

Northern Territory of Australia

Capital Grant Funding

General Conditions - Version 2022:02

These are the **General Conditions** referred to in **Part B Terms and Conditions** of the **Capital Grant Funding Agreement Details**.

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General Conditions

1. Defined Terms, Interpretation and Priority

Defined Terms

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

Additional Special Conditions	means the Additional Special Conditions set out at clause 2.3 of Part B Terms and Conditions of this Agreement.
Approval	includes any approval, consent, authorisation, permit, registration, licence, exemption, clearance or certificate of any Authority (such as development consent, building permits, compliance certifications, Aboriginal Areas Protection Authority certificates, permits to enter Aboriginal land, asbestos clearance, occupation certificate, working with children clearance, and the like).
Asset	means any item of property that is created, leased or purchased, wholly or in part with the Funding, with or without our approval, with a value of the amount specified in Item 11 or more.
Associate	means a person associated or connected with you because: <ul style="list-style-type: none">(a) they are a Related Entity;(b) of a family relationship;(c) of a business partnership;(d) one is a company and the other is a director or manager of the company;(e) one is a private company and the other is a shareholder in the company; or(f) a chain of relationships can be traced between you and them under one or more of the above sub-paragraphs.
Audit	means the right to access, examine, and make copies or extracts of Records and Project Material kept by, or under the control of, or reasonably accessible by, you or your Personnel in connection with this Agreement or the Project, and includes an investigative and forensic audit for the purposes of determining: <ul style="list-style-type: none">(a) your compliance with this Agreement;(b) Conflicts (including Conflicts in your procurement processes);(c) whether Improper Conduct has occurred, is occurring, or is at risk of occurring; or(d) any other discrepancy.
Authority	means any government authority, statutory authority, local council or other legal entity with the legislative authority over or in connection with the Project.
Budget	means the budget for the Project attached to this Agreement (or subsequently accepted by us in accordance with clause 6.3) detailing how you will expend the Funding, including identifying Other Contributions (if any) and the proposed expenditure of such amounts for the purposes of conducting the Project.
Business Day	means any day which is not a Saturday, Sunday or a public holiday in Darwin in the Northern Territory (as specified in Schedule 2 of the <i>Public Holidays Act 1981</i> (NT)).

Competitive Process	means a process whereby you: <ul style="list-style-type: none"> (a) seek a minimum of two quotes where the estimated value of the supply is less than \$100,000 (ex GST); or (b) invite publicly advertised tenders where the estimated value of the supply is \$100,000 (ex GST) or greater, and use weighted pre-set assessment criteria (which add up to 100%) to assess responses received in order to obtain best value for money, including an assessment criteria for local content and commitment with a minimum weighting of 30% applied to it.
Confidential Information	means any Material that is agreed by the parties in writing as constituting confidential information for the purpose of this Agreement, but does not include information that: <ul style="list-style-type: none"> (a) is or becomes public knowledge other than by breach of this Agreement; (b) has been developed or acquired by a party other than in connection with this Agreement; and (c) Project Material in respect of which we have Intellectual Property rights.
Conflict	means a circumstance in which you or an Associate is in, or could be perceived to be in, a position to derive personal benefit, financial or non-financial and directly or indirectly, from the Project.
Contract	means a contract entered into by you for the provision of goods or services in relation to Works and includes Subcontracts.
Date of this Agreement	means the date on which the last party to sign this Agreement does so.
Design	means the detailed drawings, plans and specifications for the Works, including the scope, functionality and quality standards.
Designated Use and Designated Use Period	means the use, and the period of time for which the use must be maintained, specified in Item 8 .
Dispose or Disposal	means to sell, mortgage or encumber, lease or sub-lease, licence or sub-licence, assign or otherwise transfer (with or without consideration), or give up ownership or the right to occupy or use, or to enter into an agreement to do any of the preceding acts.
Dispute	does not include the lawful termination of this Agreement, or the exercise by us of our rights under this Agreement with respect to Unspent Funds, Misused Funds, Unacquitted Funds, Corrective Action, Audit, clauses 25 and 26, or any indemnity.
Expiry Date	means the date 30 Business Days after: <ul style="list-style-type: none"> (a) the end of the Designated Use Period; or (b) if there is no Designated Use, the date on which Practical Completion occurs.
Funding	means the funding amount specified in Item 4 payable by us to you under this Agreement and includes the interest you earn on that funding.
ICAC	means the Independent Commissioner Against Corruption under the ICAC Act.
ICAC Act	means the <i>Independent Commission Against Corruption Act 2017</i> .
Improper Conduct	means: <ul style="list-style-type: none"> (a) a failure to manage a Conflict;

	<ul style="list-style-type: none"> (b) dishonest, illegal, unauthorised, unconscionable or otherwise inappropriate conduct in connection with this Agreement or the Project; and (c) any other conduct that involves recklessness, negligence, impropriety, or incompetence, that has a material adverse effect on the performance of the obligations under this Agreement; and (d) a finding of improper conduct by the ICAC.
Improvements	are Works that result in the enhancement of the usefulness of land or an Asset in terms of its capacity, quality, or remaining useful life, and need not be tangible improvements.
Intellectual Property	means all intellectual property rights including patents, copyright, rights in circuit layout, registered designs, trademarks, and other rights.
Interest	means interest calculated at the rate set by the Northern Territory on an annual basis and paid at the 90 day bank bill rate as at 1 June each year.
Item	means an Item listed in the Project Details.
Law	includes all applicable statutes, regulations, by-laws, ordinances or subordinate legislation in force from time to time, whether made by a State, Territory, the Commonwealth, or a local government, and includes the common law and rules of equity as applicable from time to time.
Material	means any document, information or material in any form stored by any means and includes all copies and extracts of such Material.
Milestone	means a milestone listed at Item 5 .
Milestone Payment	means the payment amount specified in Item 5 that is attached to a completed Milestone.
Misused Funds	means appropriating, using or dealing with the Funding or part of the Funding in a manner: <ul style="list-style-type: none"> (a) other than in accordance with this Agreement; (b) that constitutes Improper Conduct; or (c) that is reasonably considered by us to be at risk of either (a) or (b), whether directly or indirectly and whether intentionally or unintentionally.
Other Contributions	means the other funding contributors to the Works and their financial contribution amounts described at Item 13 (which may include you and your contributions).
Our Material	means any Material provided by us to you for the purposes of this Agreement and includes Material copied or derived from Our Material.
Personnel	means the directors, officers, employees, Subcontractors, advisers, agents and volunteers of a party.
Practical Completion	occurs when the Works have been completed, the requirements of clause 8 (Practical Completion) have been satisfied, and occupancy certification required by Law has been issued and provided to us.
Practical Completion Date	means the date specified in Item 7 by which you must achieve Practical Completion.
Primary Contact Person	means the person with the day to day management of this Agreement named at Parties (or such other person as is notified).
Project	means the project described at Item 1 and includes the Works and the Designated Use.

Project Details	means the Project Details set out in Part A Contract Details of this Agreement.
Project Documents	<p>means all plans, drawings and other information relating to the Project and the Works that are brought into existence by or on behalf of you under or in connection with this Agreement or otherwise relating to the Project or the Works including, where relevant:</p> <ul style="list-style-type: none"> (a) drawings and specifications for the Works; (b) a site plan including ingress and egress arrangements for pedestrians and motor vehicles; (c) development approval; (d) land owner approval; (e) design brief; (f) design specifications; (g) design drawings; (h) equipment specifications, certification and suppliers; (i) tender acceptance report; (j) all other Approvals.
Project Material	means information relating to the Project brought into existence for the purpose of this Agreement and includes the Project Documents, and Material (including Your Material to the extent incorporated into the Project Material, but not Our Material).
Project Objectives	means the project objectives described in Item 3 .
Project Plan	means the project plan attached to this Agreement (or subsequently submitted to and accepted by us in accordance with clause 6), detailing the conduct of the Project, the Works, a milestone schedule (including the Milestones and the timeframes for completion of each Milestone), the resources for each Milestone, and the criteria for completion of each Milestone, the performance measures and any Other Contributions.
Property	means the land described in Item 6 on which the Works will be conducted, and includes any premises, buildings, fixtures and other improvements on the land, but does not include items that would be regarded as fittings or chattels at Law.
Records	means all or any of the information required to be kept, maintained or created by you under this Agreement (including financial information and accounts, Reports and Project Documents) and any other information kept, created or maintain by you relevant to this Agreement, and includes documents, files, software, information and data stored by any means.
Related Entity	<p>means:</p> <ul style="list-style-type: none"> (i) in the case of a company, a related entity within the meaning of section 50 of the <i>Corporations Act 2001</i> (Cth), and directors and shareholders of the company and/or a Related Entity; (ii) in the case of other incorporated bodies, a member of the board of management of that body or other person that is in a position of influence in respect of decision making of that body; and (iii) in the case of unincorporated bodies, includes sole traders, members of a partnership, joint venturers, and members of the management committee.
Reports	means the reports specified at Item 12 that must meet the applicable requirements of clause 18.

