



**Australian Government**  
**Department of Health and Ageing**

# **SUPPORTING COMMUNITIES TO REDUCE THE RISK OF SUICIDE**

**(Aboriginal and Torres Strait Islander component)**

## **Grant Program Guidelines**

**2012-13 – 2014-15**

Guidelines for the implementation of the Aboriginal and Torres Strait Islander component of the *Supporting Communities to Reduce the Risk of Suicide* initiative of the *Mental Health: Taking Action to Tackle Suicide* package

&

Information for applicants wishing to apply for funding under this initiative

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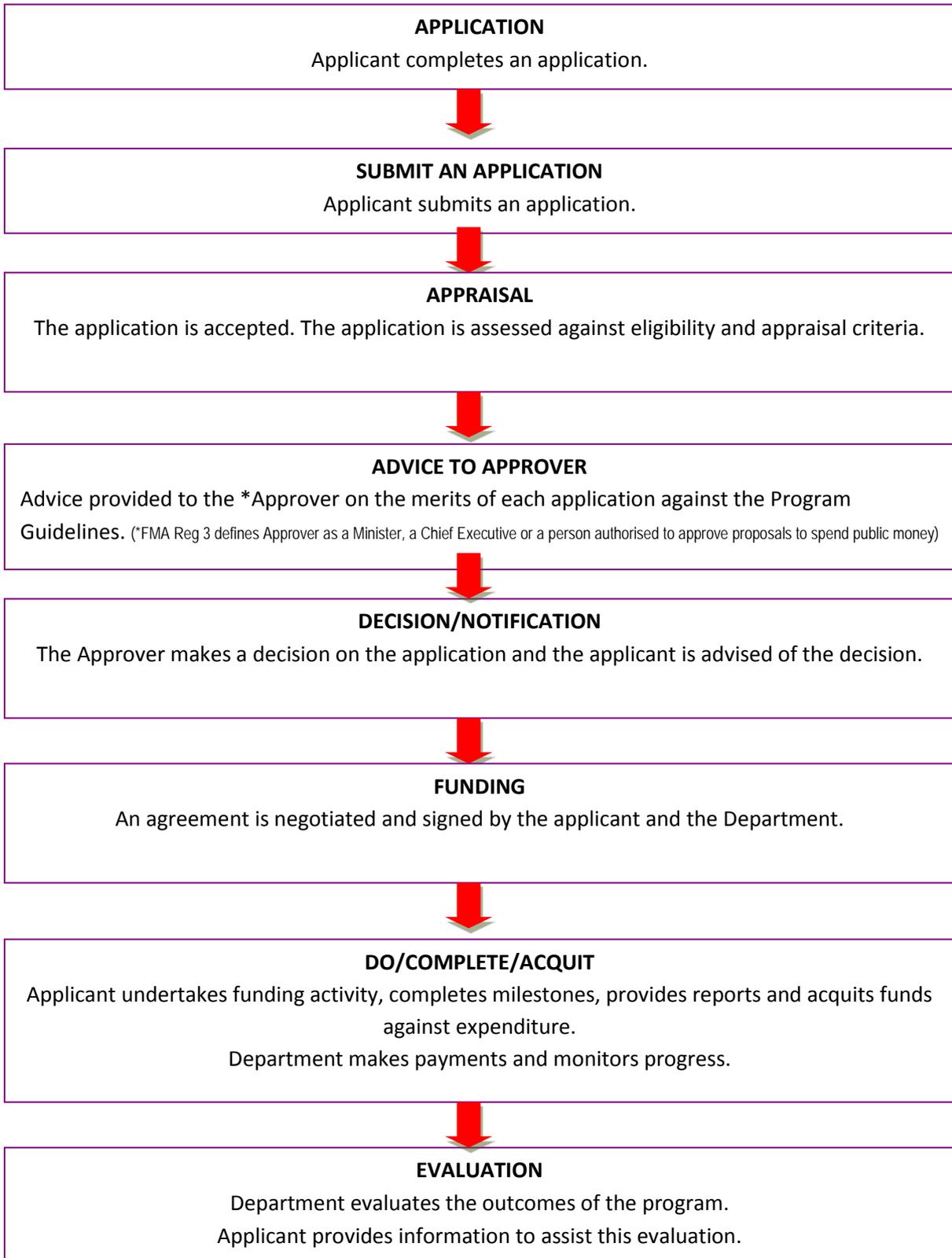
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# 1. Grant Program Process Flowchart for Supporting Communities to Reduce the Risk of Suicide (Aboriginal and Torres Strait Islander component)



# 1. Introduction

## 1.1. Program Background

The 2010 Election Commitment *Mental Health: Taking Action to Tackle Suicide* (TATS) package forms part of the Australian Government's commitment to mental health reform. The package comprises four streams of activity to provide more services on the ground to those at risk of suicide:

1. Boosting frontline services to those at risk;
2. Taking action to prevent suicide and boost crisis intervention services;
3. Providing more services and support for men; and
4. Promoting good mental health for young people.

The legislative authority for the TATS package is provided by item 415.026 and 415.034 of Schedule 1AA of the *Financial Management and Accountability Regulations* 1997.

Under the TATS package the Australian Government committed \$30.2 million funding over four years commencing 2011-12 for the *Supporting Communities to Reduce the Risk of Suicide* initiative to support community-led suicide prevention activities – targeted at groups and communities which are at high risk of suicide, including Indigenous people, men, gay, lesbian and bisexual people, and families recently bereaved by suicide.

\$6 million of this funding has been quarantined for activity that is specific to Aboriginal and Torres Strait Islander peoples and their communities who are at risk of suicide.

The first tranche of funding of \$1.5 million for the 2011-2012 year has been committed. \$4.5 million is available 2012-13 - 2014-15 (\$1.5 million per year).

## 1.2. Program Purpose, Scope, Objectives, Outcomes and Key Principles

The purpose of the Aboriginal and Torres Strait Islander component of the *Supporting Communities to Reduce the Risk of Suicide* initiative is to reduce the risk of suicide for Aboriginal and Torres Strait Islander peoples and their communities.

In September 2011, Ministers Butler, Macklin and Snowdon announced the establishment of an Aboriginal and Torres Strait Islander Suicide Prevention Advisory Group (Advisory Group).

The Advisory Group has developed and endorsed principles to underpin the initiative. These principles recommend that projects should:

- be grounded in community, owned by the community, based on community needs and accountable to the community;
- be based on Aboriginal and Torres Strait Islander definitions of health incorporating spirituality, culture and healing;
- be sustainable both in terms of building community capacity and in terms of not being 'one-off'; they must endure until the community is empowered. For example provide Aboriginal and Torres Strait Islander workforces and community members with tools for awareness, early identification and for responding to self harm issues within the community;
- work in genuine partnerships with local Aboriginal and Torres Strait Islander stakeholders and other providers to support and enhance existing local measures not duplicate or compete with them. Funding applications need to demonstrate a record of genuine community and stakeholder/provider consultations and a track record of community empowerment;
- be delivered in a safe manner;

- be built on learnings, try new and innovative approaches, share learnings, and improve the evidence base; and
- share learnings and these should be promoted in other communities.

Consistent with these principles, activities funded under this initiative could include training community leaders to better identify and respond to suicide, and activities to better build resilience, positive mental health and social and emotional wellbeing.

The funding is being provided to support activities which aim to:

- reduce the risk of suicide for Aboriginal and Torres Strait Islander peoples and communities;
- empower Aboriginal and Torres Strait Islander peoples and communities through community-led suicide prevention activities; and
- provide a sustainable approach to suicide prevention activity capable of being implemented across a variety of situations and geographical settings.

### 1.3. Roles and responsibilities

The Grant Program Process Flowchart on page 3 outlines the roles and responsibilities of each party.

The funding approver for the Aboriginal and Torres Strait Islander component of the *Supporting Communities to Reduce the Risk of Suicide* initiative is the Assistant Secretary, Mental Health Early Intervention and Prevention Branch, Mental Health and Drug Treatment Division, at the Department of Health and Ageing (DoHA).

Commonwealth funding will be provided to preferred applicants through a funding agreement which will detail the terms and conditions of the funding. Details of the funding agreement will be negotiated between the Commonwealth and preferred applicants following the finalisation of the selection process. Parties involved in these negotiations should ensure they are familiar with, and seek legal advice on, the terms and conditions of the funding agreement.

