



Australian Government

Department of the Prime Minister and Cabinet

## HEAD AGREEMENT FOR INDIGENOUS GRANTS

between

the Commonwealth of Australia as represented by the Department of the Prime Minister and Cabinet (ABN 18 108 001 191)

AND

**[insert Provider name] (ABN [xx])**

Grant System Agreement number (System ID)	<b>[Agreement ID provided by grant management system]</b>
Provider reference number (System ID)	<b>[Org ID provided by grant management system]</b>

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SAMPLE

## DETAILS AND AGREEMENT STRUCTURE

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### Term of Head Agreement

Start Date: The date this Head Agreement is signed by both parties.

Expiry Date: The last Project Agreement End Date under this Head Agreement

### Parties to the Head Agreement

<b>Commonwealth</b>	<b>The Commonwealth of Australia as represented by the Department of the Prime Minister and Cabinet</b>
ABN	ABN 18 108 001 191
Registered office	1 National Circuit, Barton ACT 2600
Address for service of notices	[insert]
Contact officer for Head Agreement	[list the position of the person who negotiates the first Project Schedule]
Telephone	[insert]
Email	[insert]
Registered for GST?	Yes, and can provide recipient created tax invoices

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<b>The Provider</b>	
Full legal name	[insert]
Trading or business name	[insert]
ABN	[insert]
Registered office (physical address)	[insert]
Address for service of notices (if different)	[insert]
Contact person for Head Agreement	[insert name and position title]
Telephone	[insert]
Fax	[insert]
Email of contact person	[insert]

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## Background

- A. The Commonwealth is committed to working more closely with Indigenous Australians on the key priorities of getting children to school, adults to work and making communities safer.
- B. The Provider is committed to achieving results in these priority areas, and will work with the Commonwealth and Indigenous communities to do this.

## How this Head Agreement and the Project Schedules work

- 1. The purpose of this Head Agreement is to create a framework that governs the relationship between the Commonwealth and the Provider for all Indigenous Grants.
- 2. This **Head Agreement** sets out the general terms and conditions applying to all Projects and Grants.
- 3. A **Project Schedule** sets out specific terms and conditions that apply to particular Projects and Grants covered by it.
- 4. A Project Agreement is formed if the Commonwealth approves a Grant and executes a Project Schedule with the Provider. The Commonwealth does not guarantee that any Grants will be made to the Provider during the term of the Head Agreement.
- 5. Each **Project Agreement** is a separate contract between the Commonwealth and the Provider. The terms of a Project Agreement are those set out in:
  - (a) the relevant Project Schedule;
  - (b) this Head Agreement; and
  - (c) any attachments to, or documents incorporated by reference into, any of those documents.
- 6. If there is any inconsistency between these documents, the document appearing higher in the list in clause 5 will take priority.
- 7. Each Project Agreement constitutes the parties' entire agreement relating to the Projects covered by that agreement and supersedes all previous oral or written communications, agreements and undertakings in relation to that Project.
- 8. Project Agreements may be entered into up until the Expiry Date of the Head Agreement. The Head Agreement remains in force until the end of all Project Agreements entered into before the Expiry Date.
- 9. The parties may mutually agree to extend a Project Agreement, by executing a contract variation under clause 139.
- 10. Headings to clauses do form part of a Project Agreement, however notes in italics are for information only and are not binding. Words in the singular include the plural, and vice versa.

## THE GRANT

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### Payment of Grant

11. The Commonwealth will pay a Grant in accordance with the relevant Project Agreement, subject to sufficient funds being available and the Provider complying with the Project Agreement.

### Using the Grant

12. The Provider is to use each Grant only in accordance with the Project Agreement. A Grant must only be used for the Project for which it is provided, unless the Commonwealth otherwise agrees in writing to an alternative use.
13. The Provider must hold all unspent Grant money in an account in its name and which it controls. The account must be with a deposit-taking institution authorised under the *Banking Act 1959* (Cth) to carry on business in Australia.
14. On request from the Commonwealth, the Provider will provide an authority to the authorised deposit-taking institution for the Commonwealth to obtain all details relating to any use of the account.
15. The Provider must manage its account and financial records so that all receipts and expenditure of each Grant are clearly identifiable and ascertainable at all times.