Special Conditions	means the Special Conditions set out at clause 2.2 of Part B Terms and Conditions of this Agreement, and includes Additional Special Conditions where the context permits.
Subcontract	means a written agreement with a Subcontractor in accordance with clause 9.
Subcontractor	means any contractor, person or organisation engaged by you to deliver works, goods or services with respect to the Project.
Term	means the term of this Agreement pursuant to clause 2.
Territory Enterprise	means an enterprise operating in the Northern Territory that has an active ABN, is currently operating in the Northern Territory, has a significant permanent presence in the Northern Territory (for example manufacturing or office facilities) and employs Northern Territory residents.
Unacquitted Funds	means the Funding or part of the Funding that cannot, by reconciliation or audit of the Records maintained by you (or as reported to us by you), be shown to our reasonable satisfaction to have been spent or committed in accordance with this Agreement.
Unforeseen Event	means an event or circumstance of riot, war, invasion, terrorism, earthquake, flood, fire, cyclone, epidemic, pandemic, protected industrial action (but not action involving solely the employees or subcontractors of the affected party), or act of God, provided that event or circumstance: <ul style="list-style-type: none"> (a) could not have been reasonably foreseen or avoided by exercise of due diligence by the affected party; (b) is completely outside the control of the affected party and its Personnel; (c) is not caused by the affected party or its Personnel; and (d) is not a result of an epidemic or pandemic that is known by the parties at the Date of this Agreement.
Unspent Funds	means the Funding or part of the Funding that: <ul style="list-style-type: none"> (a) has not been spent by you; and (b) you are not contractually obliged to pay to a third party by written agreement, in accordance with this Agreement.
us	(and grammatical variations such as we and our) means the Northern Territory of Australia and includes our Personnel and successors.
Works	means that part of the Project described at Item 2 that comprises the design, construction, modification, expansion, refurbishment or fit-out (as the case may be) of the Property and related activities, and includes building new facilities, the extension or upgrade of existing facilities, the rectification of defects, and the purchase of an Asset, but does not include general repairs and maintenance on existing assets.
you	(and grammatical variations such as your) includes your Personnel and successors.
Your Material	means any Material that is developed by you prior to the Date of this Agreement or independently of this Agreement.

Interpretation

1.2 In this Agreement:

- (a) if a word or phrase is defined, its other grammatical forms have corresponding meaning;
- (b) a word which means the singular also means the plural and vice versa;

- (c) the word “including” is not a word of limitation, and is to be interpreted as though it were immediately followed by the words “but not limited to”;
- (d) where a clause states that an action requires notice, consent, approval, agreement, authorisation, endorsement, permission or words of similar effect, then it must be given or obtained in writing to be effective;
- (e) a reference to a “person” includes a reference to an individual, a partnership, a body corporate, unincorporated body, a government or local authority or agency or any other entity;
- (f) if an act is to be done on a day which is not a Business Day, that act must be done on the next Business Day;
- (g) headings and sub-headings have been included for ease of reference only and have no effect in limiting or extending the language of the provision to which they refer;
- (h) reference to “party” or “parties” means a party or the parties to this Agreement, and includes the Personnel of that party or parties;
- (i) a reference to a statute, ordinance, code or other Law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (j) a reference to a clause or schedule is a reference to a clause or schedule of this Agreement;
- (k) a reference to a document (including a reference to this Agreement) is to the document as amended, varied, supplemented, notated or replaced, unless the context otherwise requires;
- (l) no rules of construction apply to the disadvantage of a party on the basis that that party was responsible for the preparation of this document or any part of it; and
- (m) a reference to dollars and \$ is to Australian currency only.

Formation

1.3 This Agreement is comprised of:

- (a) **Part A Contract Details**; and;
- (b) **Part B Terms and Conditions** (including General Conditions, Special Conditions and Additional Special Conditions whether set out or incorporated by reference),

and includes the signing page, all annexures, appendices, schedules or attachments referred to in this Agreement and any other documents expressly incorporated by reference into this Agreement.

Priority

1.4 If there is a conflict or inconsistency between any of the provisions forming part of this Agreement then, to the extent of the inconsistency, those provisions have priority in the following order:

- (a) Additional Special Conditions in **Part B Terms and Conditions**;
- (b) Special Conditions in **Part B Terms and Conditions**;
- (c) General Conditions in **Part B Terms and Conditions**;
- (d) an Item in the Project Details in **Part A Contract Details**;
- (e) the Budget and Project Plan;
- (f) other annexure, appendix or attachment referred to in the Project Details; and
- (g) any other document incorporated by reference into this Agreement.

2. Term of Agreement

- 2.1 This Agreement will take effect from the Date of this Agreement and, unless terminated earlier in accordance with this Agreement, will expire on the later to occur of:
- (a) the Expiry Date; and
 - (b) the date on which you have met all your obligations under this Agreement to our satisfaction.

3. Public Accountability

- 3.1 You acknowledge the Funding is “public resources” and you are a “public body” for the purposes of the ICAC Act.
- 3.2 You acknowledge and agree that you or your Personnel’s Improper Conduct in connection with the Funding is a breach of this Agreement and has the potential to cause material reputational damage and loss to us.
- 3.3 You further acknowledge and agree:
- (a) this Agreement is intended to be, and is, legally binding;
 - (b) to do anything we reasonably require for us to comply with our public accountability responsibilities, including our obligations under, or compliance with, privacy and freedom of information laws, financial management legislation and the ICAC Act;
 - (c) your failure to comply with this Agreement may be taken into consideration in any future grant funding applications and may result in you being excluded from consideration for subsequent or other funding;
 - (d) where you have an Australian Business Number (ABN) details of the Funding may be provided by us to the Australian Taxation Office; and
 - (e) subject to reasonable notice, you must give our Auditor-General, the Information Commissioner, the Ombudsman, and the Independent Commissioner for Corruption (and their respective delegates), access to inspect and copy Records associated with this Agreement, howsoever and wheresoever stored, and you must provide all reasonable assistance requested in respect of any inquiry into or concerning the Project or the Funding.
- 3.4 Where you provide any part of the Funding to other entities (such as Subcontractors), you must first obtain that entity’s written agreement that:
- (a) the part of the Funding they receive is “public resources” and that entity is also “a public body” for the purpose of the ICAC Act; and
 - (b) the entity is also bound to comply this clause 3,
- and you are not relieved of your responsibility for non-compliance by reason of that agreement.

4. Funding

Payment of Funding

- 4.1 Subject to:
- (a) parliamentary appropriation;
 - (b) receipt of any part of the Funding that is provided or to be provided by a third party to us (such as the Commonwealth); and
 - (c) the provisions of this Agreement,
- we will pay the Funding to you in accordance with **Item 5**.
- 4.2 The funding to be contributed by us will not exceed the amount of the Funding and we are not liable for:

- (a) any debts incurred by you; and
- (b) any monies owing by you,

and you are solely responsible for:

- (c) any budget or cost overruns of the Works or Project; and
- (d) contributing further monies where the Funding is insufficient to complete the Works or Project.