### 1.4. Anticipated key dates

The following table outlines the anticipated timeline for the program.

Milestone	Anticipated Dates
Guidelines Issued	Mid November 2012
Applications Open	Mid November 2012
Applications Close	Late December 2012
Assessment and Decision	February 2013
Development of Funding Agreements	March 2013
Execute Funding Agreement	March 2013
Program Ends	June 2015

## 2. Eligibility

### 2.1. Who is eligible to apply for funding?

For legal and accountability reasons, only incorporated bodies are eligible to apply for funding under this program.

The types of organisations that may apply for funding include:

- Aboriginal or Torres Strait Islander organisations.
- Non-profit/charitable organisations.
- For profit organisations.
- Non-government health care providers.

The Department encourages organisations to form partnerships to deliver projects. If more than one organisation will be involved in the project, one organisation must be identified as the lead organisation and an authorised representative of the lead organisation must sign the Application Form.

### 2.2. What is eligible for funding?

Applications which will be considered for funding must comply with the following requirements:

- Projects which support community-led suicide prevention activities which target Aboriginal and Torres Strait Islander peoples and communities at high risk of suicide.
- Funding up to a maximum of \$300,000 per year for individual projects.
- Projects which operate for the full term of the initiative from 2012-13 and be completed by 30 June 2015.
- If more than one organisation will be involved in the project, one organisation must be identified as the lead organisation.
- Retrospective activities will not be funded by this initiative.

## 3. Probity

The Australian Government will ensure that the process for providing funding under the *Supporting Communities to Reduce the Risk of Suicide* initiative Aboriginal and Torres Strait Islander Peoples component is transparent and in accordance with published Guidelines.

*Note: Guidelines may be varied from time-to-time by the Australian Government as the needs of the program dictate. Amended Guidelines will be published on the Department's website.*

### 3.1. Conflict of interest

A conflict of interest may exist, for example, if the applicant or any of its personnel:

- Has a relationship (whether professional, commercial or personal) with a party who is able to influence the application assessment process, such as a Department staff member;
- Has a relationship with, or interest in, an organisation, which is likely to interfere with or restrict the applicant in carrying out the proposed activities fairly and independently; or
- Has a relationship with, or interest in, an organisation from which they will receive personal gain as a result of the granting of funding under the Aboriginal and Torres Strait Islander component of the *Supporting Communities to Reduce the Risk of Suicide* initiative.

Each applicant will be required to declare as part of their application, existing conflicts of interest or that to the best of their knowledge there is no conflict of interest, including in relation to the examples above, that would impact on or prevent the applicant from proceeding with the project or any funding agreement it may enter into with the Australian Government.

Where an applicant subsequently identifies that an actual, apparent, or potential conflict of interest exists or might arise in relation to this application for funding, the applicant must inform the Department in writing immediately.

The department will ensure that all members of the Assessment Panel will be required to provide a statement detailing any relationship they may have with applicants. All panel members will be required to sign a Deed of Confidentiality-Conflict of Interest form.

### **3.2. Confidentiality and Protection of Personal Information**

Each applicant will be required to declare as part of their application, their ability to comply with the following Legislation/Clauses in the funding agreement it may enter into with the Australian Government.

The Protection of Personal Information Clause requires the Participant to:

- comply with the *Privacy Act (1988)* ('the Privacy Act'), including the 11 Information Privacy Principles (IPPs), as if it were an agency under the Privacy Act, and the National Privacy Principles (NPPs);
- refrain from engaging in direct marketing (s 16F of the Privacy Act), to the extent that the NPP and/or s 16F apply to the Participant; and
- impose the same privacy obligations on any subcontractors it engages to assist with the Project.

The Confidentiality Clause imposes obligations on the Participant with respect to special categories of information collected, created or held under the Agreement. The Participant is required to seek the Commonwealth's consent in writing before disclosing Confidential Information.

Further information can be found in the Standard Form Funding Agreement available at [Attachment A](#) or the Deed for Multi Project Funding.

## **4. How to Apply**

### **4.1. Invitation to Apply**

An Invitation to Apply (ITA) for funding under the Aboriginal and Torres Strait Islander component of the *Supporting Communities to Reduce the Risk of Suicide* initiative will be advertised on the Department's Tenders and Grants internet page and the GrantsLink internet site.

Applications must be submitted to the Department by the closing date listed within the ITA document.

Applications received will be initially reviewed by the Department of Health and Ageing to ensure applicants meet the mandatory criteria including:

- Definition of legal entity;
- Required insurance levels or willingness to obtain;
- Addressing all selection criteria;
- Agreement to acknowledgments on the reporting of the project, and agreement to the terms of the funding agreement;
- Completion of the declaration; and
- Letters of support for joint applications.

#### **4.2. How to submit an application**

Applications may be submitted in the following manner:

- Number of copies: one hard copy (single sided) and one electronic copy provided on USB; and
- Applications must be submitted on the official application form provided in the ITA documentation.
- Posted to:  
*Supporting Communities to Reduce the Risk of Suicide* initiative - Aboriginal and Torres Strait Islander component  
 Department of Health and Ageing  
 Tender Box  
 Sirius Building  
 Foyer, Ground Floor  
 23 Furzer Street  
 WODEN ACT 2606

To assist with the appraisal of an application, clarifying information may be requested by the Department. Applicants will be notified by email or post where this is required.

## **5. Appraisal**

### **5.1. Appraisal process**

Those applications which do not satisfy the eligibility criteria may not be assessed.

Based on the information provided, the assessment committee will undertake an evaluation of eligible applications against the appraisal criteria outlined below. The assessment committee will consist of officers from the Department. Subject to the conflict of interest criteria outlined above (Item 3.1), a member of the Aboriginal and Torres Strait Islander Suicide Prevention Advisory Group may be consulted during the appraisal process.

### **5.2. Appraisal criteria**

Applications will be assessed against the following criteria to determine value with public money:

- **Mandatory Criteria** are the criteria that an application must satisfy in order to be considered for funding. Mandatory Criteria often involve the use of expressions such as 'must', 'must not', 'will' or 'will not (e.g Unincorporated Associations).
- **Assessment Criteria** are the criteria against which all eligible, compliant applications will be assessed in order to determine their merits against the program objectives and , for competitive programs, other competing applications.

An outline of assessment criteria is provided in the Invitation to Apply.

For short listed applications, value with public money will be determined based on the following:

- Applicant's past performance on comparable projects;
- whether the project objectives align with the objects of the Aboriginal and Torres Strait Islander component of the *Supporting Communities to Reduce the Risk of Suicide* initiative;
- risks associated with funding the project; and
- project costs.

## **6. Decisions**

### **6.1. Approval of funding**

Following an appraisal of applications by the assessment committee, advice will be provided to the Funding Approver, the Assistant Secretary, Mental Health Early Intervention and Prevention Branch, on the merits of the applications.

The Funding Approver will consider whether the proposal will make an efficient, effective and ethical use of Commonwealth resources, as required by Commonwealth legislation, and whether any specific requirements will need to be imposed as a condition of funding.

The list of recommended projects to be funded under the initiative will be forwarded to the Minister for Mental Health and Ageing for policy approval.

Following policy approval, the Funding Approver will exercise their delegation to commence negotiations with successful applicants.

### **6.2. Advice to applicants**

Applicants will be advised by letter of the outcome of their application. Letters to successful applicants will contain details of any specific conditions attached to the funding. Funding approvals will also be listed on the Department's website.

The Department will notify all unsuccessful applicants, in writing, following execution of funding agreements with successful applicants including an offer of feedback on their application.

### **6.3. Complaint handling**

The Department of Health and Ageing's Procurement and Funding Complaints Handling Policy applies to complaints that arise in relation to a procurement or funding process. It covers events that occur between the time the request documentation is released and the date of contract execution, regardless of when the actual complaint is made. DoHA requires that all complaints relating to a procurement or funding process must be lodged in writing. Further details of the policy are available 'About Us' page on the Department's internet site ([www.health.gov.au](http://www.health.gov.au))

Any enquiries relating to funding decisions for this Program, should be directed to:

Director  
Suicide Prevention Section  
Mental Health Early Intervention and Prevention Branch  
Phone: (02) 6289 2574  
Fax: (02) 6289 7680  
[communitiesatrisk@health.gov.au](mailto:communitiesatrisk@health.gov.au)

## **7. Conditions of Funding**

### **7.1. Contracting arrangements**

Successful applicants will be required to enter into a funding agreement with the Commonwealth, represented by the Department of Health and Ageing. The funding agreement outlines the obligations of both parties under the Aboriginal and Torres Strait Islander component of the *Supporting Communities to Reduce the Risk of Suicide* initiative. A copy of the standard funding agreement is at [Attachment A](#) and the deed for multi project funding.