### Tax and Invoices

16. Subject to clauses 17 to 19, the Provider agrees to pay all taxes, duties and government charges levied in Australia or overseas in connection with this Head Agreement and any Project Agreements.
17. All dollar amounts and all other consideration for a supply made under a Project Agreement are inclusive of GST, unless stated otherwise.
18. The Provider must notify the Commonwealth if its ABN changes or it ceases to be registered for GST.
19. Invoices will be issued in accordance with the Project Schedule.

## DELIVERING THE PROJECT

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### Project to be delivered in accordance with Project Agreement

20. The Provider must deliver each Project:
  - (a) in accordance with the Project Agreement;
  - (b) in consultation and cooperation with the Commonwealth and the relevant communities; and
  - (c) in a manner that is not inconsistent with the Commonwealth's key priorities of getting children to school, adults to work and making communities safer.

### Consultation, cooperation and evaluation

21. The parties agree that regular consultation, cooperation and evaluation are necessary to give each Project the best chance of achieving results for Indigenous Australians.
22. The parties agree that the processes set out in clauses 23 to 27 will be conducted in a mutually cooperative manner and may include consultation with the relevant community and other interested parties. The Provider also agrees to give reasonable assistance, access and information as required by the Commonwealth in relation to these processes.
23. The Commonwealth may, at any time, evaluate a Project, the Provider's capacity to deliver a Project in accordance with the Project Agreement, and/or the Provider's performance under a Project Agreement. The Commonwealth may consider:

- (a) the Provider's compliance with the Project Agreement;
- (b) how a Project is progressing against the outcomes, objectives and/or key performance indicators set out in the Project Schedule;
- (c) the likelihood that a Project will continue to meet the outcomes, objectives and/or key performance indicators set out in the Project Schedule;
- (d) how the Provider identifies and manages risk to give a Project the best chance of achieving the outcomes, objectives and/or key performance indicators set out in the Project Schedule;
- (e) the extent to which a Project is achieving, or is likely to achieve, results that are consistent with and promote the Commonwealth's priorities (including under any guidelines); and
- (f) any other relevant information.

### **Change proposals and delivering on Commonwealth priorities**

24. If, at any time, the Commonwealth reasonably believes that:

- (a) the Provider may be, or may become, unable to deliver a Project in accordance with the Project Agreement, including due to financial, risk management or governance issues;
- (b) a Project is unlikely to meet an outcome, objective and/or key performance indicator set out in the Project Schedule;
- (c) the Provider is not identifying and managing risk in a manner that gives the Project the best chance of achieving the outcomes, objectives and/or key performance indicators set out in the Project Schedule; or
- (d) a Project does not, or there is a risk that it will not, achieve results that are consistent with and/or promote the Commonwealth's priorities (including under any relevant guidelines),

the Commonwealth may notify the Provider and request a proposal outlining what steps could be taken and/or how the Project could be delivered in a manner that addresses these issues. The Commonwealth will give reasons for the request, and the Provider must provide a proposal to the Commonwealth within 10 business days (or any longer period agreed with the Commonwealth).

25. If, at any time, the Provider:

- a) considers that a Project could be changed or delivered in a manner that better addresses the issues listed in clause 24 – it may notify the Commonwealth and propose changes to the Project; or
- b) fails to continue, or is unlikely or unable, to perform its obligations under a Project Agreement or to deliver a Project – it must promptly notify the Commonwealth and may propose changes to the Project.

26. Within 10 business days of receiving a proposal under clauses 24 or 25, the Commonwealth must notify the Provider whether it approves or rejects the proposal, or wishes to negotiate alternative arrangements.