4.3 Notwithstanding any other provision of this Agreement, we may withhold payment of any Funding if, in our reasonable opinion, you have not complied with any material term of this Agreement to our reasonable satisfaction (including completing a Milestone, providing a Report, or complying with an Audit), or you have failed to provide Records in accordance with a reasonable request to do so.

Use of the Funding

4.4 The Funding may only be used for the Project and must be used in accordance with:

- (a) the Project Objectives, Project Plan and Budget;
- (b) the requirements of this Agreement; and
- (c) our reasonable directions,

and, in the absence of our approval, you must not use the Funding or any part of the Funding for any other purpose including:

- (d) your administrative or other general costs not directly incurred for the purpose of the Works;
- (e) to purchase, lease or otherwise acquire vehicles, land or premises (except for the Property if specified in the Budget);
- (f) for the Designated Use, such as rent, outgoings or service provision (noting operational or services funding may be subject to a separate services funding agreement); or
- (g) for investment purposes, to make a loan, to give any form of credit, or to provide any form of financial security.

4.5 You must hold the Funding in an interest bearing account with an “authorised deposit-taking institution” as that term is defined in the *Banking Act 1959* (Cth).

Other Contributions

4.6 Where Other Contributions are set out at **Item 13** or subclause 4.8 below applies, you must:

- (a) within 20 Business Days after the Date of this Agreement, or where subclause (d) applies within 5 Business Days, provide to us satisfactory written evidence that the Other Contributions have been paid (including your contribution, if any), detailing the person or entity providing the contribution, and the nature and value of the contribution;
- (b) if requested by us, promptly provide to us copies of any written arrangements entered into, or proposed to be entered into, in respect of the Other Contributions;
- (c) ensure that the terms on which any Other Contributions are provided to you are not inconsistent with the terms of this Agreement and do not in any way limit or affect your ability to comply strictly with your obligations or our ability to exercise our rights, under this Agreement; and
- (d) use the Other Contributions to undertake the Works,

and we are not required to make any payment of Funding until such time as you have complied with clause 4.6(a) to our satisfaction.

4.7 Notwithstanding any other provision of this Agreement, if the Other Contributions are not provided or used in accordance with clause 4.6, we may by notice:

- (a) suspend payment of Funding until the Other Contributions are provided;

- (b) reduce the total Funding payable under this Agreement by an amount that, in our opinion, represents an equivalent proportion of the overall reduction in the total value of the Other Contributions resulting from the failure; or
 - (c) terminate this Agreement immediately and require repayment of the Funding within the time specified in the notice.
- 4.8 You must promptly notify us if you enter into any arrangement under which you are entitled to receive additional monetary or in-kind contributions in respect of the Project that are not identified as Other Contributions at **Item 13**. Any such additional contribution is deemed to constitute Other Contributions for the purposes of this Agreement.
- 4.9 Where the actual cost of the completed Works is less than the sum of the Funding and the Other Contributions, resulting in cost savings (**Savings**), we may give you notice requiring you to return to us an amount that in our reasonable opinion is equal to our proportion of those Savings, and that proportion will be Unspent Funds for the purpose of this Agreement.

5. The Property

Your Warranties

- 5.1 You warrant and represent that:
- (a) the Property is, and will at all times be, fit for the purposes of carrying out the Project and you have made reasonable enquiries to ensure that there are no latent conditions that may affect your ability to undertake or complete the Works;
 - (b) you:
 - (i) own the Property; or
 - (ii) you have the legal right to occupy the Property for the entirety of the Term for the purpose of carrying out the Project (including the legal right to undertake the Works);
 - (c) the performance of the Project does not, and will not, infringe any condition of ownership of, occupation of or right to use, the Property;
 - (d) any use of the Property for the Project does not, and will not, infringe any Law; and
 - (e) there are and will be no restrictive covenants, restrictions on use, easements, encumbrances, interests, mortgages, caveats, leases, rights and notifications affecting the Property, other than those notified to us in writing prior to the Date of this Agreement.

Your General Obligations

- 5.2 During the Term, you must:
- (a) perform the Project on and from the Property;
 - (b) maintain the Property in good condition and safeguard the Property against loss, damage or unauthorised use; and
 - (c) reinstate the Property if it is damaged or destroyed.
- 5.3 During the Term, you must not:
- (a) grant to or Dispose of:
 - (i) the Property;
 - (ii) any interest in the Property; or
 - (iii) your right to occupy the Property,to any person without first:
 - (iv) obtaining our prior consent (which consent is at our discretion and may be subject to any conditions, including a condition that all or part of the Funding must be repaid to us to transferred to a third party); and

- (v) where a Designated Use Period applies, requiring the person to enter into a deed of covenant in our favour to use the Property for the Designated Use until expiry of the Designated Use Period;
- (b) except with our prior consent, use the Property as any form of security for the purpose of obtaining or complying with any form of loan, credit, payment or other interest; and
- (c) if you are not the owner of the Property, do anything that would give the owner of the Property the right to terminate or forfeit your right of occupancy.

6. Planning, Design and Approvals

Project Plan and Budget

- 6.1 Unless specified as an annexure at **Item 2** and attached to this Agreement, you must submit to us:
 - (a) a draft Project Plan; and
 - (b) a draft Budget,within 10 Business Days of the Date of this Agreement.
- 6.2 You must ensure that the draft Project Plan and draft Budget submitted under clause 6.1:
 - (a) have been prepared accurately, diligently, effectively and to a high professional standard;
 - (b) meet all requirements of this Agreement; and
 - (c) are consistent with the Project Objectives.
- 6.3 We will review the draft Project Plan and draft Budget and may, in our discretion, notify you that the draft Project Plan and/or draft Budget:
 - (a) is acceptable to us; or
 - (b) requires amendment, in which case you must amend the draft Project Plan and/or draft Budget so as to address our comments and resubmit the documents to us within the time specified in the notice.
- 6.4 Our review of, comment on, or acceptance of, a draft Project Plan and/or draft Budget will not in any way limit or affect your obligations under this Agreement.
- 6.5 If you fail to comply with clause 6.1 or 6.3(b) (or you fail to comply with such further or other timeframe or requirements as we may agree), we may terminate this Agreement immediately by notice and require repayment of the Funding within the time specified in the notice.

Design of the Works

- 6.6 You are responsible for the Design and you must ensure the Design:
 - (a) is prepared with the degree of skill, care diligence of a skilled and competent design professional;
 - (b) complies with the regulatory requirements of any relevant Authority, including building Approvals and technical certifications;
 - (c) is fit for its intended purpose (including the Designated Use, if any) in all respects; and
 - (d) complies with all Laws,and, if required by us, obtain our endorsement of the final Design.
- 6.7 At any time prior to the Works commencing, we may, acting reasonably, review the Design and, if the Design is not acceptable to us, we may at our discretion:
 - (a) suspend the commencement of the Works until such time as our comments on the Design are addressed; or
 - (b) terminate this Agreement immediately by notice and clause 22 will apply.

- 6.8 Without limiting any other provision of this Agreement, you must develop, prepare and maintain copies of all documents necessary to complete the Works, including all documents that would be prepared by a prudent and competent design professional, in order to ensure the Works are, on the date Practical Completion occurs, fit for purpose, and, if a Designated Use applies, fit for the purpose of the Designated Use throughout the Designated Use Period.

Approvals

- 6.9 You must obtain all Approvals for the construction of the Works and you must deliver a copy of each Approval to us promptly on request.
- 6.10 If the Works must be varied to obtain any Approval, you must notify us and ensure the variation will not adversely affect the Project or Project Objectives and clause 7.9 applies.
- 6.11 On completing the Works, you must ensure that an occupation certificate is issued in respect of the Works, and promptly provide a copy of that certificate to us. You must not use the Works in the absence of the occupation certificate.

