

Schedule 1: Commonwealth Standard Grant Conditions

Organisation ID:	
Agreement ID:	
Schedule ID:	
Activity ID:	

1. Undertaking the Activity

- 1.1. The Grantee agrees to undertake the Activity for the purpose of the Grant in accordance with this Agreement.
- 1.2. The Grantee is fully responsible for the Activity and for ensuring the performance of all its obligations under this Agreement in accordance with all relevant laws. The Grantee will not be relieved of that responsibility because of:
 - (a) the grant or withholding of any approval or the exercise or non-exercise of any right by the Commonwealth; or
 - (b) any payment to, or withholding of any payment from, the Grantee under this Agreement.

2. Payment of the Grant

- 2.1. The Commonwealth agrees to pay the Grant to the Grantee in accordance with the Grant Details.
- 2.2. Notwithstanding any other provision of this Agreement, the Commonwealth may by notice withhold payment of any amount of the Grant and/or take any other action specified in the Supplementary Terms if it reasonably believes that:
 - (a) the Grantee has not complied with this Agreement;
 - (b) the Grantee is unlikely to be able to perform the Activity or manage the Grant in accordance with this Agreement; or
 - (c) there is a serious concern relating to the Grantee or this Agreement that requires investigation.
- 2.3. A notice under clause 2.2 will contain the reasons for any action taken under clause 2.2 and, where relevant, the steps the Grantee can take to address those reasons.
- 2.4. The Commonwealth will only pay a withheld amount once the Grantee has addressed the reasons contained in a notice under clause 2.2 to the Commonwealth's reasonable satisfaction.
- 2.5. The Grantee agrees to hold the Grant in an account:
 - (a) in the Grantee's name and which the Grantee controls, with an authorised deposit-taking institution authorised by the Banking Act 1959 (Cth) to carry on banking business in Australia;
 - (b) that is established solely for the purpose of the Activity; and
 - (c) that is separate from the Grantee's other operational accounts.

3. Acknowledgements

- 3.1. The Grantee agrees not to make any public announcement, including by social media, in connection with the awarding of the Grant without the Commonwealth's prior written approval.
- 3.2. The Grantee agrees to acknowledge the Commonwealth's support in all Material, publications and promotional and advertising materials published in connection with this Agreement. The Commonwealth may notify the Grantee of the form of acknowledgement that the Grantee is to use.

4. Notices

- 4.1. Each Party agrees to promptly notify the other Party of anything reasonably likely to adversely affect the undertaking of the Activity, management of the Grant or its performance of any of its other requirements under this Agreement.
- 4.2. A notice given by a Party under this Agreement must be in writing and addressed to the other Party's representative as set out in the Grant Details or as most recently updated by notice given in accordance with this clause.

5. Relationship between the Parties

- 5.1. A Party is not by virtue of this Agreement the employee, agent or partner of the other Party and is not authorised to bind or represent the other Party.

6. Subcontracting

- 6.1. The Grantee is responsible for the performance of its obligations under this Agreement, including in relation to any tasks undertaken by subcontractors.
- 6.2. The Grantee agrees to make available to the Commonwealth the details of any of its subcontractors engaged to perform any tasks in relation to this Agreement upon request.

7. Conflict of interest

- 7.1. Other than those which have already been disclosed to the Commonwealth, the Grantee warrants that, to the best of its knowledge, at the date of this Agreement neither it nor its officers have any actual, perceived or potential conflicts of interest in relation the Activity.
- 7.2. If during the term of the Agreement, any actual, perceived or potential conflict arises or there is any material change to a previously disclosed conflict of interest, the Grantee agrees to:
 - (a) notify the Commonwealth promptly and make full disclosure of all relevant information relating to the conflict; and
 - (b) take any steps the Commonwealth reasonably requires to resolve or otherwise deal with that conflict.

8. Variation, assignment and waiver

- 8.1. This Agreement may be varied in writing only, signed by both Parties.
- 8.2. The Grantee cannot assign its obligations, and agrees not to assign its rights, under this Agreement without the Commonwealth's prior approval.
- 8.3. The Grantee agrees not to enter into negotiations with any other person for the purposes of entering into an arrangement that will require novation of, or involve any assignment of rights under, this Agreement without first consulting the Commonwealth.
- 8.4. A waiver by a Party of any of its rights under this Agreement is only effective if it is in a signed written notice to the other Party and then only to the extent specified in that notice.