The Schedule attached to the funding agreement will provide a detailed description of the project based on the application. The department will work with successful applicants with the anticipated aim of having funding agreements signed within 3 weeks of the approval.

Applicants should note that if they are successful, some details of their project (including project outline, name and the amount of funding awarded) will be posted on the department's website as part of the department's legislative reporting arrangements.

### **7.2. Payment arrangements**

Payments will be made on receipt and approval of agreed deliverables.

Before any payment can be made, funding recipients will be required to provide:

- a tax invoice for the amount of the payment;
- evidence of meeting the obligations stipulated in the funding agreement (including progress reports, income and expenditure statements relating to the project etc).

Where payments are linked to the achievement of specific milestones, payments will only be made after the Department is satisfied that those milestones and associated obligations of the funding agreement have been met.

### **7.3. Reporting requirements**

Clause 11 of the Standard Funding Agreement at [Attachment A](#) or the Deed for Multi Project Funding outlines the Departments requirements and expectations relating to reporting.

Applicants should be aware that the Department will require funding recipients to provide progress reports on the agreed milestones at regular intervals, with a Final Report due at the end of the funding period. The timing of reports will be negotiated as part of the funding agreement.

Successful applicants will also be required to submit audited end of financial year statements for each financial year or part year funding received from the Department. Further details regarding the content of these reports can be found in Clause 11.5 at [Attachment A](#).

### **7.4. Monitoring**

The funding recipient will be required to actively manage the delivery of the project. The Department will monitor progress against the funding agreement through assessment of progress reports and by conducting site visits as necessary.

### **7.5. Evaluation**

An evaluation by the Department will determine how the funding contributed to the objectives of the program. Funding recipients will be required to provide information to assist in this evaluation for a period of time, as stipulated in the funding agreement, after funding has been provided.

## **7.6. Acknowledgement**

The Participant must acknowledge the financial and other support it has received from the Commonwealth.



**Australian Government**  
**Department of Health and Ageing**

## **STANDARD FUNDING AGREEMENT**

between the

**COMMONWEALTH OF AUSTRALIA**

as represented by the

Department of Health and Ageing

ABN 83 605 426 759

and

*[Insert Participant's name and ABN]*

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THIS Agreement is made

between the

**COMMONWEALTH OF AUSTRALIA** ('the Commonwealth'), as represented by the Department of Health and Ageing ('the Department') ABN 83 605 426 759

and

***[insert name and registered address of Participant] ABN [insert number] [insert description of legal entity – see commentary for assistance]*** ('the Participant').

**RECITALS:**

- A. The Commonwealth has developed the ***[insert name of Program]*** Program.
- B. The objectives and outcomes of the Program are to ***[insert details of objectives and outcomes of Program]***.
- C. The Participant has fully informed itself of all aspects of the work required to be performed for the purposes of the Project and has submitted a proposal entitled ***[insert title of Participant's proposal]*** dated ***[insert date of proposal]***.
- D. The Participant is committed to helping to achieve the objectives and outcomes of the Program through the conduct of the Project.
- E. The Commonwealth has agreed to fund the Participant to perform the Project in support of the Program on the following terms and conditions.

**THE PARTIES AGREE as follows:**

**1. Interpretation**

1.1 In this Agreement, unless the contrary intention appears:

**'Agreement'** means this document and includes the Schedule and any Attachments or Annexures;

**'Agreement Period'** means the period described in clause 2.1;

**'Aim of the Project'** means the Project's objectives and outcomes described in Item A;

**'Approved Auditor'** means a person who is:

- (a) registered as a company auditor under the *Corporations Act 2001* or an appropriately qualified member of the Institute of Chartered Accountants in Australia, or of CPA Australia or the National Institute of Accountants; and
- (b) not a principal, member, shareholder, office holder or employee of the Participant;

**'Asset'** means:

- (a) items identified in Item I; or
- (b) an 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 \$5,000 or more, inclusive of GST,

but does not include Project Material;

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

**'Australian Accounting Standard'** means the standards of that name maintained by the Australian Accounting Standards Board created by section 226 of the *Australian Securities and Investments Commission Act 2001*;

**'Australian Auditing Standard'** refers to the standards made by the Auditing and Assurance Standards Board created by section 227A of the *Australian Securities and Investments Commission Act 2001* (Cth);

**'Budget'** means the budget as specified in Item B for expenditure of the Funds and such Other Contributions as have been identified as at the Date of this Agreement, for the purposes of conducting the Project or performing obligations under this Agreement;

**'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;

**'Committed'** at a particular date means Funds that the Participant is contractually obliged to pay to a third party in respect of any part of the activities making up the Project or the Final Report and that can be identified in a written contractual arrangement with that third party;

**'Commonwealth'** means the Commonwealth of Australia as represented by any department or agency of the Commonwealth which is from time to time responsible for the administration of this Agreement;

**'Commonwealth Material'** means any Material:

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

**'Completion Date'** means the date that is 60 Business Days after the Commonwealth has received the Final Report and all deliverables required under this Agreement;

**'Confidential Information'** means information that:

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

but does not include information that:

- (d) is or becomes public knowledge, other than by breach of this Agreement or by any other unlawful means;
- (e) is in the possession of the Participant without restriction in relation to disclosure before the date of receipt from the Commonwealth; or
- (f) has been independently developed or acquired by the Participant;

**'Conflict'** means any conflict of interest, any risk of a conflict of interest and any apparent conflict of interest arising through the Participant (or the Participant Personnel) engaging in any activity or obtaining any interest that is likely to conflict with or restrict the Participant in performing the Project fairly and independently;

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

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

**'End of Financial Year Report'** means the Report to be provided to the Commonwealth in accordance with clause 11.5;

**'Existing Material'** means all Material in existence prior to the commencement of this Agreement that is:

- (a) incorporated in;
- (b) supplied with, or as part of; or
- (c) required to be supplied with, or as part of,

the Project Material and includes Material identified as Existing Material in Item F but excludes Commonwealth Material;

**'Final Report'** means the Report to be provided to the Commonwealth in accordance with clause 11.4;

**'Freedom of Information Commissioner'** means any of the information officers appointed under the *Australian Information Commissioner Act 2010* (Cth) when performing the 'freedom of information functions' as defined in that Act;

**'Funds'** means the amount or part thereof payable by the Commonwealth as specified in Item E;

**'Government Agency'** means:

- (a) a body corporate or an unincorporated body established or constituted for a public purpose by Commonwealth legislation, or an instrument made under that legislation;
- (b) a body established by the Governor-General or by a Minister of State of the Commonwealth, including departments; or
- (c) an incorporated company over which the Commonwealth exercises control;

**'Guidelines'** means the guidelines for the Program, if any, as described in Item L;

**'Information Commissioner'** means any of the information officers appointed under the *Australian Information Commissioner Act 2010* (Cth) when performing the 'information commissioner functions' as defined in that Act;

**'Information Privacy Principle'** has the same meaning as in the *Privacy Act 1988* (Cth);

**'Intellectual Property'** means all copyright (including rights in relation to phonograms and broadcasts), all rights in relation to inventions (including patent rights), plant varieties, registered and unregistered trade marks (including service marks), registered and unregistered designs, circuit layouts, know-how 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;

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

**'Liaison Officers'** means the persons or position holders specified in Item G or any substitute notified in writing to the other Party;

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

**'Moral Rights'** includes the following rights of an author of copyright Material:

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

**'National Privacy Principle'** has the same meaning as in the *Privacy Act 1988* (Cth);

**'Ombudsman'** means the office established under the *Ombudsman Act 1976* and includes any other person that may, from time to time, perform the functions of that office;

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

**'Participant Personnel'** means:

- (a) officers, employees, agents or subcontractors of the Participant; and
- (b) officers, employees, agents or subcontractors of the Participant's subcontractors;

engaged in the performance of the Project, and includes:

