the Commonwealth within 7 Business Days after 31 March 2014. This report must be submitted under a covering letter signed by a Senior Executive Officer of the Organisation and must include the following information:
 - (i) a statement outlining the progress of the Organisation in respect of the performance of the Infrastructure Works including detail as to the

Infrastructure Works that remain incomplete and the Organisation's assessment of the time required to complete the Infrastructure Works;

- (ii) if requested by the Commonwealth, a complete copy of the Project Material (as per clause 14) that exists as at the date of the report;
- (iii) if requested by the Commonwealth, a Financial Report (as per clauses 11.7 and 11.8), which must also include details of the expenditure of the Funds up to 31 March 2014 for the purposes of performing the Infrastructure Works and how the Project Aim and Program Objectives have been supported by the performance of the Infrastructure Works as at that date.

13. Residential Works Reports

On or about 30 June 2016 the Commonwealth proposes to review whether it will continue to require the Organisation to provide Reports. A determination based on this review will be at the Commonwealth's absolute discretion and, unless the Commonwealth notifies the Organisation otherwise, the Organisation must continue to comply with its obligations under this Agreement.

13.1 Quarterly Reports during the Residential Works phase

The Organisation must provide quarterly Reports until Practical Completion occurs in respect of the Residential Works. The quarterly Reports in respect of the Residential Works must be submitted at the same time and in the same manner as the reports referred to in Item 12.1 and must include the matters listed in the table below and documentation to support the information provided:

[The detail required to be submitted as part of the quarterly reports required during the Residential Works phase will be included having regard to the Organisation's response and the nature of the Residential Works to be performed. The reporting requirements in this regard will primarily relate to the progress of the completion of the Residential Works]

13.2 Report on Practical Completion of the Residential Works

- (a) The Organisation must provide a final Residential Works report in relation to the completion of the Residential Works, against the Project Plan and Project within three months after the date that the Organisation achieves Practical Completion of the Residential Works in accordance with clause 4.9. The final Residential Works report must be submitted under a covering letter signed by a Senior Executive Officer of the Organisation and must include the following information:
 - (i) a comprehensive report on actual performance against the Project Aim, whether the Project Aim was achieved and, if not, why not;
 - (ii) in respect of any Residential Works undertaken by an entity which is required to comply with the privately funded construction project requirements of the Code, the Implementation Guidelines and the Industry Guidelines, a statement confirming such compliance;
 - (iii) where relevant, a copy of the Certificate of Occupancy for the Residential Works;

- (iv) if requested by the Commonwealth, a complete copy of the Project Material (as per clause 14);
- (b) The Commonwealth will inform the Organisation if these content requirements are to be amended together with the details of the changes to be made, and the Organisation agrees to put into effect such arrangements as necessary to ensure that it can comply with the amended reporting requirements within the required timeframes.

13.3 Report at 30 June 2016

If the Organisation has not provided a report in accordance with Item 13.2 before 30 June 2016, the Organisation must provide a report to the Commonwealth within 7 Business Days after 30 June 2016. This report must be submitted under a covering letter signed by a Senior Executive Officer of the Organisation and must include the following information:

- (a) a statement outlining the progress of the Organisation in respect of the performance of the Residential Works including detail as to the Residential Works that remain incomplete and the Organisation's assessment of the time required to complete the Residential Works;
- (b) if requested by the Commonwealth, a complete copy of the Project Material (as per clause 14) that exists as at the date of the report;
- (c) if requested by the Commonwealth, a Financial Report (as per clauses, 11.7 and 11.8), which must also include details of how the Project Aim and Program Objectives have been supported by the performance of the Residential Works as at that date.

13.4 Reports in relation to the use of the minimum amount

[This item will be completed having regard to the Organisation's response in relation to how the minimum amount will be used to create affordable housing.]

As a minimum the Commonwealth requires that reporting be on a quarterly basis (commencing at a date to be determined by the Commonwealth) specifying how the minimum amount has been used to create affordable housing.]

14. Consortium Members

[insert the full descriptions and ABNs of the consortium members if any, if none, insert 'not applicable'. If the names of the consortium members are to be inserted subsequent to the Date of this Agreement leave this item blank].

Executed as an agreement.

Signed for and on behalf of the
Commonwealth of Australia as
represented by the Department of
Sustainability, Environment, Water,
Population and Communities ABN 34 190
894 983 on:

Date

Signature of Witness

Signature of Authorised Person

Name of Witness in full

Name of Authorised Person in full

Signed for and on behalf of
insert Name of Organisation
ABN **insert number** on:

Date

Signature of Witness

Signature of Authorised Person

Name of Witness in full

Name of Authorised Person in full

Annexure A – Project Plan

[Note: The Project Plan will form Annexure A and will be inserted prior to execution of this Agreement. The following is an outline of the sort of information that is required in a Project Plan. This note and the detail specified below will not form part of the final Agreement]

A Project Plan which includes, at minimum, the following information:

- (i) a clear, detailed timeline for the conduct and completion of the Project, including forecast dates for the acquisition of the Property and the commencement and completion of the planning, design and construction stages of the Project;
- (ii) a detailed description of the tasks and activities that will be undertaken during each stage of the Project;
- (iii) key Project personnel;
- (iv) monitoring and reporting activities;
- (v) roles and responsibilities;
- (vi) resources;
- (vii) outputs/deliverables/Milestones;
- (viii) costings and budget;
- (ix) a risk management and contingency plan for the Project, identifying all risks to the successful completion of the project, including but not limited to, risks regarding fundraising, financial viability, staffing and resource arrangements for the Project. Risk ratings and proposed risk treatment or mitigation measures is also required as part of the Risk Management Plan.

The Project Plan, once accepted by the Commonwealth will form Annexure A to this Agreement.

Annexure B – Project Budget

[Note: The Project Budget will form Annexure B the Agreement and will be inserted prior to execution of this Agreement. The following are some comments in respect of the Project Budget. This note and the detail specified below will not form part of the final Agreement]

The Project Budget which must:

- (i) be consistent with the Project Plan; and
- (ii) show the proposed Budget for each financial year during the Project Period
- (iii) include estimates of the following:
 - A. Revenue
 - B. Outgoings
 - C. Management fees
 - D. Total loan costs, interest rates and terms of any loan(s) and
 - E. Plant staff and equipment costings

[The following table is provided in this draft funding agreement as an example of the level and type of information that may be required in the Project Budget.]

| Expenditure line item | Financial Year [<i>insert</i>] Budget Amount (\$GST exclusive) |
|---|--|
| Concept and planning | |
| Project management consultants | |
| Statutory and approval fees | |
| Consultant/sub-contractor fees | |
| [Organisation to specify any other required line items] | |
| Detailed Design | |
| Architect and design fees | |
| Engineering fees | |
| [Organisation to specify any other required line items] | |
| Construction | |
| Construction consultant and project management fees | |
| Site preparation works | |
| Demolition/excavation/decontamination works | |
| Decanting costs | |

Construction of new buildings

External works

[Organisation to specify any other required line items]

Fit-out

Fit-out of new buildings (excluding equipment)

General

Administrative and other general costs (including salary costs of those personnel engaged by the Organisation to oversee the Project)

Total – Commonwealth Funds

Other Contributions

[Organisation to specify expenditure line items to be covered by Other Contributions]

[Organisation to specify Budget Amounts for Other Contributions]

Total – Other Contributions

Draft