27. The parties agree to negotiate any proposal in good faith, and to take the necessary steps to implement and comply with an approved proposal, including by executing a contract variation under clause 139 (if required).

28. An evaluation or proposal under clauses 23 to 27 is not required before the Commonwealth can take risk management action under clauses 70 to 71, appoint a grants controller under clauses 73 to 78, take action under clause 80 where money is not spent in accordance with the Project Agreement, deal with unspent amounts under clause 81, or take action under the breach and termination provisions in clauses 82 to 91.

### **Working with Vulnerable Persons and police and criminal history checks policy**

29. Before engaging or deploying any person (whether an officer, employee, contractor, subcontractor, volunteer or in any other capacity) in relation to any part of a Project that may involve contact with a Vulnerable Person, the Provider must:
  - (a) confirm that no Commonwealth, State or Territory law prohibits the person from being engaged in a capacity where they may have contact with a Vulnerable Person; and
  - (b) comply with all other legal requirements of the place where the Project, or part of the Project, is being conducted in relation to engaging or deploying persons in a capacity where they may have contact with Vulnerable Persons.
30. The Provider must in relation to a Project:
  - (a) ensure compliance with all legal requirements in accordance with clause 29(b) remains current;
  - (b) immediately notify the Commonwealth if any person engaged or deployed that has or may have contact with a Vulnerable Person is prohibited from having contact with a Vulnerable Person and immediately ensure the person is no longer so engaged or deployed;
  - (c) complete a risk assessment to identify the level of contact with Vulnerable Persons and the level of risk of harm or abuse to Vulnerable Persons;
  - (d) develop and apply an appropriate risk management strategy in relation to working with Vulnerable People;
  - (e) deliver training and establish a compliance regime in relation to working with Vulnerable People; and
  - (f) comply with any additional policies or requirements relating to contact with Vulnerable Persons, police checks and criminal history checks, which the Commonwealth notifies it from time to time.
31. The Provider must report to the Commonwealth:
  - (a) on the Provider's compliance with clauses 29 and 30 by no later than 31 October each year and in such form as may be specified by the Commonwealth; and
  - (b) on any other matter relating to the Provider's work with Vulnerable People upon request by the Commonwealth.

### **Subcontracting and assignment**

32. The Provider is responsible for ensuring each Project is conducted in accordance with the relevant Project Agreement, including any tasks undertaken by subcontractors.
33. The Provider agrees not to assign its rights or obligations under the Head Agreement or a Project Agreement or subcontract any aspect of a Project without the Commonwealth's prior written approval. The approval may be subject to conditions. Any subcontracting arrangements specified in a Project Schedule are approved for the purpose of this clause (subject to any conditions also set out in the Project Schedule).
34. The Provider acknowledges that the Commonwealth may publicly disclose the names of any subcontractors engaged for a Project, and the Provider agrees to inform all subcontractors of this and obtain the subcontractors' consent.
35. The Provider agrees to ensure that any subcontract entered into for the purpose of a Project Agreement is consistent with its obligations and the Commonwealth's rights under the Project Agreement. In particular, any subcontract must include clauses equivalent to clauses 29 to 31 (Vulnerable Persons), clauses 59 to 63 (access), clause 69 (removing Personnel), clauses 88 to 97 (termination), clauses 98 to 101 (insurance), and clauses 102 to 103 (indemnities).
36. The Commonwealth may, on any reasonable ground, direct the Provider to remove a subcontractor or subcontractor Personnel from a Project. The Commonwealth will give written reasons for the

removal. The Provider must, at its own cost, ensure the subcontractor or subcontractor Personnel cease all further involvement in the Project and arrange a replacement that is acceptable to the Commonwealth.

### **Key Personnel**

37. If Key Personnel are identified in a Project Schedule, the Provider agrees to ensure that they work on the Project as specified.
38. If Key Personnel are unable to work on the Project as specified, the Provider agrees to notify the Commonwealth immediately and to engage replacement Personnel acceptable to the Commonwealth as soon as reasonably practicable.
39. The Commonwealth may direct the Provider to remove Key Personnel under clause 69.