9. Taxes, duties and government charges

- 9.1. The Grantee agrees to 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 Agreement.
- 9.2. If Goods and Services Tax (GST) is payable by a supplier on any supply made under this Agreement, the recipient of the supply will pay to the supplier an amount equal to the GST payable on the supply, in addition to and at the same time that the consideration for the supply is to be provided under this Agreement.
- 9.3. If at the commencement of the Agreement the Grantee is not registered for GST and during the term of the Agreement the Grantee becomes, or is required to become, registered for GST, the Grantee agrees to notify the Commonwealth in writing within 7 days of becoming registered for GST.

10. Spending the Grant

- 10.1. The Grantee agrees to spend the Grant for the purpose of performing the Activity and otherwise in accordance with this Agreement.
- 10.2. Within one month after the Activity Completion Date [and at least every 12 months during the term of the Activity], the Grantee agrees to provide [a] financial statement[s] signed by the Grantee verifying the Grant was spent in accordance with this Agreement.
- 10.3. A statement under clause 10.2 must include an income and expenditure statement in relation to the Grant and the Activity for each financial year of the Agreement.

11. Repayment

11.1. If any amount of the Grant:

- (a) has been spent other than in accordance with this Agreement; or
- (b) is additional to the requirements of the Activity;

then the Commonwealth may by written notice:

- (c) require the Grantee to repay that amount to the Commonwealth;
- (d) require the Grantee to deal with that amount as directed by the Commonwealth; or
- (e) deduct the amount from subsequent payments of the Grant or amounts payable under another agreement between the Grantee and the Commonwealth.

11.2. If the Commonwealth issues a notice under this Agreement requiring the Grantee to repay a Grant amount:

- (a) the Grantee must do so within the time period specified in the notice;
- (b) the Grantee must pay interest on any part of the amount that is outstanding at the end of the time period specified in the notice until the outstanding amount is repaid in full; and
- (c) the Commonwealth may recover the amount and any interest under this Agreement as a debt due to the Commonwealth without further proof of the debt being required.

12. Record keeping

12.1. The Grantee agrees to keep financial accounts and other records that:

- (a) detail and document the conduct and management of the Activity;
- (b) identify the receipt and expenditure of the Grant [and any Other Contributions] separately within the Grantee's accounts and records so that at all times the Grant is identifiable; and
- (c) enable all receipts and payments related to the Activity to be identified and reported.

12.2. The Grantee agrees to keep the records for five years after the Activity Completion Date or such other time specified in the Grant Details and provide copies of the records to the Commonwealth upon request.

13. Reporting

13.1. The Grantee agrees to provide the Reporting Material specified in the Grant Details to the Commonwealth.

13.2. In addition to the obligations in clause 13.1, the Grantee agrees to:

- (a) liaise with and provide assistance and information to the Commonwealth as reasonably required by the Commonwealth; and
- (b) comply with the Commonwealth's reasonable requests, directions and monitoring requirements, in relation to the Activity.

13.3. If the Commonwealth acting reasonably has concerns regarding the performance of the Activity or the management of the Grant, the Commonwealth may by written notice require the Grantee to provide one or more additional reports, containing the information and by the date(s), specified in the notice.

13.4. The Grantee acknowledges that the giving of false or misleading information to the Commonwealth is a serious offence under the Criminal Code Act 1995 (Cth).

14. Privacy

14.1. When dealing with Personal Information in carrying out the Activity, the Grantee agrees:

- (a) to comply with the requirements of the Privacy Act 1988 (Cth); and
- (b) not to do anything which, if done by the Commonwealth, would be a breach of an Australian Privacy Principle.

15. Confidentiality

15.1. The Parties agree not to disclose each other's confidential information without the other Party's prior written consent unless required or authorised by law or Parliament to disclose.

15.2. The Commonwealth may disclose the Grantee's confidential information where;

- (a) the Commonwealth is providing information about the Activity or Grant in accordance with Commonwealth accountability and reporting requirements;
- (b) the Commonwealth is disclosing the information to a Minister of the Australian Government, a House or Committee of the Commonwealth Parliament; or
- (c) the Commonwealth is disclosing the information to its personnel or another Commonwealth agency where this serves the Commonwealth's legitimate interests.