- (c) Specified Personnel; and
- (d) those individuals (if any) engaged in the performance of the Project on a voluntary basis by the Participant or its subcontractors;

**'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;

**'Privacy Commissioner'** any of the information appointed under the *Australian Information Commissioner Act 2010* (Cth) when performing the 'privacy functions' as defined in the Act;

**'Program'** means that part of the operations of the Commonwealth identified in the Recitals under which Funds are provided to the Participant;

**'Progress Report'** means a Report of the Participant's progress in undertaking the Project to be provided to the Commonwealth in accordance with clause 11.3;

**'Project'** means the activities described in Item A and the provision of all Project Material, excluding the Final Report;

**'Project Material'** means all Material, excluding Commonwealth Material that is:

- (a) brought into existence for the purpose of this Agreement; or
- (b) incorporated in, supplied or required to be supplied along with the Material referred to in paragraph (a); and

including the Project Material described at Item F;

**'Project Period'** means the period specified in Item C during which the Project must be completed;

**'Report'** means Material provided to the Commonwealth in accordance with clause 11 including any Progress Reports, End of Financial Year Reports and the Final Report;

**'Specified Personnel'** means Participant Personnel specified in Item M;

**'Standards'** means the standards for performance of the Project as specified in Item L; and

**'Unspent'** at a particular date means Funds that have not been spent or Committed by the Participant.

1.2 In this Agreement, unless the contrary intention appears:

- (a) words in the singular include the plural and words in the plural include the singular;
- (b) words importing a gender include any other gender;
- (c) words importing persons include a partnership and a body whether corporate or otherwise;
- (d) clause headings are inserted for convenient reference only and have no effect in limiting or extending the language of provisions to which they refer;
- (e) all references to dollars are to Australian dollars;
- (f) where any word or phrase is given a defined meaning, any other form of that word or phrase has a corresponding meaning;
- (g) an uncertainty or ambiguity in the meaning of a provision of this Agreement will not be interpreted against a Party just because that Party prepared the provision;
- (h) a reference to any statute or other legislation (whether primary or subordinate) is to a statute or other legislation of the Commonwealth as amended from time to time;
- (i) a reference to the word 'including' in any form is not to be construed or interpreted as a word of limitation; and
- (j) a reference to a 'Recital' is to the Recitals of this Agreement, a reference to a 'clause' is to a clause in this Agreement, a reference to 'Item' is to an Item in the Schedule to this Agreement, a reference to 'Schedule' is to the Schedule to this Agreement and a reference to 'Annexures' or 'Attachments' is a references to documents attached to this Agreement.

- 1.3 If there is any conflict or inconsistency between:
- (a) the terms and conditions contained in the clauses of this Agreement and any part of the Schedule, then the terms and conditions of the clauses will prevail to the extent of the conflict or inconsistency;
  - (b) the terms and conditions contained in the clauses of this Agreement and any part of the Annexures or Attachments (if any), then the terms and conditions of the clauses will prevail to the extent of the conflict or inconsistency; and
  - (c) any part of the Schedule and any part of the Annexures or Attachments (if any), then the Schedule will prevail to the extent of the conflict or inconsistency.
- 1.4 The laws of the Australian Capital Territory apply to this Agreement. The Parties agree to submit to the non-exclusive jurisdiction of the courts of the Australian Capital Territory in respect of any dispute under this Agreement.
- 1.5 This Agreement records the entire agreement between the Parties in relation to its subject matter.
- 1.6 Subject to clauses 3 and 18, no variation of this Agreement is binding unless agreed in writing between the Parties.
- 1.7 Any reading down or severance of a particular provision does not affect the other provisions of this Agreement.
- 1.8 A waiver of any provision of this Agreement must be in writing.
- 1.9 No waiver of a term or condition of this Agreement will operate as a waiver of another breach of the same or of any other term or condition contained in this Agreement.
- 1.10 If a Party does not exercise, or delays in exercising, any of its rights under this Agreement or at Law, that failure or delay does not operate as a waiver of those rights.
- 1.11 A single or partial exercise by a Party of any of its rights under this Agreement or at Law does not prevent the further exercise of any right.
- 1.12 The Participant must not assign its rights under this Agreement without prior approval in writing from the Commonwealth.

## **2. AGREEMENT PERIOD**

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

## **3. FUNDING FOR THE PROJECT**

- 3.1 Subject to Parliamentary appropriation and to the provisions of this Agreement, the Commonwealth agrees to pay the Funds to the Participant in accordance with the payment schedule specified in Item E.
- 3.2 The funding to be contributed by the Commonwealth for the performance of this Agreement by the Participant will not exceed the amount of Funds specified in Item E.
- 3.3 The Commonwealth may at its discretion:
- (a) defer,
  - (b) reduce; or
  - (c) not make

a payment of Funds where it forms the reasonable opinion that the full payment is not properly required by the Participant because of Project surpluses or underspends.

3.4 Without limiting its rights, the Commonwealth may at its discretion:

- (a) defer;
- (b) reduce; or
- (c) not make

a payment of Funds until the Participant has performed all of its obligations that are required to be performed up to the date of that payment under this Agreement.

3.5 The Participant agrees to submit invoices for payment of the Funds in the manner specified in Item E. The amount of the invoice will not exceed the amount of Funds properly required by the Participant for its use in relation to the performance of this Agreement up to the date of the next invoice.

## **4. OTHER CONTRIBUTIONS**

4.1 The Participant must notify the Commonwealth in writing within 10 Business Days of receipt, or allocation to the Project by the Participant, of the amount, source and proposed use of any Other Contribution not already identified in the Budget.

## **5. TAXES, DUTIES AND GOVERNMENT CHARGES**

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

5.2 Without limiting clause 5.1, the Participant must pay Goods and Services Tax ('GST') on the goods, services and other supplies made under this Agreement ('the supplies') to the extent that they are taxable supplies within the meaning of the *A New Tax System (Goods and Services Tax) Act 1999* ('the GST Act').

5.3 In relation to any GST payable under clause 5.2, the Participant must issue the Commonwealth with a tax invoice in accordance with the GST Act.

5.4 The Participant warrants it is registered in accordance with the GST Act and agrees to remain registered during the Agreement Period.

## **6. Conduct of the Project**

6.1 In consideration of the provision of the Funds, the Participant must:

- (a) use the Funds only for the performance of this Agreement;
- (b) perform the Project according to the Budget, within the Project Period and according to the terms and conditions specified in this Agreement (including any applicable Guidelines and Standards);
- (c) perform all aspects of the Project (including achieving the Aim of the Project) as specified in Item A;
- (d) deliver the Final Report in accordance with clause 11.4; and

- (e) endeavour in good faith to ensure that all work undertaken under this Agreement is in support of the objectives and outcomes of the Program described in Recital B.

## **7. SUBCONTRACTING**

7.1 The Participant agrees that:

- (a) it will not subcontract the performance of any part of the Project without the prior approval in writing of the Commonwealth; and
- (b) the subcontractors, if any, specified in Item A will perform work in relation to the Project in accordance with this Agreement and are approved by the Commonwealth to do so.

7.2 The Commonwealth may impose any terms and conditions it considers appropriate when giving its approval under clause 7.1(a).

7.3 Where a subcontractor specified in Item A or approved by the Commonwealth under clause 7.1(a) is unable to perform the work, the Participant agrees to notify the Commonwealth immediately.

7.4 Where clause 7.3 applies, the Commonwealth may request the Participant to secure a replacement subcontractor acceptable to the Commonwealth at no additional cost and at the earliest opportunity.

7.5 If the Participant does not comply with any request made under clause 7.4 the Commonwealth may terminate this Agreement in accordance with clause 18.1(a).

7.6 In respect of subcontractors listed in Item A or approved by the Commonwealth under this clause, the Participant must ensure that:

- (a) the subcontract facilitates compliance by the Participant with its obligations under this Agreement;
- (b) the subcontract will not conflict with or detract from the rights and entitlements of the Commonwealth under this Agreement;
- (c) the other party to the subcontract has the necessary relevant expertise and the appropriate types and amounts of insurance to perform work in relation to the Project;
- (d) the subcontract contains all the relevant terms of this Agreement including those relating to the Law, subcontracting, intellectual property, audit and access, privacy, confidentiality, warranties and indemnities, disclosure and termination and in particular that the Participant has a right to terminate the subcontract on terms no less favourable than those accorded the Commonwealth by clause 18, in the event of this Agreement being terminated;
- (e) the other party to the subcontract acknowledges that it may be considered a 'Commonwealth service provider' for the purposes of the *Ombudsman Act 1976* 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;
- (f) the other party to the subcontract is prohibited from further subcontracting the Project without the prior written approval of the Commonwealth; and

- (g) if requested, the Participant will promptly provide a copy of the relevant subcontract to the Commonwealth.