### **Assets**

40. The Provider agrees to obtain prior written approval from the Commonwealth to use a Grant or any part of a Grant to purchase, lease or acquire an Asset. The approval may be conditional and may include requiring the Provider to provide the Commonwealth with security over the Asset at the Provider's own cost. Any Assets specified in a Project Schedule are approved for the purpose of this clause (subject to any conditions also set out in the Project Schedule).
41. The Provider will maintain a register of all Assets and provide the register to the Commonwealth on request. The Provider may keep a single register that covers all Assets covered under a Project Agreement. The register must include for each Asset:
  - (a) a description of the Asset, including the serial number and the location of the Asset;
  - (b) the date of purchase, lease or other acquisition;
  - (c) the purchase, lease or acquisition price;
  - (d) the amount of the Grant used to purchase, lease or otherwise acquire the Asset;
  - (e) whether it is owned, leased or acquired;
  - (f) all Projects and Project Agreements to which it relates;
  - (g) the proceeds of any sale or disposal of the Asset; and
  - (h) the Adjustable Value of the Asset.
42. The Provider is fully responsible for each Asset and bears all risk relating to the Asset and its use.
43. The Provider must protect and maintain all Assets.
44. Unless otherwise agreed in writing by the Commonwealth, an Asset may only be used for delivering a Project and must not be encumbered or used as security for any purpose.
45. The Provider must not sell or dispose of an Asset without the Commonwealth's prior written approval. The approval may be conditional and may require the Provider to repay an amount up to the Adjustable Value of the Asset within 20 business days of approval unless otherwise agreed by the Commonwealth.
46. The Provider agrees to comply with any Commonwealth directions requiring it to deal with Assets in a particular way at the Project End Date. This may include selling the Asset and returning the full sale amount to the Commonwealth, or transferring the Asset to the Commonwealth or its nominee.
47. On request, the Provider must give the Commonwealth evidence showing that it has complied with the requirements set out in clauses 40 to 46.

## Complaints

48. The Provider will establish and maintain a complaints handling process for each Project. The process must be published and made available on request to the Commonwealth and the public.
49. The Provider will also maintain a complaints register for each Project.
50. The complaints register must contain full details of all complaints made in relation to the Project, whether received directly by the Provider or referred to it by the Commonwealth or a third party. The register must identify, for each complaint:
  - (a) the name of the person or organisation making the complaint (if known);
  - (b) the date and nature of the complaint; and
  - (c) any action taken, including any changes (or proposed changes) to the conduct of the Project as a result of the complaint.
51. The Provider agrees to provide the Commonwealth a copy of the complaints register on request.

## REPORTING AND ACCESS

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### Reports

52. The Provider must provide the reports identified in a Project Schedule.
53. Each report must be provided at the times, and containing the information, set out in the Project Schedule.
54. The Commonwealth may request a revised report where it reasonably believes that either the form or content of a report is unsatisfactory. The Provider must comply with that request within 10 business days unless another timeframe is agreed.
55. Subject to clause 56, if an audited expenditure report is required, it must be audited by a person who is not a principal, member, shareholder, officer or employee of the Provider and is either:
  - (a) a Registered Company Auditor under the *Corporations Act 2001* (Cth);
  - (b) a member of CPA Australia;
  - (c) a member of the Institute of Public Accountants in Australia; or
  - (d) a member of the Institute of Chartered Accountants in Australia.
56. Where the Provider is audited by the Commonwealth Auditor-General or a State or Territory Auditor-General, an audited expenditure report must be audited in accordance with the relevant legislation.
57. The Provider agrees to provide any additional information or reports reasonably requested by the Commonwealth. This includes providing information or reports relating to a Project, Grant, the Provider's governance arrangements and its overall financial position, or arranging for an unaudited report to be audited. Additional information or reports must be provided within 10 business days unless another timeframe is agreed.
58. Information contained in, or provided under, this Head Agreement or a Project Agreement may be used for public reporting purposes.