16. Insurance

16.1. The Grantee agrees to maintain adequate insurance for as long as any obligations remain in connection with this Agreement and provide proof of insurance to the Commonwealth upon request.

17. Intellectual property

17.1. Subject to clause 17.2, the Grantee owns the Intellectual Property Rights in Activity Material and Reporting Material.

17.2. This Agreement does not affect the ownership of Intellectual Property Rights in Existing Material.

17.3. The Grantee provides the Commonwealth a permanent, non-exclusive, irrevocable, royalty-free licence to use, modify, communicate, reproduce, publish, adapt and sub-license the Reporting Material for Commonwealth Purposes.

17.4. The licence in clause 17.3 does not apply to Activity Material.

18. Dispute resolution

- 18.1. The Parties agree not to initiate legal proceedings in relation to a dispute arising under this Agreement unless they have first tried and failed to resolve the dispute by negotiation.
- 18.2. Unless clause 18.3 applies, the Parties agree to continue to perform their respective obligations under this Agreement when a dispute exists.
- 18.3. The Parties may agree to suspend performance of the Agreement pending resolution of the dispute.
- 18.4. Failing settlement by negotiation in accordance with clause 18.1, the Parties may agree to refer the dispute to an independent third person with power to intervene and direct some form of resolution, in which case the Parties will be bound by that resolution. If the Parties do not agree to refer the dispute to an independent third person, either Party may initiate legal proceedings.
- 18.5. Each Party will bear their own costs in complying with this clause 18, and the Parties will share equally the cost of any third person engaged under clause 18.4.
- 18.6. The procedure for dispute resolution under this clause does not apply to any action relating to termination, cancellation or urgent interlocutory relief.

19. Reduction, Suspension and Termination

19.1. Reduction in scope of agreement for fault

- 19.1.1. If the Grantee does not comply with an obligation under this Agreement and the Commonwealth believes that the non-compliance is incapable of remedy, or if the Grantee has failed to comply with a notice to remedy, the Commonwealth may by written notice reduce the scope of the Agreement.
- 19.1.2. The Grantee agrees, on receipt of the notice of reduction, to:
- (a) stop or reduce the performance of the Grantee's obligations as specified in the notice;
 - (b) take all available steps to minimise loss resulting from the reduction;
 - (c) continue performing any part of the Activity or the Agreement not affected by the notice if requested to do so by the Commonwealth; and
 - (d) report on, and return any part of, the Grant to the Commonwealth, or otherwise deal with the Grant, as directed by the Commonwealth.
- 19.1.3. In the event of reduction under clause 19.1.1, the amount of the Grant will be reduced in proportion to the reduction in the scope of the Agreement.

19.2. Suspension

19.2.1. If:

- (a) the Grantee does not comply with an obligation under this Agreement and the Commonwealth believes that the non-compliance is capable of remedy;
- (b) the Commonwealth reasonably believes that the Grantee is unlikely to be able to perform the Activity or manage the Grant in accordance with this Agreement; or
- (c) the Commonwealth reasonably believes that there is a serious concern relating to the Grantee or this Agreement that requires investigation;

the Commonwealth may by written notice:

- (d) immediately suspend the Grantee from further performance of the Activity (including expenditure of the Grant); and/or
- (e) require that the non-compliance or inability be remedied, or the investigation be completed, within the time specified in the notice.

19.2.2. If the Grantee:

- (a) remedies the non-compliance or inability specified in the notice to the Commonwealth's reasonable satisfaction, or the Commonwealth reasonably concludes that the concern is unsubstantiated, the Commonwealth may direct the Grantee to recommence performing the Activity; or
- (b) fails to remedy the non-compliance or inability within the time specified, or the Commonwealth reasonably concludes that the concern is likely to be substantiated, the Commonwealth may reduce the scope of the Agreement in accordance with clause 19.1 or terminate the Agreement immediately by giving a second notice in accordance with clause 19.3.

19.3. Termination for fault

19.3.1. The Commonwealth may terminate this Agreement by notice where the Grantee has:

- (a) failed to comply with an obligation under this Agreement and the Commonwealth believes that the non-compliance is incapable of remedy or where clause 19.2.2.b applies; or
- (b) provided false or misleading statements in relation to the Grant; or
- (c) become bankrupt or insolvent, entered into a scheme of arrangement with creditors, or come under any form of external administration.