7. Conduct of the Project

General Conduct

- 7.1 You must carry out the Project in accordance with this Agreement and in doing so you must:
- (a) complete the Works in accordance with the Budget and the Project Plan, including meeting all Milestones;
 - (b) not make any substantive amendments to, or materially depart from, the Project Plan or the Budget, without our prior approval;
 - (c) comply with all Approvals with respect to the Project;
 - (d) comply with relevant Australian industry standards, best practices and guidelines;
 - (e) complete the Project diligently, effectively and to a high professional standard;
 - (f) deliver the Project in a manner that is consistent with your representations in your funding application or funding proposal (if any);
 - (g) ensure the Works are fit for purpose; and
 - (h) meet the Project Objectives.
- 7.2 You must not commence the Works until you have:
- (a) obtained all relevant Approvals that are necessary to enable the commencement of the Works; and
 - (b) obtained all insurances required under this Agreement.

Employees

- 7.3 You must:
- (a) adequately resource the Project with suitably competent, qualified and skilled employees (including a project manager) in order to meet your obligations under this Agreement;
 - (b) take reasonable steps to ensure your employees are appropriately screened, suitably qualified, experienced and trained to undertake their duties in accordance with this Agreement;
 - (c) pay all remuneration and other entitlements of your employees when due irrespective of receipt of the Funding or any Milestone Payment; and
 - (d) ensure your employees comply with the requirements of this Agreement.

Project Progress

- 7.4 With respect to the conduct of the Project, you and your Personnel must:
- (a) act in good faith and cooperate with us; and

- (b) provide such information or documentation and participate in such meetings as we reasonably request,

and if, in our opinion, you or your Personnel have not complied with these obligations, we may give notice under clause 25.1(b) without following the procedure in clause 21.

- 7.5 If you become aware that you are unlikely to complete a Milestone, or you are unlikely to meet a Milestone within the timeframe for completion, you must:
 - (a) immediately notify our Primary Contact Person detailing the reasons and providing a new date for completion; and
 - (b) promptly prepare an updated Project Plan (and Budget if there is an associated cost) for acceptance by us.

Defects and Rectification

- 7.6 Upon giving you reasonable notice, and subject to your reasonable requirements in relation to safety and security:
 - (a) we (or persons authorised by us) may enter the Property to inspect and examine the Works; and
 - (b) we may give you notice of any omission, fault or defect in the Works,and you must promptly rectify all matters identified in the notice within the time specified.
- 7.7 Notwithstanding our rights under clause 7.6:
 - (a) we are not obliged to inspect or examine the Works or give notice to you of any defect, fault or omission; and
 - (b) you are not relieved of responsibility for any defect, fault or omission in respect of the Works.

Works Variations

- 7.8 You must not materially vary the Works without our consent.
- 7.9 You must notify us of all proposed variations to the Works that could or might reasonably be expected to have an effect on:
 - (a) the overall cost of the Works specified in the Budget;
 - (b) the accuracy of the Project Plan or the Budget;
 - (c) the Milestones;
 - (d) the Practical Completion Date; or
 - (e) the fitness of the Works for the Designated Use.

8. Practical Completion

- 8.1 You must achieve Practical Completion on or before the Practical Completion Date.
- 8.2 In order to achieve Practical Completion:
 - (a) the Works must be complete and free from material errors, omissions and defects, meet the Project Objectives, and fit and available for the Designated Use; and
 - (b) you must have provided to us a copy of the occupancy certification in respect of the Works.
- 8.3 We may extend the Practical Completion Date by notice where, in our reasonable opinion, you have:
 - (a) been delayed by an Unforeseen Event;
 - (b) been delayed by a breach of this Agreement by us; or
 - (c) given us notice of a delay, with particulars, within 5 Business Days of the delay arising,

and you have taken all reasonable steps to avoid the delay and minimise its effects.

- 8.4 An extension to the Practical Completion Date given under clause 8.3 is your sole remedy in respect of any delay.

9. Subcontracting and Procurement

Subcontracting Generally

- 9.1 Subject to this clause 9, you may engage Subcontractors with respect to the Project, provided that you:
- (a) only engage Subcontractors who are appropriately qualified, skilled and experienced in their respective disciplines; and
 - (b) manage and administer your Subcontractors in accordance with this Agreement.
- 9.2 You must ensure that all Subcontractors you engage are bound by a Subcontract, and promptly give us a full copy of any such contract on our request. The Subcontract must:
- (a) contain terms substantially the same as this Agreement in relevant respects;
 - (b) with regard to clause 9.7, contain a term that an Associate is ineligible to be awarded a contract unless we first consent to such award;
 - (c) reserve rights of access, audit, recovery, suspension and termination to take account of our rights under this Agreement; and
 - (d) not make payment of the Subcontractor conditional upon your receipt of Funding.
- 9.3 Subcontracting any part of the Project will not relieve you of any of your obligations under this Agreement.

Buy Local

- 9.4 Procurement of all Subcontractors must be carried out in a fair, open and transparent manner, using a Competitive Process.
- 9.5 You acknowledge and adopt our commitment to the development of business and industry in the Northern Territory and our support for Territory Enterprises. In engaging Subcontractors you must:
- (a) invite Territory Enterprises (and any other enterprises) to submit quotes or tenders (**respondents**); and
 - (b) engage Territory Enterprises, or otherwise demonstrate through conducting a Competitive Process that either:
 - (i) there are no Territory Enterprises willing or able to carry out or conduct the requirement; or
 - (ii) the quotes or tenders received from Territory Enterprises do not provide best value for money for you; and
- 9.6 You must require respondents to similarly engage with Territory Enterprises where they procure contractors or subcontractors.

Probity in Procurement

- 9.7 A respondent that is an Associate is ineligible to be awarded a contract unless we first consent to such award, which consent may be withheld in our absolute discretion and without any obligation on us to give reasons.
- 9.8 Where you intend to procure a Subcontract that has, or is likely to have, a value equal to or greater than:
- (a) \$1 million dollars (exclusive of GST); or
 - (b) if an amount other than \$1 million dollars is specified in **Item 14**, that amount,

then you must, before conducting a Competitive Process in respect of that particular procurement:

- (c) submit to us a copy of the proposed probity plan for the relevant procurement (**the probity plan**), which must include, in addition to terms that a prudent procurer of Works would require, statements in respect of the following matters:
 - (i) the name and contact details of an independent probity adviser appointed by you to oversee the procurement (**the probity adviser**); and
 - (ii) how Conflicts (whether patent at the commencement of assessment or arising during assessment) will be managed generally during the procurement process;
 - (iii) reasonable details of the criteria by which respondent's tenders will be assessed (including demonstration of compliance with clause 9.6).

9.9 Where clause 9.8 applies:

- (a) We must, within 2 Business Days of receipt of your submission of the probity plan, approve or reject the probity plan by notice to you. If we do not notify you, the probity plan will be taken to be accepted. If we reject the probity plan we will notify you our reasons and work with you and the probity adviser on a bona fide basis until the Probity Plan is acceptable to us (acting reasonably);
- (b) We may, but are not obliged to, appoint a representative to attend the assessment of tenders to ensure the terms of the probity plan and the terms of this Agreement are observed by the assessment panel. You must give us not less than 5 Business Days' notice of the proposed date of commencement of assessments, and keep us informed of changes to the assessment schedule;
- (c) The probity plan must be made available to us and any respondent on request. The Competitive Process must advise respondents that the probity adviser is appointed as an independent overseer of the process and that the probity adviser is available to receive queries or complaints from any person who has an interest in the procurement process (including without limitation, a person representing us or a member of the public);
- (d) Upon completion of any procurement process you must promptly provide to us a copy of the probity adviser's report (which report must include details of communications by any interested person to the probity adviser); and
- (e) You are prohibited from awarding a Subcontract without first obtaining our approval, which approval will not be unreasonably withheld or delayed provided that the probity adviser's report does not report any breach of the probity plan, you are not in breach of this Agreement, and the obligations of this clause 9.9 have, in our reasonable opinion, otherwise been complied with.

9.10 You must ensure that any communications to the public with respect to the Project, in any medium (whether written, verbal, electronic or otherwise), including the award of Subcontracts, are only undertaken in consultation with, and with the prior approval of, us (which may include a requirement that we approve the content of any proposed media release, and that our contribution pursuant to this Agreement is appropriately acknowledged).