### Access to premises and records

59. Subject to clause 60 and on written request, the Provider agrees to give the Commonwealth and/or its authorised representatives access to:
  - (a) all premises being used to administer a Grant, or to deliver a Project; and
  - (b) all Material relating to the Head Agreement or a Project Agreement, including allowing copies of these items.

60. The access must be provided within 48 hours of the Provider receiving the request, or any shorter time set out in the request.
61. The Commonwealth may require immediate access where there are public health or safety concerns or in the circumstances listed in clause 62.
62. The Commonwealth and/or its authorised representatives may remove and retain any Material relevant to an investigation involving:
  - (a) an actual or apprehended breach of the law;
  - (b) a breach of a Project Agreement; or
  - (c) fraud.

This includes removing and retaining Material not related to a Project. The Commonwealth will return a copy of the Material within a reasonable period of time.
63. The Provider must also provide assistance and Material required by the Commonwealth to comply with any requests received by the Commonwealth under the *Freedom of Information Act 1982* (Cth).

## **GOVERNANCE AND RISK MANAGEMENT**

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### **Strengthening Organisational Governance**

64. Clauses 65 to 68 require the Provider to be, or become, incorporated in certain circumstances.
65. The incorporation requirement applies if the total value of all Indigenous Grants (except Capital Works Grants) in a financial year equals \$500,000 or more (excluding GST), and the Provider:
  - (a) is not a statutory body, or a State or Local Government; and
  - (b) has not received an exemption from the incorporation requirements in clauses 66 to 68 from the Minister (or the Minister's delegate).
66. Where the incorporation requirement applies:
  - (a) the Provider must be, or become, incorporated in accordance with clause 67; and
  - (b) the incorporation must occur within 6 months of the date that the agreement (or contract variation) is executed resulting in the total value of all Indigenous Grants in a financial year equalling \$500,000 or more (excluding GST).
67. The Provider must be, or become, incorporated:
  - (a) if the Provider is an Indigenous Organisation – under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth);
  - (b) if the Provider is not an Indigenous Organisation – under the *Corporations Act 2001* (Cth).
68. Once the Provider is, or becomes, incorporated, it must remain incorporated for the remainder of the term of all Indigenous Grant Agreements.

### **Removing Personnel**

69. The Commonwealth may direct the Provider to remove Personnel, including Key Personnel, from a task relating to any Grant, Project or Project Agreement on any reasonable ground, and will give written reasons for the removal. The Provider must, at its own cost, promptly remove the Personnel and where applicable provide replacement Personnel acceptable to the Commonwealth.

### **Risk management and performance**

70. At any time, the Commonwealth may take risk management and/or performance action under clause 71 where it reasonably considers:
  - (a) the Provider's performance is less than satisfactory;

- (b) the Provider is unable to properly manage any Grant, or there are other financial issues relevant to any Project or Project Agreement;
  - (c) the Provider is unable to properly deliver any Project because of its financial, risk management or governance; or
  - (d) there is a significant or continuing breach of any Project Agreement.
71. The Commonwealth may, by notice:
- (a) require the Provider to work with the Commonwealth or its nominee to improve its capacity to conduct some or all of its Projects to the Commonwealth's satisfaction, including by addressing governance, financial or service delivery issues, or through relevant training;
  - (b) require additional reports or information under clause 57;
  - (c) appoint a grant controller;
  - (d) either itself, or through a third party, take control or management of all or part of any Project under the relevant Project Agreement; and/or
  - (e) take other action permitted under a Project Agreement.
72. The risk management and/or performance action under clause 71 may be taken in relation to some or all of the Provider's Projects or Project Agreements.