19.3.2. The Grantee agrees, on receipt of the notice of termination, to:

- (a) stop the performance of the Grantee's obligations;
- (b) take all available steps to minimise loss resulting from the termination; and
- (c) report on, and return any part of, the Grant to the Commonwealth, or otherwise deal with the Grant, as directed by the Commonwealth.

20. Cancellation or reduction for convenience

20.1. The Commonwealth may cancel or reduce the scope of this Agreement by notice, due to:

- (a) a change in government policy; or
- (b) a Change in the Control of the Grantee which the Commonwealth reasonably believes will negatively affect the Grantee's ability to comply with this Agreement.

20.2. On receipt of a notice of reduction or cancellation under this clause, the Grantee agrees to:

- (a) stop or reduce the performance of the Grantee's obligations as specified in the notice;
- (b) take all available steps to minimise loss resulting from that reduction or cancellation;
- (c) continue performing any part of the Activity or the Agreement not affected by the notice if requested to do so by the Commonwealth; and
- (d) report on, and return any part of, the Grant to the Commonwealth, or otherwise deal with the Grant, as directed by the Commonwealth.

20.3. In the event of reduction or cancellation under this clause, the Commonwealth will be liable only to:

- (a) pay any part of the Grant due and owing to the Grantee under this Agreement at the date of the notice; and
- (b) reimburse any reasonable and substantiated expenses the Grantee unavoidably incurs that relate directly and entirely to the reduction in scope or cancellation of the Agreement.

20.4. In the event of reduction, the amount of the Grant will be reduced in proportion to the reduction in the scope of the Agreement.

20.5. The Commonwealth's liability to pay any amount under this clause is:

- (a) subject to the Grantee's compliance with this Agreement; and
- (b) limited to an amount that when added to all other amounts already paid under the Agreement will not exceed the total amount of the Grant.

20.6. The Grantee will not be entitled to compensation for loss of prospective profits or benefits that would have been conferred on the Grantee but for the cancellation or reduction in scope of the Agreement under clause 20.1.

20.7. The Commonwealth will act reasonably in exercising its rights under this clause.

21. Survival

The following clauses survive termination, cancellation or expiry of this Agreement:

- clause 10 (Spending the Grant);
- clause 11 (Repayment);
- clause 12 (Record keeping);
- clause 13 (Reporting);
- clause 14 (Privacy);
- clause 15 (Confidentiality);
- clause 16 (Insurance);

- clause 17 (Intellectual property);
- clause 19 (Reduction, Suspension and Termination);
- clause 21 (Survival);
- clause 22 Definitions;
- clause 19 of the Supplementary Terms (Indemnities);
- Supplementary Condition 4 of the Capital Works Supplementary Conditions (Land Owned by a Third Party);
- Supplementary Condition **Error! Reference source not found.** of the Capital Works Supplementary Conditions (Defects);
- Supplementary Condition **Error! Reference source not found.** of the Capital Works Supplementary Conditions (Designated Use Period);
- Supplementary Condition 10 of the Capital Works Supplementary Conditions (Repayment);
- Supplementary Condition 11 of the Capital Works Supplementary Conditions (Charge);
- Supplementary Condition 12 of the Capital Works Supplementary Conditions (Definitions); and
- Any other clause which expressly or by implication from its nature is meant to survive.

22. Definitions

In this Agreement, unless the contrary appears:

- **Activity** means the activity described in the Grant Details and includes the provisions of the Reporting Material.
- **Activity Completion Date** means the date or event specified in the Grant Details.
- **Activity Material** means any Material, other than Reporting Material, created or developed by the Grantee as a result of the Activity and includes any Existing Material that is incorporated in or supplied with the Activity Material.
- **Agreement** means the Grant Details, Supplementary Terms (if any), the Commonwealth Standard Grant Conditions and any other document referenced or incorporated in the Grant Details.
- **Agreement End Date** means the date or event specified in the Grant Details.
- **Australian Privacy Principle** has the same meaning as in the *Privacy Act 1988*.
- **Change in the Control** means any change in any person(s) who directly exercise effective control over the Grantee.
- **Commonwealth** means the Commonwealth of Australia as represented by the Commonwealth entity specified in the Agreement and includes, where relevant, its officers, employees, contractors and agents.
- **Commonwealth Purposes** includes the following:
 - (a) the Commonwealth verifying and assessing grant proposals, including a grant application;
 - (b) the Commonwealth administering, monitoring, reporting on, auditing, publicising and evaluating a grant program or exercising its rights under this Agreement;
 - (c) the Commonwealth preparing, managing, reporting on, auditing and evaluating agreements, including this Agreement; and
 - (d) the Commonwealth developing and publishing policies, programs, guidelines and reports, including Commonwealth annual reports;

but in all cases:

(e) excludes the commercialisation (being for-profit use) of the Material by the Commonwealth.