## **8. SPECIFIED PERSONNEL AND PARTICIPANT PERSONNEL**

- 8.1 The Participant agrees that the Specified Personnel will perform the activities specified in Item M.
- 8.2 Where Specified Personnel are unable to perform the activities, the Participant must notify the Commonwealth immediately.
- 8.3 The Commonwealth may, at its absolute discretion, request the Participant to remove Participant Personnel (including Specified Personnel) from activities in relation to this Agreement.
- 8.4 Where clauses 8.2 or 8.3 apply, the Commonwealth may direct the Participant to provide replacement personnel acceptable to the Commonwealth at no additional cost and at the earliest opportunity.
- 8.5 If the Participant does not comply with any request made under clause 8.4, the Commonwealth may terminate this Agreement in accordance with clause 18.1(a).

## **9. RESPONSIBILITY OF PARTICIPANT**

- 9.1 The Participant agrees to be fully responsible for the performance of the Project and for ensuring compliance with the requirements of this Agreement, and will not be relieved of that responsibility because of any:
  - (a) involvement by the Commonwealth in the performance of the Project;
  - (b) payment made to the Participant on account of the Project;
  - (c) subcontracting of the Project; or
  - (d) acceptance by the Commonwealth of replacement personnel.

## **10. Management of Funds and BANK ACCOUNT**

- 10.1 The Participant must have a bank account controlled solely by the Participant to hold the Funds and immediately deposit all Funds received into that account.
- 10.2 The Participant must notify the Commonwealth of the identifying details of the bank account.
- 10.3 The Participant must use and deal with any interest earned on the Funds as if the money earned were part of the Funds.
- 10.4 The Participant must not Commit any part of the Funds for expenditure that is likely to occur after the end of the Agreement Period.

## **11. RECORDS AND REPORTS**

- 11.1 The Participant must keep comprehensive written records of the conduct of the Project including:
  - (a) performance against Guidelines and Standards,
  - (b) progress against the Aim of the Project and the objectives and outcomes of the Program described in Recital B;
  - (c) the creation of Project Material; and

(d) the acquisition and disposal of Assets.

11.2 The Participant must keep financial records relating to the Project so as to enable:

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

#### *Progress Reports*

11.3 In accordance with the timetable specified in Item D, the Participant must provide to the Commonwealth written Progress Reports which must include:

- (a) a description of actual performance against the Guidelines and Standards and the Aim of the Project;
- (b) information on whether the Aim of the Project is being achieved and if not, why not;
- (c) a version of the Project Material produced to the date of the Progress Report, if requested by the Commonwealth;
- (d) a statement of the balance of the Funds in the bank account referred to in clause 10.1;
- (e) a statement of how much the Participant needs to meet current liabilities under legal commitments entered into by the Participant for the performance of this Agreement; and
- (f) any other requirements specified in Item D.

#### *Final Report*

11.4 On the date specified in Item D or within 20 Business Days of the date of any early termination of this Agreement, the Participant must provide to the Commonwealth a written Final Report which must include:

- (a) a comprehensive report on actual performance against the Guidelines and Standards and the Aim of the Project and whether the Aim of the Project was achieved and, if not, why not;
- (b) an audited detailed statement of receipts and expenditure in respect of the Funds prepared by an Approved Auditor in compliance with the Australian Auditing Standards which must include a definitive statement as to whether the financial accounts are complete and accurate, and a statement of the balance of the Funds in the bank account referred to in clause 10.1;
- (c) a statement of how much (if any) the Participant needs from the final payment to meet current liabilities under legal commitments entered into by the Participant for the performance of this Agreement;
- (d) a certificate provided by the Chief Executive Officer or Chief Financial Officer of the Participant, or a person authorised by the Participant to execute documents and legally bind it by their execution, confirming that:

- (i) the Funds and Other Contributions received were spent for the purpose of the Project and in accordance with this Agreement and that the Participant has complied with this Agreement;
- (ii) salaries and allowances paid to persons involved in the Project are in accordance with any applicable award or agreement in force under any relevant Law on industrial or workplace relations; and
- (iii) at the time the Final Report is provided to the Commonwealth, the Participant is able to pay all its debts as and when they fall due.

In preparing the certificate required under this paragraph (d), the Participant should have regard to clause 26.2 of this Agreement; and

- (e) any other requirements specified in Item D.

*End of Financial Year Report*

11.5 If specified in Item D, the Participant must, in addition to the Reports required under clauses 11.3 and 11.4, provide to the Commonwealth a written End of Financial Year Report by the date specified in Item D which must include:

- (a) an audited detailed statement of receipts and expenditure in respect of the Funds prepared by an Approved Auditor in compliance with the Australian Auditing Standards which must include a definitive statement as to whether the financial accounts are complete and accurate, and a statement of the balance of the Funds in the bank account referred to in clause 10.1;
- (b) a description of actual performance against the Guidelines and Standards and the Aim of the Project;
- (c) information on whether the Aim of the Project is being achieved and if not, why not;
- (d) a version of the Project Material produced to the date of the End of Financial Year Report, if requested by the Commonwealth;
- (e) a statement of how much the Participant needs to meet current liabilities under legal commitments entered into by the Participant for the performance of this Agreement; and
- (f) any other requirements specified in Item D.

*Other Reports*

11.6 The Participant must provide any other Reports or documents specified in Item D by the date specified.

**12. LIAISON**

12.1 The Participant must liaise with and report to the Commonwealth as reasonably required by the Commonwealth for the purposes of this Agreement.

12.2 Upon receipt of written notice, the Participant must within the time-frame specified in the notice, or within a reasonable time-frame if no time-frame is specified in the notice, provide any information in relation to the Project requested by the Commonwealth for the purposes of this Agreement, including monitoring and evaluation.

### **13. Access to Premises AND materials**

13.1 The Participant must give:

- (a) the Commonwealth;
- (b) the Auditor-General;
- (c) the Freedom of Information Commissioner, Information Commissioner and the Privacy Commissioner;
- (d) the Ombudsman; and

any person authorised by a person described in clauses 13.1(a) to 13.1(d) (referred to in this clause collectively as 'those permitted') access to premises at which records and Materials associated with this Agreement are stored or work under the Project is undertaken.

13.2 The Participant must give to those permitted access in order to be able to inspect and copy Materials, in the Participant's possession or control, for the purposes associated with this Agreement or any review of performance under this Agreement. The Participant must also give those permitted access to any Assets, wherever they may be located, and reasonable access to the Participant Personnel for the same purpose.

13.3 The rights referred to in clause 13.1 are, wherever practicable, subject to:

- (a) the provision of reasonable prior notice by the Commonwealth (except where the Commonwealth believes that there is an actual or apprehended breach of the Law);
- (b) access being sought during reasonable times (except where the Commonwealth believes that there is an actual or apprehended breach of the Law); and
- (c) the Participant's reasonable security procedures.

13.4 The Participant agrees to provide all assistance reasonably requested by the Commonwealth in respect of any inquiry into or concerning the Project or this Agreement.

13.5 The Participant must ensure that any subcontract entered into for the purposes of this Agreement contains an equivalent clause allowing those permitted to have access as specified in this clause.