**Grant controller**

73. If the Commonwealth appoints a grant controller, it will give the Provider notice of the appointment, setting out the name of the grant controller, the scope of their role and the duration of the appointment.
74. The Commonwealth may alter any aspect of the appointment from time to time, by giving notice to the Provider.
75. The grant controller's powers and functions may include, but are not limited to:
- (a) administering and controlling Grant money;
  - (b) providing financial, management and corporate governance assistance, support and advice to the Provider to assist it in complying with the relevant Project Agreement;
  - (c) establishing a new separate account for holding and receiving Grant money, and being a mandatory signatory for that account; and
  - (d) providing any other advice or assistance to the Provider that the Commonwealth requires.
76. The Provider must:
- (a) consider in a timely manner and in good faith all advice received from the grant controller;
  - (b) co-operate actively and in good faith with the grant controller, and provide assistance, Material and access as reasonably required from time to time; and
  - (c) comply with all directions given by the grant controller relating to the administration of Grant money. This may include adding the grant controller as an additional mandatory signatory for each account that contains Grant money, and permitting the grant controller to establish a new separate account for Grant money.
77. The Provider acknowledges that it remains fully responsible for delivering all Projects and performing its obligations under all Project Agreements, despite the appointment of a grant controller.
78. The Provider agrees that costs incurred by the Commonwealth in relation to a grant controller may be deducted from future payments under any Project Agreement, or must be borne by the Provider if the Commonwealth gives notice to that effect. The Provider acknowledges that the Commonwealth is not liable for any costs incurred by the Provider in relation to a grant controller.

## **WITHHOLDING, INCORRECTLY PAID OR SPENT, UNSPENT AMOUNTS AND BREACHES**

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### **Withholding**

79. The Commonwealth may withhold some or all of a Grant payment if the Provider has not:
- (a) conducted the Project in accordance with the Project Agreement;
  - (b) done everything the Provider was required to do to the Commonwealth's satisfaction;
  - (c) been performing the Project to the Commonwealth's satisfaction; or
  - (d) spent the Grant in accordance with the Project Agreement.

The Commonwealth will only pay the withheld amount once the reasons for withholding the payment are resolved to the Commonwealth's satisfaction.

### **Provider not entitled to amount or amount not spent in accordance with a Project Agreement**

80. If the Provider is paid an amount it is not entitled to, or some or all of a Grant payment has not been spent in accordance with the Project Agreement, the Commonwealth may by notice require repayment of an amount, or reduce any other Grant payment under that or any other Project Agreement, up to the relevant amount.

### **Unspent Grant amounts**

81. If the Provider:
- (a) is unable to spend all of a Grant in accordance with the Project Agreement; or
  - (b) did not spend all of a Grant before the Project End Date,
- the Commonwealth may by notice:
- (c) direct the Provider to spend the amount for a purpose specified by the Commonwealth;
  - (d) reduce a Grant payment under that or any other Project Agreement, up to the relevant amount; or
  - (e) require the Provider to pay to the Commonwealth an amount specified in the notice up to the relevant amount, by the date specified in the notice.

### **Breach of Project Agreement**

82. If the Provider breaches a term or condition of a Project Agreement, and the breach is capable of being remedied, the Commonwealth may give the Provider a notice requiring it to remedy the breach or to provide a remediation plan that is acceptable to the Commonwealth.
83. The Provider must comply with the notice and any accepted remediation plan, in the required timeframes and to the Commonwealth's reasonable satisfaction.
84. If the Provider does not comply with clause 83, or breaches a term or condition of a Project Agreement and the breach is incapable of being remedied, the Commonwealth may:
- (a) reduce or withhold one or all of the Grant payments for any Projects under the Project Agreement;
  - (b) reduce the total amount of any Grant payments for any Projects under the Project Agreement;
  - (c) impose additional conditions for any Projects under the Project Agreement, such as additional reporting requirements;
  - (d) reduce the scope of, or terminate, any Projects under the Project Agreement;
  - (e) either itself, or through a third party, take control or management of all or part of any Projects under the Project Agreement; and/or
  - (f) exercise termination rights under clauses 88 to 91.