- **Commonwealth Standard Grant Conditions** means this document.
- **Existing Material** means Material developed independently of this Agreement that is incorporated in or supplied as part of Reporting Material or Activity Material.
- **Grant** means the money, or any part of it, payable by the Commonwealth to the Grantee for the Activity as specified in the Grant Details and includes any interest earned by the Grantee on that money once the Grant has been paid to the Grantee.
- **Grantee** means the legal entity other than the Commonwealth specified in the Agreement and includes, where relevant, its officers, employees, contractors and agents.
- **Grant Details** means the document titled Grant Details that forms part of this Agreement.
- **Intellectual Property Rights** means all copyright, patents, registered and unregistered trademarks (including service marks), registered designs, and other rights resulting from intellectual activity (other than moral rights under the *Copyright Act 1968*).
- **Material** includes documents, equipment, software (including source code and object code versions), goods, information and data stored by any means including all copies and extracts of them.
- **Party** means the Grantee or the Commonwealth.
- **Personal Information** has the same meaning as in the *Privacy Act 1988*.
- **Records** includes documents, information and data stored by any means and all copies and extracts of the same.
- **Reporting Material** means all Material which the Grantee is required to provide to the Commonwealth for reporting purposes as specified in the Grant Details and includes any Existing Material that is incorporated in or supplied with the Reporting Material.

Schedule 2: Supplementary Terms from Clause Bank

1. Other Contributions

CB1.2 The Grantee agrees to provide, or to ensure the provision of, the Other Contributions and to use them to undertake the Activity. If the Other Contributions are not provided or used in accordance with this clause, then the Commonwealth may:

- (a) suspend payment of the Grant until the Other Contributions are provided; or
- (b) terminate this Agreement in accordance with clause Capital Works Supplementary Condition 19 of this Agreement.

4. Access/Monitoring/Inspection

CB4.1 The Grantee agrees to give the Commonwealth, or any persons authorised in writing by the Commonwealth:

- (a) access to premises where the Activity is being performed and/or where Material relating to the Activity is kept within the time period specified in a Commonwealth notice; and
- (b) permission to inspect and take copies of any Material relevant to the Activity.

CB4.2 The Auditor-General and any Information Officer under the Australian Information Commissioner Act 2010 (Cth) (including their delegates) are persons authorised for the purposes of clause CB3.1.

CB4.3 This clause 3 does not detract from the statutory powers of the Auditor-General or an Information Officer (including their delegates).

11. Jurisdiction

CB11.1 This Agreement is governed by the law of the Australian Capital Territory.

13. Fraud

CB13.1 In this Agreement, Fraud means dishonestly obtaining a benefit, or causing a loss, by deception or other means, and includes alleged, attempted, suspected or detected fraud.

CB13.2 The Grantee must ensure its personnel and subcontractors do not engage in any Fraud in relation to the Activity.

CB13.3 If the Grantee becomes aware of:

- (a) any Fraud in relation to the performance of the Activity; or
- (b) any other Fraud that has had or may have an effect on the performance of the Activity;

then it must within 5 business days report the matter to the Commonwealth and all appropriate law enforcement and regulatory agencies.

CB13.4 The Grantee must, at its own cost, investigate any Fraud referred to in clause CB7.3 in accordance with the Australian Government Investigations Standards available at www.ag.gov.au.

CB13.5 The Commonwealth may, at its discretion, investigate any Fraud in relation to the Activity. The Grantee agrees to co-operate and provide all reasonable assistance at its own cost with any such investigation.

CB13.6 This clause survives the termination or expiry of the Agreement.

19. Indemnities

CB19.1 The Grantee indemnifies the Commonwealth, its officers, employees and contractors against any claim, loss or damage arising in connection with the Activity.

CB19.2 The Grantee's obligation to indemnify the Commonwealth will reduce proportionally to the extent any act or omission involving fault on the part of the Commonwealth contributed to the claim, loss or damage.