10. Work Health and Safety

10.1 For the purpose of this clause 10, "**WHS Laws**" means the *Work Health and Safety (National Uniform Legislation) Act 2011* and the regulations made under that Act.

10.2 You and your Personnel must strictly comply with:

- (a) the WHS Laws; and
- (b) any design safety requirements of the Works.

10.3 If we are satisfied that you or your Personnel are not complying with this clause 10, we may direct you to immediately suspend the Works until the non-compliance is rectified and we are not obliged to make any payment whatsoever to you during that period.

11. Designated Use

Designated Use and Designated Use Period

11.1 If a Designated Use is specified in the Project Details you:

- (a) warrant that the Designated Use is permitted by the applicable zoning of the Property and you have, or will, obtain the necessary Approvals; and
- (b) during the Designated Use Period you must:
 - (i) use the Property solely for the Designated Use and for no other purpose without our prior approval;
 - (ii) ensure that any services or activities carried out from the Property during the Designated Use Period meet all relevant industry accreditation standards and any requirements to be registered and licensed; and
 - (iii) not leave the Property unused (or unoccupied) for a period in excess of four weeks without first obtaining our consent.

Repayment

11.2 If within the Designated Use Period, we are satisfied on reasonable grounds that you have failed to comply with any of your obligations under this clause 11, we may by notice require you to repay the amount calculated in accordance with clause 11.3 (or some lesser amount at our discretion) within the period specified in the notice.

Repayment Formula

11.3 The formula for the purpose of clause 11.2 is:

$$A = B - \left(\frac{C}{D} \times B \right)$$

Where:

A = repayment amount owed to us

B = total Funding

C = number of years for which the Property was used for the Designated Use

D = number of years in the Designated Use Period

Covenant

11.4 We may require a caveat or covenant with respect to the ongoing Designated Use to be registered on the title of the Property, and you consent (or you warrant you have procured the Property owner's consent) to the registration of a caveat or covenant in gross providing for the sole use of the Property to be the Designated Use for a minimum period of time equal to the Designated Use Period.

11.5 You must sign (or procure the owner of the Property to sign) all documents and give all undertakings reasonably required by us to give effect to clause 11.4.

11.6 The costs of the preparation, stamping (if applicable) and registration of the caveat or covenant and any further or other documents required to give effect to clause 11.4 will be borne by you.

12. Intellectual Property

Intellectual Property Ownership

12.1 Intellectual Property in:

- (a) Our Material is owned by us;

- (b) Reports vests in us; and
- (c) Project Material vests in you.

Licence of Intellectual Property

- 12.2 We grant you a royalty free non-exclusive licence to use, adapt, communicate, publish, reproduce and sub-licence Our Material for the purposes of performing your obligations under this Agreement, following which you must return to us all of Our Material unless we advise otherwise.
- 12.3 You grant us a perpetual, irrevocable, royalty-free, fee free, non-exclusive licence to use, adapt, communicate, publish, reproduce and sub-licence Project Material, for our governmental purposes. You will grant us full and free access to the Project Material for the purpose of us exercising our rights under this clause 12.3.
- 12.4 You warrant that you:
- (a) are entitled to grant the licence in clause 12.3; or
 - (b) will procure all rights, licences and consents from any third party that is necessary to enable you to grant the licence in clause 12.3.
- 12.5 If required by us, you must provide, sign, execute, or complete any document that may be necessary or desirable to give effect to clause 12.3.

13. Privacy and Confidentiality

Privacy

- 13.1 You acknowledge that you may be a 'contracted service provider' within the meaning of the *Information Act 2001 (the Act)* with respect to this Agreement and if so, you must comply with the Information Privacy Principles set out in Schedule 2 of the Act in dealing with personal information as if you were a public sector agency.
- 13.2 You must immediately notify us if you become aware of a breach or possible breach of any of your privacy or confidentiality obligations under this Agreement.

Confidentiality

- 13.3 Other than in accordance with this clause 13, a party must not, without the prior consent of the other party, use or disclose any Confidential Information of the other party.
- 13.4 The obligations in clause 13.3 will not be breached where that Confidential Information:
- (a) is disclosed by a party to its Personnel solely in order to perform its obligations or exercise its rights under this Agreement and is covered by confidentiality obligations;
 - (b) is disclosed by us to the Parliament, Cabinet, a Minister or any Parliamentary, Ministerial or Cabinet Committee of the Territory or in response to a request by the Legislative Assembly or a Committee of the Legislative Assembly of the Territory or otherwise is required to be disclosed for public accountability reasons;
 - (c) is shared by us with another department or agency of the Territory, the Commonwealth of Australia or any other State or Territory of Australia, where this serves our legitimate interests;
 - (d) is authorised or required by Law to be disclosed; or
 - (e) is disclosed by a party and is information in a material form in respect of which the party has Intellectual Property rights that permit the disclosure.

14. Conflicts of Interest

Warranty

14.1 You warrant that, to the best of your knowledge after making diligent inquiry, at the Date of this Agreement, no Conflict exists or is likely to arise in the performance of obligations under this Agreement with respect to you or your Personnel.

Obligation to avoid Conflict

14.2 You will not, and you will use your best endeavours to ensure that your Personnel do not, engage in any activity or obtain any interest during the Term that is likely to Conflict with your obligations under this Agreement or affect your ability to deliver the Project fairly, independently and without perception of bias.

Notification of Conflict

14.3 If during the Term a Conflict arises, or appears likely to arise, you must:

- (a) immediately notify us of the Conflict making a full disclosure of all relevant information relating to the Conflict and setting out the steps you propose to take to resolve or otherwise deal with the Conflict; and
- (b) take such steps as you have proposed, and take such steps as we may reasonably require to resolve or otherwise deal with the Conflict.

14.4 If you fail to comply with clause 14.3, or we are of the reasonable opinion that you are unable or unwilling to resolve or deal with the Conflict as required, we may terminate this Agreement immediately on notice to you and no compensation of any nature whatsoever will be payable to you.

15. Insurance and Risk

Insurance

15.1 You must take out, and maintain, appropriate types and amounts of insurance sufficient to cover your activities and obligations under this Agreement (including those obligations which survive its expiry or sooner termination) and, at a minimum:

- (a) workers compensation insurance required by Law;
- (b) public liability insurance for \$20 million; and
- (c) the insurances specified in **Item 9**.

15.2 You must, within 5 Business Days of our request, provide us with copies of your relevant insurance policies and certificates of currency.

Insurance Proceeds

15.3 If, during the Term, the Works or the Property (or both as the case may be) are lost, damaged or destroyed by a risk against which you are required under this Agreement to be insured you must claim and obtain payment of any insurance moneys to which you are entitled (**the proceeds**).

15.4 At our option, you must apply the proceeds to:

- (a) reinstating the Works or the Property (or both as the case may be); or
- (b) pay to us the proceeds, or such lesser amount as we may agree.

Risk and Release

15.5 You accept all risks of this Agreement and the Project, including the risk of:

- (a) designing, constructing and commissioning the Project, including all liabilities associated with work health and safety, environmental issues, and liabilities to third parties (including to your Subcontractors, Personnel, or suppliers);
- (b) the cost of the Project, and the cost of performing your obligations under this Agreement, being greater than anticipated;

- (c) goods or services in connection with the Project not being supplied or performed in accordance with the requirements of any contract between you and your Subcontractors; and
- (d) compliance with Laws and any change in Laws in connection with the Project; and
- (e) loss of or damage to any property, or injury or death to any person, or any other loss whatsoever or howsoever incurred arising out of the Project,

and you release us and our Personnel to the full extent permitted by Law from all responsibility and liability for the risks in this clause 15.5 howsoever incurred.