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

13.7 This clause survives the expiration or early termination of this Agreement for a period of seven years.

## **14. PROJECT MATERIAL and intellectual property**

- 14.1 Any Intellectual Property rights and title to, or in relation to, the Project Material will vest, upon creation, in the Participant.
- 14.2 The Participant grants to the Commonwealth a perpetual, irrevocable, royalty-free and licence fee-free, world-wide, non-exclusive licence (including a right of sub-licence) to use, reproduce, modify, adapt, publish, perform, broadcast, communicate, commercialise and exploit the Intellectual Property in the Project Material.
- 14.3 This clause does not affect the ownership of any Intellectual Property in any Existing Material. However, the Participant grants, or undertakes to arrange for a third party to grant to the Commonwealth, a perpetual, irrevocable, royalty-free and licence fee-free, world-wide, non-exclusive licence (including a right of sub-licence) to use, reproduce, modify, adapt, publish, perform, broadcast, communicate, commercialise and exploit the Intellectual Property in the Existing Material but only in conjunction with the other Project Material.
- 14.4 The Participant warrants that anything done by the Participant in the course of the Project, including in developing the Reports, will not infringe the Intellectual Property rights of any person.
- 14.5 For this clause, the 'Specified Acts' relating to Moral Rights means any of the following classes or types of acts or omissions by or on behalf of the Commonwealth:
- (a) using, reproducing, modifying, adapting, publishing, performing, broadcasting, communicating, commercialising or exploiting all or any part of the Project Material, with or without attribution of authorship;
  - (b) supplementing the Project Material with any other Material; and
  - (c) using the Project Material in a different context to that originally envisaged, but does not include false attribution of authorship.
- 14.6 The Participant must use its best endeavours to ensure that:
- (a) where there is no consent already in place, a written consent will be given by the author of any Project Material to the Specified Acts (whether occurring before or after the consent is given) which extends directly or indirectly to the performance of the Specified Acts by the Commonwealth or any person claiming under or through the Commonwealth; and
  - (b) where there is no consent already in place, a written consent will be given by the author of any Existing Material to the Specified Acts (whether occurring before or after the consent is given) which extends directly or indirectly for the Commonwealth's benefit in relation to the Commonwealth's licensed use of the Existing Material.
- 14.7 Intellectual Property rights and title to, or in relation to, Commonwealth Material remains vested at all times in the Commonwealth.
- 14.8 The Commonwealth grants to the Participant a royalty-free and licence fee-free, world-wide, non-exclusive licence (including a limited right of sub-licence to sub-licence to a subcontractor specified in Item A or approved by the Commonwealth under clause 7) to use, reproduce, modify, adapt, publish, perform, broadcast and communicate the Intellectual Property in the Commonwealth Material for the purposes of the Project. The

Participant agrees to ensure that all Intellectual Property in Commonwealth Material is used strictly in accordance with any conditions or restrictions specified by the Commonwealth.

14.9 As part of the Final Report if specified in Item D, or on the early termination of this Agreement, the Participant must deliver a complete copy of the Project Material and all of the Commonwealth Material to the Commonwealth, or deal with it as otherwise directed by the Commonwealth.

14.10 This clause survives expiration or early termination of this Agreement.

## **15. Acknowledgment and Publications**

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

- (a) in all publications, promotional and advertising materials, public announcements and activities by it or on its behalf in relation to the Project or any products, processes or inventions developed as a result of the Project; and
- (b) in the form specified in Item H or, if not specified in Item H, then in a form approved by the Commonwealth prior to its use.

15.2 Where the Participant has been provided with Funds to produce any publication, the Participant must, on completion of the Project Period, provide the Commonwealth with the number of copies of the publication specified in Item F.

15.3 This clause survives the expiration or early termination of this Agreement for a period of seven years.

## **16. ASSETS**

16.1 During the Agreement Period the Participant must use Assets only for performance of this Agreement.

16.2 The Participant must:

- (a) not encumber or dispose of any Asset, or deal with or use any Asset other than in accordance with this clause, without the prior written approval of the Commonwealth;
- (b) hold all Assets securely and safeguard them against theft, loss, damage or unauthorised use;
- (c) maintain all Assets in good working order;
- (d) maintain all appropriate insurances in respect of any Assets;
- (e) be fully responsible for, and bear all risks arising in relation to, the use or disposal of any Asset;
- (f) maintain a register of all Assets recording the date of purchase or lease, the purchase or lease price, Asset description including serial number, Asset location, the proportion of the Funds used to create or acquire the Asset, the Depreciated value of the Asset and (where relevant) details of Asset disposal including the sale price; and
- (g) as and when requested, provide copies of the register of Assets to the Commonwealth.

- 16.3 The Participant must obtain prior agreement in writing from the Commonwealth before selling or otherwise disposing of an Asset during the Agreement Period. If, at the time of the sale or disposal, the Asset has not been fully Depreciated the Participant must, at the option of the Commonwealth:
- (a) pay to the Commonwealth within 20 Business Days of the date of the sale or 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 sale or disposal, the proceeds of the sale or disposal, less an amount equal to the sum of the Participant's proportionate contribution to the purchase price of the Asset and the Participant's reasonable costs of sale or disposal of the Asset; or
  - (c) use the amount specified in (a) or (b) above for a purpose approved in writing by the Commonwealth.
- 16.4 If, on the expiration or early termination of this Agreement, an Asset has not been fully Depreciated the Participant must, at the option of the Commonwealth:
- (a) pay to the Commonwealth within 20 Business Days after expiry or early termination of this Agreement, an amount equal to the proportion of the value of the Asset following Depreciation that is equivalent to the proportion of the purchase price of the Asset that was funded from the Funds;
  - (b) sell the Asset for the best price reasonably obtainable and pay to the Commonwealth within 20 Business Days of the date of sale the proceeds of sale, less an amount equal to the sum of the Participant's proportionate contribution to the purchase price of the Asset and the Participant's reasonable costs of disposal of the Asset; or
  - (c) use the Asset on such terms and conditions as may be approved in writing by the Commonwealth.
- 16.5 If the Participant fails to make payment as required by either clause 16.3 or 16.4:
- (a) the Participant 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 will be recoverable by the Commonwealth as a debt due to the Commonwealth by the Participant.
- 16.6 This clause survives the expiration or early termination of this Agreement.
- 17. NEGATION OF EMPLOYMENT, PARTNERSHIP AND AGENCY**
- 17.1 The Participant is not by virtue of this Agreement, or for any purpose, an employee, partner or agent of the Commonwealth, or invested with any power or authority to bind or represent the Commonwealth.
- 17.2 The Participant must not represent itself, and must use its best endeavours to ensure that the Participant Personnel 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.

## **18. SUSPENSION AND TERMINATION**

18.1 If:

- (a) the Commonwealth is satisfied on reasonable grounds that the terms and conditions of this Agreement have not been complied with by the Participant;
  - (b) the Commonwealth is satisfied on reasonable grounds that the Participant is unable or unwilling to satisfy the terms of this Agreement;
  - (c) the Commonwealth, by notice in writing, requests the Participant to take action to meet a timeframe or perform an activity in accordance with this Agreement and, after 10 Business Days from the date of the notice (or such longer period as is specified in the notice), the Participant has failed to take such action;
  - (d) the Commonwealth is satisfied on reasonable grounds that any statement made by the Participant is incorrect or incomplete in a way which would have affected the original decision to approve the Funds for the Project;
  - (e) the Commonwealth is not satisfied on reasonable grounds that the purposes and activities of the Participant remain compatible with:
    - (i) the Aim of the Project; or
    - (ii) the objectives and outcomes of the Program as specified in Recital B;
  - (f) the Commonwealth is satisfied on reasonable grounds that a Report given by the Participant is not complete or accurate;
  - (g) the Participant:
    - (i) becomes bankrupt or insolvent or is wound-up;
    - (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) goes into liquidation or passes a resolution to go into liquidation or becomes subject to any petition or proceedings in a court for its compulsory winding-up or becomes subject to the supervision of a court either voluntarily or otherwise; or
    - (iv) suffers any execution against its assets having adverse effect on its ability to perform the Agreement; or
    - (v) anything analogous to, or of a similar effect to anything described above under the Law occurs in respect of the Participant; or
  - (h) the Participant, 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 Participant, terminate this Agreement or require the Participant to immediately suspend dealings with the Funds.

18.2 For the avoidance of doubt, the Commonwealth has an unfettered discretion to terminate this Agreement in accordance with clause 18.1(i).