20. Compliance with Legislation and policies

CB20.1 In this Agreement:

Legislation means a provision of a statute or subordinate legislation of the Commonwealth, or of a State, Territory or local authority

CB20.2 The Grantee agrees to comply with all Legislation applicable to its performance of this Agreement.

CB20.3 The Grantee agrees, in carrying out its obligations under this Agreement, to comply with any of the Commonwealth's policies as notified, referred or made available by the Commonwealth to the Grantee (including by reference to an internet site).

23. Corporate governance

CB23.1 In this Agreement:

Constitution means (depending on the context):

- (a) a company's, body corporate's or incorporated association's constitution, or equivalent documents, which (where relevant) includes rules and any amendments that are part of the constitution;
- (b) in relation to any other kind of body:
 - i. the body's charter or memorandum; or
 - ii. any instrument or law constituting or defining the constitution of the body or governing the activities of the body or its members.

CB23.2 The Grantee warrants that nothing in its Constitution conflicts with its obligations under this Agreement.

CB23.3 The Grantee agrees to provide a copy of its Constitution to the Commonwealth upon request and inform the Commonwealth whenever there is a change in the Grantee's Constitution, structure or management.

24. Counterparts

CB24.1 This Agreement may be executed in any number of counterparts. All counterparts, taken together, constitute one instrument. A Party may execute this Agreement by signing any counterpart.

27. Rollover of surplus and uncommitted funds

CB27.1 In this Agreement:

Surplus and Uncommitted Funds means surplus and uncommitted funds provided by the Commonwealth through previous grant agreements relating to activities which are the same as or similar to the Activity and which are confirmed by final financial statements provided under the previous grant agreements.

CB27.2 The Parties acknowledge that the Grantee may hold Surplus and Uncommitted Funds.

- CB27.3 The Commonwealth may give the Grantee written approval to retain all or part of any Surplus and Uncommitted Funds and treat those funds as part of the Grant provided under, and subject to, this Agreement. The Commonwealth may give such approval subject to conditions.
- CB27.4 The Grantee agrees to acquit in the Reporting Material any Surplus and Uncommitted Funds that are retained and used to deliver the Activity under this Agreement.
- CB27.5 This clause does not affect the Commonwealth's right to require the repayment of the balance of Surplus and Uncommitted Funds.
- CB27.6 This clause survives the termination or expiry of the Agreement.

28. Secret and Sacred Indigenous Material

CB28.1 In this clause:

Aboriginal Person has the same meaning given in the *Aboriginal and Torres Strait Islander Act 2005* (Cth);

Aboriginal Tradition has the meaning given in the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth);

Indigenous Person means a person who is or identifies and is accepted as an Aboriginal Person or a Torres Strait Islander;

Secret and Sacred Indigenous Material means all information, knowledge or Material of special spiritual, cultural or customary significance which is considered to be sacred or of significance by an Indigenous Person or according to Aboriginal Tradition; and

Torres Strait Islander has the same meaning given in the *Aboriginal and Torres Strait Islander Act 2005* (Cth)

CB28.2 The parties agree that, for the purposes of this Agreement:

- (a) the definition of Activity Material in Capital Works Supplementary Condition 22 excludes any Secret and Sacred Indigenous Material;
- (b) the definition of Reporting Material in Capital Works Supplementary Condition 22 excludes any Secret and Sacred Indigenous Material;
- (c) the record keeping requirements in Capital Works Supplementary Condition 12 do not apply to any Secret and Sacred Indigenous Material; and
- (d) any Secret and Sacred Indigenous Material is the confidential information of the relevant Indigenous Person or Indigenous community.

CB28.3 The Grantee agrees to inform the Commonwealth of the existence of Secret and Sacred Indigenous Material relevant to the performance of the Activity which is not disclosed to the Commonwealth due it being Secret and Sacred Indigenous Material.

Schedule 3: Capital Works Supplementary Conditions

This Agreement is amended by the following Capital Works Supplementary Conditions:

1. Project Manager

1.1. The Grantee must engage a registered and qualified:

- (a) builder;
- (b) architect; or
- (c) engineer,

as Project Manager for the Activity Period.

1.2. The Project Manager must:

- (a) be engaged by the Grantee within the timeframe specified by the Commonwealth;
- (b) be a member of a relevant professional association in a State or Territory of Australia;
- (c) undertake a supervisory role and not perform any aspect of the Activity; and
- (d) must be approved by the Commonwealth.