Indemnity

15.6 You indemnify (and keep indemnified) us and our Personnel, from and against any:

- (a) claims made by any person against, and loss, damage or other liability incurred by, us or our Personnel in respect of any personal injury or death and any loss of, or damage to, any property; and
- (b) all costs and expenses incurred by us or our Personnel in dealing with any claim against them (including legal costs on a solicitor and own client basis),

that is caused by or arises from:

- (c) the risks referred to in clause 15.5;
- (d) any infringement, or alleged infringement, of the Intellectual Property rights of any person;
- (e) any actual, likely or threatened breach of your or your Subcontractor's obligations relating to confidentiality or privacy;
- (f) any breach of this Agreement by you or your Personnel;
- (g) your or your Personnel's negligence or wrongful or unlawful act or omission; and
- (h) any breach by you of your warranties under this Agreement.

15.7 Your liability to indemnify us and our Personnel under clause 15.6 will be reduced proportionately to the extent that our negligent act or omission or breach of this Agreement contributed to the relevant loss, damage, liability or expense.

15.8 Our right to be indemnified under clause 15.6 is in addition to, and not exclusive of, any other right, power, or remedy provided by Law.

16. Records

16.1 You must keep comprehensive Records and promptly provide copies to us on request, including:

- (a) records that detail and document the conduct and management of the Project (including progress against the Milestones and the extent to which the Project is achieving or has achieved the Project Objectives);
- (b) financial records that:
 - (i) identify the receipt and expenditure of the Funding and any Other Contributions separately so that at all times the Funding and Other Contributions are;
 - (ii) that allow all revenue and expenditure related to the Project to be identified in your accounts; and
 - (iii) enable the preparation of financial statements in accordance with Australian Accounting Standards; and
- (c) records that enable all receipts and payments related to the Project to be identified and reported.

16.2 You must retain Records for a period of 7 years after creation or such longer period as may be required by Law.

17. Access and Audit

17.1 You must provide accurate, informative and timely advice to us on any matters that could impact the Project or the Project Objectives.

17.2 On reasonable notice, and subject to any safety requirements, you and your Personnel must permit us to access the Property to inspect the progress of your activities or to confirm that the requirements of this Agreement are being met.

17.3 In addition to any other right we may have under this Agreement, we may, at any time, after giving you 2 Business Days' notice, conduct an Audit. We may conduct the Audit ourselves or may engage a third party to conduct the Audit on our behalf (**auditor**).

17.4 You must cooperate with and provide all Records and Project Material and other assistance reasonably requested by the auditor.

17.5 If required by the auditor, you must promptly provide the auditor with access to:

- (a) your and your Personnel's premises at which Records and Project Material are stored or work in connection with the Project is undertaken; and
 - (b) your and your Personnel's computer hardware and software and equipment,
- to the extent required for us to exercise our rights under this clause 17.

18. Reports and Acquittal

Reports

18.1 You must:

- (a) provide all Reports in such format as we may require and on the dates specified in **Item 12** in accordance with this clause 18; and
- (b) provide such other information or documentation or meet any other requirements as is reasonably required by us in connection with your obligations under this Agreement.

18.2 All Reports are owned by us.

Progress Reports

18.3 Reports on the progress of the Project must include:

- (a) progress against all applicable deliverables or milestones, supported by evidence of completion;
- (b) amounts of Funding and Other Contributions received to date; and
- (c) progress of expenditure of Funding and Other Contributions received against the Budget.

Subcontracting Reports

18.4 You will, either upon or prior to the award of a Subcontract (depending upon whether clause 9.8 applies), submit a written report to us detailing:

- (a) details of the successful contractor engaged or to be engaged to carry out the Works, including whether the contractor is a Territory Enterprise, and if not, an explanation of why a Territory Enterprise could not be engaged;
- (b) a summary of any Competitive Process undertaken including details of the assessment criteria and weightings used;
- (c) the probity adviser's report (if applicable under clause 9.9); and
- (d) details of the expected timeline within which the Works the subject of the particular Subcontract being reported, will be completed.

Acquittal Reports

18.5 Reports requiring you to acquit funds must include:

- (a) a detailed statement of receipts and expenditure in respect of the Funding prepared by a third party auditor (who must not be an Associate);
- (b) a definitive statement by the third party Auditor as to whether the financial accounts are complete and accurate;
- (c) a certificate provided by your Chief Executive Officer or equivalent certifying you:
 - (i) have complied with, this Agreement;
 - (ii) that the Funding and Other Contributions were used in accordance with this Agreement; and
 - (iii) that you are able to pay all your debts as and when they fall due; and
- (d) a copy of the Register of Assets required under clause 20.5 (if applicable).

Final Report

18.6 Any final Report must include:

- (a) a comprehensive report on actual performance against the Project Objectives, the Project Plan and the Milestones, including whether they were achieved and if not, why not;
- (b) a copy of the occupancy certification required by Law;
- (c) final acquittal that meets the requirements of clause 18.5, and is audited in accordance with the Australian Auditing Standards by an appropriately qualified member of the Institute of Chartered Accountants in Australia, CPA Australia, or the Institute of Public Accountants.

Designated Use Reports

18.7 Any Report requiring you to report on the Designated Use must:

- (a) be signed by your Chief Executive Officer (or equivalent);
- (b) describe the way in which the Works have been used in the reporting period, including evidence of compliance with clause 11; and
- (c) contain such other information as we may reasonable require.

Other Reports

18.8 You must participate, at your own cost and as reasonably required by us, in studies, evaluations and other activities intended to analyse the success of the Project in achieving the Project Objectives, on terms reasonably required by us, including allowing third parties access to the Property to undertake analysis and evaluation of the Project and making reports, records and other information available to third parties for the purposes of evaluation and analysis.

18.9 We may, acting reasonably, at any time require you to provide reports and other information and if so, we will issue a direction in writing to you specifying our requirements in relation to the format, content, information, and substantiating documentation to be included, and auditing or certification required (if any), for that Report.

19. Acknowledgment and Publications

19.1 You must acknowledge the financial and other support you have received from us:

- (a) in all publications, promotional and advertising materials, public announcements and activities by you or on your behalf in relation to the Project and signs or plaques displayed at the Property in a form, and with content, approved by us; and
- (b) by inviting our senior representatives (including our Minister) to any formal public opening of the Project.

20. Assets

Acquisition of Assets

20.1 You must use the Funding to acquire the Assets (if any) identified at **Item 10**.

20.2 You may otherwise only acquire an Asset where:

- (a) it is necessary for the Project and is consistent with the Project Objectives;
- (b) you submit a revised Budget; and
- (c) we give our prior consent, which consent is at our discretion and subject to such conditions as we see fit.

Use and Maintenance of Assets

20.3 You must:

- (a) use Assets solely for the purpose of the Project and for no other use (including the personal use of your Personnel);
- (b) own and, if applicable, register Assets in your name;
- (c) maintain Assets in good working order, regularly service Assets, maintain any warranty over the Asset, and maintain Asset registration and licensing (if applicable);
- (d) hold all Assets securely and safeguard them against theft, loss, damage and unauthorised use;
- (e) maintain appropriate insurances for any Assets;
- (f) be fully responsible for, and bear all risks arising in relation to, the use or Disposal of any Asset;
- (g) permit us to access and inspect Assets on reasonable notice;
- (h) not use an Asset as any form of security or otherwise encumber an Asset without our prior consent; and
- (i) comply with our reasonable requests with respect to the use of an Asset.

20.4 You must promptly notify us of, and reinstate or replace, Assets that are stolen, lost, damaged or destroyed, at your own cost (and this clause 20 will continue to apply to the reinstated or replaced Assets).

Register of Assets

20.5 You must:

- (a) maintain a register of all Assets (**Register**) recording the Asset description (including serial number), date of acquisition and acquisition price, location, proportion of the Funding used to acquire, the expected useful life, the depreciated value, and (where Disposed of) details of Disposal including the transferee, method and amount;
- (b) keep all financial, insurance and other records necessary to support the details contained or required to be contained in the Register (including proof of purchase, tax invoices, photographs of the Asset, registration documents, warranties and the like); and
- (c) promptly provide us with a copy of the Register and financial, insurance and other records with respect to the Assets on our request.