- 18.3 If this Agreement is terminated in accordance with clause 18.1(i), the Commonwealth will only be liable for any reasonable costs (excluding, without limitation, loss of prospective income or profits) unavoidably incurred by the Participant, which are directly attributable to the termination. The Commonwealth will not be liable to pay any amount in excess of the amount of Funds remaining unpaid under this Agreement at the date of termination.
- 18.4 On termination of this Agreement, or for the duration of any suspension of dealings with the Funds, the Participant must hold the Funds in utmost good faith for use only in accordance with the directions of the Commonwealth and will cease all other dealings with the Funds.
- 18.5 The Commonwealth may end the suspension of dealings with the Funds by written notice to the Participant, subject to such preconditions (including variations to this Agreement) which the Commonwealth may require.
- 18.6 Subject to clause 18.3, the Commonwealth will not be obliged to pay any part of the Funds to the Participant after the termination of this Agreement or during any period of suspension of dealings with the Funds.
- 18.7 Except as provided in this clause, the Commonwealth will not come under any liability to the Participant for termination of this Agreement in accordance with clause 18.1.
- 18.8 If a purported termination for cause by the Commonwealth under any of clauses 18.1(a) to (h) 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 18.1(i) which termination has effect from the date of the notice of termination referred to in clause 18.1.

## **19. REPAYMENT OF FUNDS**

- 19.1 If:
- (a) on the expiry or any early termination of this Agreement, any Funds:
    - (i) remain Unspent; or
    - (ii) cannot, by reconciliation between the accounts and records maintained by the Participant (as reported to the Commonwealth by the Participant in any of the financial statements referred to in clause 11) and the 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 Participant other than in accordance with this Agreement, the Commonwealth may by written notice to the Participant require the Participant to repay that part of the Funds, and the Participant must repay to the Commonwealth the amount specified in the notice, within 20 Business Days of the date of the notice.
- 19.2 If the Participant fails to repay the Funds in accordance with a notice issued under clause 19.1:
- (a) the Participant must pay the Commonwealth Interest on the amount specified in the notice from the date it was due, for the period it remains unpaid; and
  - (b) the amount specified in the notice, and Interest owed under this clause will be recoverable by the Commonwealth as a debt due to the Commonwealth by the Participant.

19.3 The Participant acknowledges that Interest payable under clause 19.2(a) represents a reasonable pre-estimate of the loss incurred by the Commonwealth as a result of the loss of investment opportunity for, or the reasonable cost of borrowing other money in place of, the amount which should have been repaid.

19.4 This clause survives the expiration or early termination of this Agreement.

## **20. INDEMNITY**

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

20.2 The Participant agrees to indemnify the Commonwealth, its officers, employees and agents from and against any:

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

arising from:

- (d) any act or omission by the Participant or the Participant Personnel in connection with this Agreement, where there was fault (including, any negligent or otherwise tortious act or omission) on the part of the person whose conduct gave rise to that liability, loss, damage or expense; or
- (e) any breach by the Participant of its obligations or warranties under this Agreement.

20.3 The Participant's liability to indemnify the Commonwealth under clause 20.2 will be reduced proportionately to the extent that any negligent or other tortious act or omission of the Commonwealth contributed to the relevant liability, loss, damage, or expense.

20.4 The right of the Commonwealth to be indemnified under this clause:

- (a) is in addition to, and not exclusive of, any other right, power or remedy provided by Law; and
- (b) does not entitle the Commonwealth to be compensated in excess of the amount of the relevant liability, loss, damage, or expense.

20.5 The Participant agrees that the Commonwealth will be taken to be acting as agent or trustee for and on behalf of its officers, employees and agents from time to time.

20.6 This clause survives the expiration or early termination of this Agreement.

## **21. INSURANCE**

- 21.1 The Participant warrants that it has taken out or will take out, and will maintain for the period specified in clause 21.2 or 21.3 as applicable, all appropriate types and amounts of insurance to cover the Participant's obligations under this Agreement, including those which survive its expiration or early termination, which insurance must include the types and corresponding amounts of insurance specified in Item J.
- 21.2 If the Participant takes out a 'claims made policy', which requires all claims and any fact situation or circumstance that might result in a claim to be notified within the period of insurance, the Participant must maintain the policy during the term of this Agreement and a policy in like terms for 7 years after the expiry or early termination of this Agreement.
- 21.3 If the Participant takes out an 'occurrence' policy, which requires the circumstances to which a claim relates to occur during the period of insurance whilst the notification of event can occur at any time subsequently, the Participant must maintain the policy during the term of this Agreement.
- 21.4 The Participant must, on request, promptly provide to the Commonwealth any relevant insurance policies or certificates of currency for inspection.
- 21.5 This clause survives the expiration or early termination of this Agreement.

## **22. Confidentiality**

- 22.1 The Participant agrees not to disclose to any person other than the Commonwealth any Confidential Information relating to this Agreement or the Project without prior approval in writing from the Commonwealth.
- 22.2 The Commonwealth may impose any conditions it considers appropriate when giving its approval under clause 22.1 and the Participant agrees to comply with those conditions.
- 22.3 The Commonwealth may at any time by notice in writing to the Participant, require the Participant to give, and to arrange for the Participant Personnel to give, written undertakings, in a form required by the Commonwealth, relating to the non-disclosure of Confidential Information.
- 22.4 If the Participant receives a request under clause 22.3, it agrees to promptly arrange for all such undertakings to be given.
- 22.5 The obligations on the Participant under this clause will not be taken to have been breached where the information referred to is required by Law to be disclosed.
- 22.6 The Commonwealth gives no undertaking to treat Participant information, or this Agreement, as confidential. The Participant acknowledges that the Commonwealth may disclose information relevant to this Agreement, or this Agreement itself, to any person:
- (a) to the extent required by Law or by a lawful requirement of any government or governmental body, authority or agency;
  - (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 or a Parliamentary Committee or a Commonwealth Minister; or
  - (d) for any other requirement of the Commonwealth.

22.7 The obligations contained in this clause are in addition to those specified in clause 24 and will survive the expiration or early termination of this Agreement.

## **23. ACCESS TO DOCUMENTS**

23.1 In this clause, 'document' and 'Commonwealth contract' have the same meaning as in the *Freedom of Information Act 1982*.

23.2 This clause only applies if this is a contract which complies with the description of 'Commonwealth contract' in the *Freedom of Information Act 1982*.

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

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

## **24. PROTECTION OF PERSONAL INFORMATION**

24.1 The Participant must, in conducting the Project:

- (a) not do any act or engage in any practice which if done or engaged in by the Commonwealth, would be a breach of an Information Privacy Principle;
- (b) not use or disclose Personal Information collected for direct marketing purposes that would be a breach of section 16F of the *Privacy Act 1988* (Cth);
- (c) comply with any directions, guidelines, determinations or recommendations of the Commonwealth to the extent that they are consistent with the Information Privacy Principles; and
- (d) comply with the obligations in the National Privacy Principles 7 to 10 (to the extent they apply to the Participant).

24.2 The Participant must notify the Commonwealth immediately if it becomes aware of a breach or possible breach of any of its obligations under this clause.

24.3 If the Participant provides a health, or health-related, service to an individual, the Participant must:

- (a) comply with the National Privacy Principles in relation to the use and disclosure of health, health-related information or other 'sensitive information' (as defined in the *Privacy Act 1988* (Cth)) about the individual;
- (b) transfer health or health-related information to another health or health-related service provider when the Commonwealth directs the Participant to do so ; and
- (c) inform the individual:
  - (i) in the form required by the *Privacy Act 1988* (Cth); and
  - (ii) at the time the information is collected,

that the information may be disclosed to a new health or health-related service provider if required by the Commonwealth.

## **25. Conflict of Interest**

- 25.1 The Participant warrants that, to the best of its knowledge after making diligent inquiry, at the date of signing this Agreement no Conflict exists or is likely to arise in the performance of obligations under this Agreement by the Participant, or by the Participant Personnel.
- 25.2 If during the Agreement Period, a Conflict arises, or appears likely to arise, in respect of the Participant or any of the Participant Personnel, the Participant must:
- (a) 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 Participant proposes to take to resolve or otherwise deal with the Conflict; and
  - (b) take such steps as have been proposed by the Participant, or at the discretion of the Commonwealth, take such steps as the Commonwealth may reasonably require to resolve or otherwise deal with the Conflict.
- 25.3 If the Participant fails to notify the Commonwealth under this clause, or is unable or unwilling to resolve or deal with the Conflict as required, the Commonwealth may terminate this Agreement in accordance with clause 18.1(a), (b) or (d).
- 25.4 The Participant agrees that it will not, and will use its best endeavours to ensure that any Participant Personnel do not, engage in any activity or obtain any interest during the course of this Agreement that is likely to conflict with or restrict the Participant in performing the Project fairly and independently.