2. Construction Plans

2.1. The Grantee must provide the Commonwealth with copies of all construction plans for the Activity as specified in the Grant Details that have been approved by a registered and qualified:

- (e) builder;
- (f) architect; or
- (g) engineer.

2.2. The Commonwealth will notify the Grantee in writing once the Commonwealth has approved construction plans that the Grantee has provided the Commonwealth under this Supplementary Condition 2.

2.3. The Grantee must carry out the Activity in accordance with the approved construction plans, unless the Commonwealth gives the Grantee written notice permitting or requiring otherwise.

2.4. The Grantee must not make any substantial or material change to the construction plans once the Commonwealth have approved them, without the Commonwealth's prior written consent.

3. Completion of activity

3.1. Within ten Business Days of completing the Activity, the Grantee must provide the Commonwealth with copies of all relevant certificates, permits and approval documents relating to the Activity, and written certification by either the Project Manager, or another registered and qualified:

- (a) builder;
- (b) architect; or
- (c) engineer,

that:

- (d) the Activity is free of errors or omissions and in conformity with the Commonwealth's requirements as set out in this Agreement;
- (e) all regulatory requirements have been complied with; and
- (f) the Location is able to be used, or is being used, for the Designated Use.

3.2. Within 20 Business Days of receiving the written certification under Supplementary Condition 3.1 the Commonwealth may give the Grantee written notice setting out the further matters which the Commonwealth requires the Grantee to address to meet the conditions for completion of the Activity.

4. Land owned by a third party

- 4.1. Before the Grantee undertakes an Activity on land that is not owned by the Grantee (Third Party Land), the Grantee must:
 - (a) obtain a lease, licence or other interest or rights in the land and all other necessary authorities to undertake the Activity with the Grant; and
 - (b) provide written confirmation of this interest in the Third Party Land to the Commonwealth.
- 4.2. The Grantee must rely on its own advice in relation to matters regarding securing an interest in Third Party Land.
- 4.3. The Grantee must not do anything during the Designated Use Period that would give the owner of the Third Party Land the right to terminate the Grantee's lease, licence or other interest over the Third Party Land or the Grantee's right to use the Third Party Land for the Designated Use.
- 4.4. Where the Grantee leases or licences or otherwise occupies the Third Party Land and:
 - (a) the Grantee receives a notice of default; or
 - (b) the Grantee's right to use and occupy the Third Party Land ends or is terminated; or
 - (c) the Third Party Land is materially damaged or destroyed during the Designated Period,the Grantee must:
 - (d) notify the Commonwealth in writing within 5 Business Days of becoming aware of the relevant event;
 - (e) if Supplementary Condition (a) applies, use its best endeavours to remedy the default.

5. Work health and safety

- 5.1. In conducting the Activity the Grantee must do all things necessary and in a manner which ensures the Grantee satisfies its obligations under the WH&S Legislation.
- 5.2. The Grantee must ensure any subcontract made in connection with the Activity contains enforceable obligations requiring the subcontractor to comply with the WH&S Legislation.
- 5.3. The Grantee must rely on its own advice in relation to its obligations under the WH&S Legislation.

6. Loss, damage and reinstatement

- 6.1. The Grantee must promptly replace or otherwise make good any loss of, or repair damage to:
- (a) any plant, equipment and work for the Activity; and
 - (b) any unfixed goods and materials used or to be used in carrying out the Activity.
- 6.2. The Grantee must bear the cost of the replacement, making good or repair.
- 6.3. In addition to Supplementary Condition 6.1, if loss or damage occurs to any part of the Activity the Grantee must:
- (a) make the area where the Activity is being undertaken safe and secure; and
 - (b) notify the relevant insurers and comply with their instructions; and
 - (c) promptly consult with the Commonwealth to discuss the steps to be taken to:
 - i. comply with the Grantee's obligations under this Supplementary Condition; and
 - ii. ensure, to the greatest extent possible, that the Grantee continues to comply with the Grantee's other obligations under this Agreement.

7. Defects

- 7.1. Following the Activity Completion Date, the Grantee must use its best endeavours to have the relevant subcontractor correct all Defects in the Capital Works that arise during the Defects Liability Period.