Disposal of Assets

20.6 You must not Dispose or otherwise part with possession of any Asset, or deal with or use any Asset other than in accordance with this Agreement, without our prior consent.

20.7 If in our opinion you have ceased to use an Asset primarily for the purpose of the Project during the Term, we may at our option, and subject to any conditions (including paying an amount):

- (a) direct you to transfer the Asset to us or to another person and you must do so within 10 Business Days;

- (b) direct you to Dispose of the Asset and pay to us an amount equal to the value of the Asset (or some lesser amount at our discretion);
- (c) approve you retaining the Asset permanently; or
- (d) if a Designated Use Period applies, we may permit you to retain possession of the Asset until the expiry of the Designated Use Period, at which time we may, at our option and subject to any conditions we may require, take an action specified in sub-clauses (a), (b) or (c).

20.8 Subject to compliance with any relevant Law, you irrevocably appoint us as your attorney for the purpose of taking any action under this clause 20 and this Agreement is evidence of that appointment.

20.9 If you fail to comply with this clause 20, we may by notice require you to repay the acquisition price of the Asset (or some lesser amount at our discretion) and Interest will accrue from the earlier of the date of Disposal or the date of the notice.

21. Problems and Corrective Action

21.1 You must immediately notify us of a potential failure or failure to meet a Milestone or perform the Project or achieve the Project Objectives (**problem**).

21.2 If you notify us of a problem, or if we are of the opinion there may be a problem and we give you notice of the problem, then you must, if requested by us, within 5 Business Days prepare and submit to us for our approval a plan (**corrective action plan**) detailing the:

- (a) nature and extent of the problem;
- (b) consequences of the problem and in particular the Milestones and Project Objectives that are likely to be affected; and
- (c) steps you will take to rectify the problem including the timeframes in which the steps are to occur,

and if we do not approve the corrective action plan you must:

- (d) amend the corrective action plan to take account of our comments; and
- (e) resubmit the corrective action plan to us within 5 Business Days for our further approval.

21.3 At any time during the process under clause 21.2 we may exercise our right to suspend under clause 25.1.

21.4 If the corrective action plan is approved, any suspension under clause 25.1 will cease and you must complete all of the steps and activities in the approved corrective action plan within the specified timeframes.

21.5 Notwithstanding any other provision of this Agreement, if:

- (a) the problem is, in our opinion, not reasonably capable of remedy;
- (b) if you fail to comply with clauses 21.1, 21.2 or 21.4; or
- (c) a corrective action plan resubmitted under clause 21.2(e) is rejected by us,

we may immediately terminate this Agreement by notice.

21.6 Nothing in this clause 21 operates as a waiver of the obligations you have under this Agreement or limits the rights or remedies we may have against you in connection with the problem.

22. Repayment of Monies

Unspent, Unacquitted or Misused Funds

22.1 In addition to any other right under this Agreement, if:

- (a) on Practical Completion, or on any earlier termination of this Agreement, if the Funding or any part of the Funding is:

- (i) Unspent Funds; or
- (ii) Unacquitted Funds; or
- (b) any other clause of this Agreement permits notice of repayment; or
- (c) at any time we form the reasonable opinion that you or your Personnel have Misused Funds,

we may at our option by notice:

- (d) require you to repay all or part of those funds, and you must repay to us the amount set out in the notice, within the time specified in the notice;
- (e) deduct an equivalent amount from Funding payable to you pursuant to this Agreement or from any other amounts payable to you under any other agreement with us; or
- (f) require you to use all or part of those funds as directed by us.

Failure to Repay

22.2 If you fail to repay Funding in accordance with a notice issued under this Agreement:

- (a) the amount required to be repaid is deemed to be a debt due and payable by you; and
- (b) you must pay to us Interest on the amount for the period it remains unpaid.

Set Off

22.3 Without prejudice to any of our rights or remedies under this Agreement, we may set off any amount that you owe to us under this Agreement against future payments under this or any other agreement we may have with you.

23. Taxes, Duties and Government Charges

Organisation is registered or required to be registered for GST

23.1 In this clause:

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

23.2 You must pay all taxes, duties and government charges imposed or levied in Australia or overseas in connection with the performance of this Agreement, except as provided by this clause.

23.3 If one party ('**supplier**') makes a taxable supply to the other party ('**receiver of the supply**') under this Agreement the receiver of the supply will pay without set-off, on provision of a tax invoice or RCTI, an additional amount to the supplier equal to the GST imposed on the supply in question.

23.4 If an amount on account of GST has been included in the consideration for a supply under this Agreement, the amount of GST is as specified GST in **Item 4**.

23.5 If an amount on account of GST has been included in the consideration for a supply under this Agreement and the supply is not a taxable supply for any reason, the supplier must, on demand, refund the amount paid on account of GST to the receiver of the supply.

- 23.6 No party may claim or retain from the other party any amount in relation to a supply made under this Agreement for which the first party can obtain an input tax credit or decreasing adjustment.
- 23.7 The parties acknowledge and agree that each party:
- (a) is registered for GST purposes;
 - (b) has quoted its Australian Business Number to the other; and
 - (c) must tell the other of any changes to the matters covered by this clause.

Recipient Created Tax Invoices

- 23.8 We (as the receiver of the supply) will issue RCTI(s) and any adjustment notes for any taxable supplies you make to us under this Agreement within 28 days of us determining the value of the taxable supplies in question.
- 23.9 You must not issue tax invoices or adjustment notes for taxable supplies you make to us under this Agreement.
- 23.10 Both parties must comply with the determination scheduled to GST Ruling 2000/10.
- 23.11 We will not issue RCTI(s) or adjustment notes for taxable supplies you make to us under this Agreement at any time that either party fails to comply with any of the requirements in clauses 23.7 to 23.10.

24. Dispute Resolution

- 24.1 Except for proceedings for urgent interlocutory relief, each party must follow the procedures in this clause 24 in relation to a Dispute before commencing any court proceeding or taking any other action under this Agreement.
- 24.2 A party wishing to claim a Dispute has arisen must promptly give notice to the other party setting out the particulars of the Dispute, and the parties must promptly undertake appropriate investigations and meet to attempt to resolve the Dispute.
- 24.3 If the Dispute cannot be resolved within 10 Business Days of the notice being given, the parties must refer the Dispute to their respective Chief Executive Officers (or equivalent) for resolution.
- 24.4 If the Dispute is not resolved within 20 Business Days of notice being given a party may submit the Dispute to mediation and:
- (a) a mediator must be appointed by mutual agreement of the parties (acting reasonably);
 - (b) the parties must comply with the directions of the mediator as to the conduct of the mediation;
 - (c) the parties must attend the mediation and participate in good faith to genuinely attempt to resolve the Dispute; and
 - (d) the costs of the mediator will be borne equally by the parties.
- 24.5 If the parties cannot agree the appointment of a mediator, or an agreement cannot be reached through mediation, either party may initiate court proceedings.
- 24.6 Information disclosed by a party under this clause 24 is confidential and must not be used for any purpose other than resolving the Dispute.
- 24.7 Notwithstanding the existence of a Dispute, but subject to lawful termination in accordance with this Agreement, each party must continue to perform its obligations under this Agreement.

25. Suspension and Reduction

Suspension

- 25.1 Without limiting our rights under this clause 25 or clause 26, we may, at any time by notice, immediately require you to suspend the Works and suspend the Funding if:
- (a) any clause of this Agreement allows for suspension;

- (b) we are satisfied that you have not fully complied with, or are not fully complying with, any of your obligations under this Agreement;
- (c) in our reasonable opinion you are likely to fail to deliver the Works in accordance with this Agreement;
- (d) you or your Personnel are reasonably suspected to have Misused Funding or have shown an inability to properly manage the Funding or the Budget or your finances or assets;
- (e) we hold reasonable concerns that you are not financially stable; or
- (f) you or your Personnel is reasonably suspected to have breached any Law material to the delivery or operation of the Project.

25.2 If we give notice under clause 25.1 you must stop the Works until such time as:

- (a) we give you notice that the matter has been resolved or addressed to our satisfaction; or
- (b) we give notice under clause 26.