## **26. Compliance with Law and policies**

- 26.1 The Participant must, in carrying out this Agreement, comply with:
- (a) the provisions of any Law including the *Crimes Act 1914*, *Criminal Code Act 1995*, *Racial Discrimination Act 1975*, *Sex Discrimination Act 1984*, *Disability Discrimination Act 1992*, *Equal Opportunity for Women in the Workplace Act 1999*, *Age Discrimination Act 2004*, *Ombudsman Act 1976* and *Auditor-General Act 1997*;
  - (b) any policies notified to the Participant in writing, or listed in Item K.
- 26.2 The Participant acknowledges that under section 137.1 of the Schedule to the *Criminal Code Act 1995*, giving false or misleading information to the Commonwealth is a serious offence.
- 26.3 Without limiting the effect of clause 17, the Participant must comply with, and require Participant Personnel to comply with, the behaviours specified in the Code of Conduct in section 13 of the *Public Service Act 1999*.
- 26.4 Subject to clauses 22 and 24, no right or obligation in this Agreement is to be read or understood as limiting the Participant's rights to enter into public debate or criticism of the Commonwealth, its agencies, officers, employees or agents.

## **27. Dispute Resolution**

27.1 Subject to clause 27.3, 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 has been followed.

27.2 The Parties agree that any dispute arising during the course of this Agreement will be dealt with as follows:

- (a) the Party claiming that there is a dispute will send the other a written notice setting out the nature of the dispute;
- (b) the Parties will try to resolve the dispute through direct negotiation, including by referring the matter to persons who have authority to intervene and direct some form of resolution;
- (c) the Parties have 10 Business Days from the date of the notice to reach a resolution or to agree that the dispute is to be submitted to mediation or some alternative dispute resolution procedure; and
- (d) if:
  - (i) there is no resolution of the dispute;
  - (ii) there is no agreement on submission of the dispute to mediation or some alternative dispute resolution procedure; or
  - (iii) 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 such extended time as the Parties may agree in writing before the expiration of the 15 Business Days,

then, either Party may commence legal proceedings.

27.3 This clause does not apply to the following circumstances, where:

- (a) either Party commences legal proceedings for urgent interlocutory relief;
- (b) action is taken by the Commonwealth under, or purportedly under, clauses 3, 13, 18 or 19; or
- (c) an authority of the Commonwealth, a State or Territory is investigating a breach or suspected breach of the Law by the Participant.

27.4 Despite the existence of a dispute, both Parties must (unless requested in writing by the other Party not to do so) continue to perform their respective obligations under this Agreement.

## **28. PARTICIPANT WARRANTIES AND UNDERTAKINGS**

28.1 The Participant represents, warrants and undertakes to the Commonwealth that:

- (a) it will promptly notify and fully disclose to the Commonwealth in writing any event or occurrence actual or threatened arising during the Agreement Period which could have an adverse effect on the Participant's ability to perform any of its obligations under this Agreement;
- (b) it has full power and authority to enter into, perform and observe its obligations under this Agreement;

- (c) the execution, delivery and performance of this Agreement has been duly and validly authorised by the Participant;
- (d) it will promptly notify and fully disclose to the Commonwealth in writing if
  - (i) it becomes insolvent or is wound up;
  - (ii) it 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 creditors;
  - (iii) it goes into liquidation or passes a resolution to go into liquidation, or becomes subject to any petition or proceedings in a court for its compulsory winding up or becomes subject to the supervision of a court or regulatory authority, either voluntarily or otherwise;
  - (iv) it suffers any execution against its assets;
  - (v) anything analogous to, or of a similar effect to anything described above under the Law occurs in respect of the Participant;
- (e) 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 Government Agency 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;
- (f) no litigation, arbitration, mediation, conciliation or proceedings including any investigations, are taking place, pending, or are threatened against the Participant which could have an adverse effect upon either the Participant's capacity to perform its obligations under this Agreement or the Participant's reputation;
- (g) unless otherwise disclosed in this Agreement, it is not entering into this Agreement as trustee of any trust or settlement;
- (h) it has not made any false declaration in respect of any current or past dealings with the Commonwealth or any Government Agency, including in any tender or application process or in any agreement;
- (i) it has had no significant deficiency in the performance of any substantive requirement or obligation under any prior agreement with the Commonwealth or any Government Agency;
- (j) it has, and will continue to have and to use, the skills, qualifications and experience, 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;

- (k) it has and will continue to have the necessary resources, including financial resources, to perform the Project and will use those resources to perform the Project.

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

28.3 Each representation and warranty survives the execution of this Agreement.

## **29. NOTICES**

29.1 A Party giving notice under this Agreement must do so in writing that is:

- (a) directed to the Party's address specified in Item G marked for the attention of the Liaison Officer; and
- (b) hand delivered or sent by pre-paid post or facsimile to that address.

29.2 A notice given in accordance with clause 29.1 is received:

- (a) if hand delivered, on delivery;
- (b) if sent by pre-paid post, on the third Business Day after the date of posting;
- (c) if sent by facsimile, at the time the sender receives notification that the notice has been transmitted satisfactorily.

## SCHEDULE

***[Note to users - please see commentary for assistance in completing the relevant Items. Do not add Items or additional Schedules without first seeking specific advice from Legal Services Branch. Please delete this note once you have completed the Schedule.]***

**A. PROJECT, AIM OF THE PROJECT and SUBCONTRACTORS**

**B. BUDGET**

**C. PROJECT PERIOD**

***Project Period [See example wording in Commentary]***

**D. REPORTS**

***Progress Reports [See example wording in Commentary]***

Timetable for provision of Progress Reports:

Additional information to be provided with Progress Reports (if any):

***Final Report [See example wording in Commentary]***

Timetable for provision of Final Report:

Additional information to be provided with Final Report (if any):

***End of Financial Year Report(s) [See example wording in Commentary]***

Timetable for provision of End of Financial Year Report(s), if required:

Additional information to be provided with End of Financial Year Report(s) (if any):

**E. FUNDS AND INVOICE REQUIREMENTS**

***[See example wording in Commentary]***

**F. PROJECT MATERIAL and EXISTING MATERIAL**

***[See example wording in Commentary]***

***Project Material***

***Number of copies of publications to be provided to the Commonwealth***

***Existing Material***

**G. LIAISON OFFICERS**

***Commonwealth's Liaison Officer***

The Commonwealth's Liaison Officer is the person holding, occupying or performing the duties of ***[insert name of position]***. This position is currently occupied by ***[insert name of person]*** available at the following address:

*[insert street address,  
postal address; and  
fax number]*

and available on the following telephone number and email address:

*[insert telephone and email].*

***Participant's Liaison Officer***

The Participant's Liaison Officer is *[insert name of person]* available at the following address:

*[insert street address,  
postal address; and  
fax number]*

and available on the following telephone number and email address:

*[insert telephone and email].*

**H. ACKNOWLEDGEMENT**

**I. ASSETS**

**J. INSURANCE**

*[See example in Commentary]*

**K. COMPLIANCE WITH LAWS AND POLICIES**

*[See example in Commentary]*

**L. GUIDELINES AND STANDARDS**

*Guidelines for the Program*

*Standards for performance of the Project*

**M. SPECIFIED PERSONNEL**

*[See example in Commentary]*

This Funding Agreement is **SIGNED** as an agreement.

**SIGNED** for and on behalf of the **COMMONWEALTH OF AUSTRALIA** acting through the Department of Health and Ageing ABN 83 605 426 759 on:

\_\_\_\_\_  
*Date*

by:

\_\_\_\_\_  
*Printed name of signatory*

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Position of signatory*

in the presence of:

\_\_\_\_\_  
*Printed name of witness*

\_\_\_\_\_  
*Signature of witness*

**SIGNED by [You will need to insert the appropriate signature block according to the type of legal entity – see Commentary. This signature block is only appropriate when the Participant is a company incorporated under the Corporations Act.]**

\_\_\_\_\_ *Name of Participant (ABN .....)* on

\_\_\_\_\_  
*Date*

by:

\_\_\_\_\_  
*Printed name of Director*

\_\_\_\_\_  
*Signature of Director*

and:

\_\_\_\_\_  
*Printed name of Director/Secretary*

\_\_\_\_\_  
*Signature of Director/Secretary*