8. Designated use

- 8.1. The Location is to be used for the Designated Use for the Designated Use Period.
- 8.2. Where the Grantee owns, leases or licences the Location, the Grantee must not dispose of or transfer that interest during the Designated Use Period without the prior written consent of the Commonwealth.
- 8.3. Where the Grantee leases or licences the Location, the Grantee must obtain the prior written approval of the landlord or licensor to this Agreement, the Designated Use and the conduct of the Activity.

9. Termination and failure to retain licence

- 9.1. In addition to the termination rights of the Commonwealth under the Standard Grant Conditions, the Commonwealth may terminate this Agreement by notice where the Grantee has had any lease, licence, authority or certificate that the Grantee is required to hold in order to operate the Designated Use at the Location, surrendered, revoked, rescinded, terminated or otherwise ended.

10. Repayment

10.1. If the Commonwealth elects to terminate this Agreement in accordance with the terms and conditions of this Agreement (including Supplementary Condition **Error! Reference source not found.**), the Commonwealth may require the Grantee to repay to the Commonwealth the total Grant amount previously paid to the Grantee at the time of termination.

10.2. If the Grantee:

- (a) fails to use the Location for the Designated Use for the Designated Use Period as required under clause **Error! Reference source not found.**; or
- (b) has any lease, licence, authority or certificate that the Grantee is required to hold in order to operate the Designated Use at the Location, surrendered, revoked, rescinded, terminated or otherwise ended during the Designated Use Period,

the Commonwealth may, by written notice, require the Grantee to repay to the Commonwealth:

- (c) the total Grant amount that has been paid to the Grantee as at the date of issue of the notice; or
- (d) a proportion of the Grant previously paid to the Grantee as at the date of issue of the notice calculated using the following formula:

$$A = \left(\frac{G}{T} \times R \right)$$

where:

A = the amount to be paid to the Commonwealth

G = the total Grant amount that has been paid to the Grantee

T = the total number of days in the Designated Use Period

R = the number of days remaining in the Designated Use Period at the date of the notice

11. Charge

11.1. Without limiting or affecting the Grantee's obligations or the Commonwealth's rights under this Agreement or otherwise at law or in equity, the Grantee irrevocably:

- (a) charges in favour of the Commonwealth, all of the Grantee's rights, title and interest in and to the Location (and to any Capital Item) to secure the Grantee's obligations under this Agreement, including to pay any debt; and
- (b) if the Commonwealth requires, agrees to sign such documents and procure all consents, as required by the Commonwealth, to allow lodgement of any caveat or charge against title of the Location (and to any Capital Item) in the form required by the Commonwealth and such further documents from time to time to prevent lapsing, or withdrawal, of any caveat, charge or security.

12. Definitions

12.1. In this Agreement, unless the contrary appears:

- A reference to **Schedule** includes the Capital Works Supplementary Conditions.
- **Activity Completion Date** has the meaning given at Item C of the Grant Details.
- **Capital Item** means any item of property, other than personal or intangible property, with a price or value of \$10,000 or more, inclusive of GST, which has been created, acquired or leased wholly or in part with the Grant and includes land, existing buildings, new buildings,

renovations of existing buildings, other infrastructure such as roads, pipelines and airstrips. For the removal of doubt, a building, including a demountable, is defined as a Capital Item if the building is a fixture to the land, that is, the building is permanently attached to the land.

- **Defect** means any defect, shrinkage, fault or omission in the Activity, including any aspect of the Activity which is not in accordance with the requirements of this Agreement or otherwise is not fit for its intended purpose.
- **Defects Liability Period** means the period specified at item J of the Grant Details which starts immediately following the Activity Completion Date.
- **Designated Use** means the use of the Childcare Centre as specified at Item H in the Grant Details.
- **Designated Use Period** means the period, if any, specified at Item H in the Grant Details which commences on the Activity Completion Date.
- **Location** means the facility and buildings identified at Item B of the Grant Details which is operated by the Grantee.
- **Standard Grant Conditions** means the Commonwealth Standard Grant Conditions at Schedule 1 of this Agreement.
- **Supplementary Terms** means the Supplementary Terms from the Clause Bank at Schedule 2 of this Agreement.
- **WH&S Legislation** means:
 - (a) the Work Health and Safety Act 2011 (Cth) and the regulations made under that Act; and
 - (b) the relevant and applicable work health and safety legislation of the state or territory jurisdiction(s) in which the Activity occurs.