Reduction

25.3 We may by notice reduce the scope of this Agreement (by removing and reduce the scope of, and the Funding for, the Works):

- (a) to reflect any suspension of the Works and the Funding under clause 25.1;
- (b) if you are unable or unwilling to perform or complete the Works in accordance with this Agreement; or
- (c) if, as a result of any change in Territory or Commonwealth Government policy:
 - (i) the Funding will be reduced; or
 - (ii) payment of monies to us which form part or all of the Funding (for example, under a Commonwealth funding agreement) will be reduced.

25.4 In consultation with you we may vary the Project Plan and the Budget to reflect any reduction under clause 25.3.

25.5 Nothing in this clause 25 limits our rights to terminate this agreement under clause 26.

26. Termination

Termination for Fault

26.1 If a party does not comply with any of its obligations under this Agreement, then the other party may:

- (a) if it reasonably considers that the non-compliance is not capable of remedy, terminate this immediately Agreement by notice; or
- (b) if the non-compliance is capable of remedy, give notice requiring the non-compliance to be remedied within the timeframe specified in the notice and, if not remedied within that time, may immediately terminate this Agreement by giving a second notice.

26.2 Notwithstanding any other provision of this Agreement, we may terminate this Agreement immediately by notice if:

- (a) any clause of this Agreement allows for termination;
- (b) after following the process in clause 21, we consider it appropriate to do so;
- (c) funding contributors fail to pay the Other Contributions and that failure has or will have a material adverse effect on the Project;
- (d) subject to applicable Law, you are unable to pay your debts as and when they become due and payable or you become bankrupt or you are put under external administration or have a liquidator appointed;

- (e) any shareholder, member or director convenes a meeting for the purpose of considering or passing a resolution for your winding up;
- (f) proceedings are commenced against you with a view to obtaining an order for winding up; or
- (g) you materially breach any Law.

Termination for Convenience

26.3 We may terminate this Agreement at our discretion if, as a result of any change in Northern Territory or Commonwealth government policy the Funding or payment of monies to us which form part or all of the Funding (for example, under a Commonwealth funding agreement) will cease, be redirected or be materially reduced such that, in our opinion, the Works or the Project is no longer feasible.

26.4 If we terminate under clause 26.3:

- (a) you must do everything possible to mitigate all losses, costs, and expenses that you may incur as a result of the termination; and
- (b) we will, subject to your compliance with this Agreement, reimburse you any reasonable and substantiated expenses you unavoidably incur that relate directly and entirely to the losses that you suffer because of the effect of the termination on Subcontracts (not exceeding the balance of Funding payable by us for the Works) and you agree this is your sole remedy for termination.

26.5 This clause 26 does not limit any other rights or remedies that may be available to us under this Agreement or at Law.

27. Notices and Other Communications

Form, service and receipt of notices

27.1 Any notice required or permitted to be given under this Agreement (**Notice**) must be in writing and served by hand delivery, prepaid registered post or sent via email, to the Address for Service of Notices specified in the Contract Details.

27.2 A Notice is deemed to have been received:

- (a) if served personally, upon delivery;
- (b) if sent by prepaid registered post, on the third Business Day after posting; and
- (c) if sent by email, on the first to occur of:
 - (i) when the sender receives an automated message confirming delivery; or
 - (ii) four hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered,

but if such delivery or receipt is later than 4.00pm (addressee's time) on a Business Day, it is deemed to be received at 9.00am on the next Business Day in the place of receipt.

Day to Day Communications

27.3 The parties' contact person for day to day communications regarding the delivery of the Project is the person specified as the Primary Contact Person in the Contract Details, or such other person as may be advised by notice from time to time.

Change of details

27.4 Either party may change their Address for Service of Notices or Primary Contact Person by giving notice of the change to the other party.

28. Unforeseen Events

- 28.1 If a party is unable or likely to be unable, wholly or in part, to carry out any of its obligations under this Agreement by reason of an Unforeseen Event that party must:
- (a) promptly give notice to the other party including full particulars of the event, its likely duration, the obligations affected by it, and the extent of its effect on those obligations, and the steps taken or that will be taken to rectify it; and
 - (b) use its best endeavours to avoid, reduce, overcome, rectify or minimise the effect of the Unforeseen Event,
- and, subject to sub-clause 28.2, the parties' affected obligations (including our obligation to pay Funding) are suspended (and necessary timeframes extended) as long as that event continues.
- 28.2 You must immediately notify us when the Unforeseen Event has ended or abated to an extent that permits the carrying out of affected obligations.
- 28.3 If an Unforeseen Event continues to prevent the affected party from carrying out any of its material obligations for more than 60 days in a row, either party may immediately terminate this Agreement by notice to the other party.

29. General

Variation

- 29.1 No variation of this Agreement will be effective unless in writing and signed by the authorised representatives of each the parties.

Compliance with Laws

- 29.2 Without limiting any other provision of this Agreement, you must at all times comply with all Laws and any Australian Standards applicable to the Project.

Survival

- 29.3 The expiry or termination of this Agreement does not affect the continued operation of:
- (a) a clause that expressly or by its nature survives the termination or expiry of this Agreement (including indemnities, warranties, intellectual property, confidentiality and privacy); and
 - (b) your obligations and our rights with in connection with Intellectual Property, Designated Use, Assets, Records, Reports, Audit, Unacquitted Funds, Unspent Funds or Misused Funds.

Your Warranties

- 29.4 You warrant that you:
- (a) are properly established and constituted at Law and if you are an association you are incorporated, and you have the power and authority to enter into this Agreement; and
 - (b) meet and will stay in compliance for the Term with all Laws under which you are incorporated.

Entire Agreement

- 29.5 This Agreement contains the entire agreement between the parties with respect to its subject matter and supersedes all prior agreements, representations and understandings between the parties.

Relationship

- 29.6 The parties do not intend to create a relationship of agency, trust, employment, joint venture or partnership. Neither party has any right or authority to assume, create or represent any obligation or responsibility, express or implied, on behalf of the other, nor to bind or represent the other party in any way. We are not a party to any arrangement you enter with a third party in

connection with your obligations under this Agreement and we will not be responsible for any monies you owe to any third party.

Transfer and Assignment

29.7 You must not transfer, assign or otherwise Dispose of any of your rights, duties, benefits, obligations or interests under this Agreement without our prior consent, which may be withheld at our absolute discretion.

Severance

29.8 If a court determines that a word, phrase, sentence, paragraph or provision of this Agreement is unenforceable, illegal or void then it will be severed and the rest of this Agreement will continue to be valid and enforceable to the extent capable by Law.

Waiver

29.9 A failure by a party to enforce an obligation, make a claim, or exercise a right or remedy, under this Agreement, including consequent upon a breach, will not constitute a waiver of the obligation, claim, right or remedy, unless the waiver is in writing and signed by an authorised representative of that party.

Governing Law

29.10 This Agreement will be governed by and construed in accordance with the laws of the Northern Territory of Australia. The parties submit to the non-exclusive jurisdiction of the courts of that jurisdiction.

Counterparts

29.11 This Agreement may be executed in any number of counterparts. The counterparts, taken together, will be deemed an original agreement and form one binding agreement. Delay of a party in delivering a counterpart will not affect the validity of the Agreement.

Electronic Signatures

29.12 To the extent permitted by Law, a party may validly execute this agreement by attaching electronic signature(s) to this agreement using a recognised electronic signature platform. Each of the parties acknowledge and agree that:

- (a) use of a signatory's email address within the electronic signature platform is a sufficient method for identifying the signatory and their intention in relation to this agreement; and
- (b) where this agreement has been signed by a signatory using an appropriate electronic signature platform, such signatures will have the same legal effect as 'wet ink' signatures.

Costs

29.13 Each party must pay its own costs and expenses (including legal costs) of and incidental to the preparation, negotiation and execution of this Agreement, and all transactions contemplated by it.

Further Acts

29.14 The parties must, at their own expense, do everything reasonably necessary (including executing documents and permitting registration of documents where necessary) to give full effect to this Agreement.