85. The Commonwealth will exercise any rights under clause 84 reasonably taking into account the relevant breach.
86. The Provider must continue to deliver all Projects not affected by the exercise of a right under clause 84.
87. Where the Commonwealth takes action under clauses 71(d) or 84(e), the Provider agrees to provide sufficient assistance and cooperation to enable the relevant Projects to continue. This includes complying with any Commonwealth directions such as the novation of relevant third party contracts, assignment of leases, licences and consents, and transferring Agreement Material, to the Commonwealth or its nominee.

## **TERMINATION**

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### **Termination or reduction in scope - for default**

88. In certain circumstances, the Commonwealth can immediately, by giving notice, do any one or more of the following:
  - (a) terminate the Head Agreement;
  - (b) terminate a Project Agreement;
  - (c) reduce the scope of a Project Agreement;
  - (d) terminate a Project;
  - (e) reduce the scope of a Project,with effect on and from the date specified in the notice.
89. The circumstances that allow action under clause 88 are where the Commonwealth reasonably believes that the Provider has:
  - (a) breached a term or condition of a Project Agreement and failed to remedy the breach in accordance with clauses 82 and 83;
  - (b) breached a term or condition of a Project Agreement and the breach is not capable of being remedied;
  - (c) failed to comply with clause 22 (consultation, cooperation and evaluation), clause 24 (change proposal and delivering on Commonwealth priorities), or clause 27 (good faith negotiation and implementing approved proposals);
  - (d) breached any law;
  - (e) become bankrupt or insolvent, entered into a creditors scheme of arrangement, or come under any form of external administration;
  - (f) become unable to pay its debts as and when they fall due;
  - (g) had a change in any person/s who directly exercise effective control over the Provider or are involved in the management of the Provider, which the Commonwealth reasonably believes will negatively affect the Provider's ability to comply with one or more Project Agreements;
  - (h) provided false or misleading statements, or incorrect information; or
  - (i) any other circumstances identified in a Project Agreement for the purpose of this clause.
90. Where the Commonwealth takes action under clause 88 to terminate or reduce scope:
  - (a) it is not liable to make any further Grant payments in relation to any terminated Projects, Project Agreements or reduced scope;
  - (b) it can take action under clause 91 in relation to any amount that was not spent in accordance with the relevant Project Agreement, or has not been spent or legally committed as a current liability as at the date the Provider receives the notice under clause 88; and

- (c) the Provider must continue to deliver all Projects not affected by the termination or reduction in scope.
91. The Commonwealth may by notice:
- (a) direct the Provider to spend the relevant amount for a purpose specified by the Commonwealth;
  - (b) reduce a Grant payment under that or any other Project Agreement, up to the relevant amount; or
  - (c) require the Provider to repay an amount up to the relevant amount, by the date specified in the notice.

#### **Termination or reduction in scope – with costs**

92. Even though the Provider is not in default, the Commonwealth may terminate or reduce the scope of this Head Agreement, or one or more Projects or Project Agreements, at any time by notice.
93. The Commonwealth may also reduce Grant amounts payable under the relevant Project Agreement, proportionate to any reduction in scope.
94. On receipt of a notice under clause 92, the Provider will:
- (a) stop performing obligations in accordance with the notice and comply with any other reasonable directions in the notice; and
  - (b) take all reasonable steps to minimise loss resulting from the termination or reduction in scope.
95. If the Commonwealth terminates or reduces scope under clause 92, it will only be liable for:
- (a) Grant amounts due to the Provider for the affected Projects at the date of the notice; and
  - (b) reimbursement of the Provider's reasonable unavoidable costs incurred as a direct result of the termination or reduction and which are not covered by (a).
96. The Commonwealth's liability to pay under clause 95 is capped to the amount which, when added to Grant payments already made to the Provider for the affected Projects, equals the total amount payable for the affected Projects (taking into account any reduction under clause 93).
97. The Commonwealth is not liable for any other amount, including compensation for lost prospective profits or benefits to the Provider.

### **INSURANCE AND INDEMNITIES**

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#### **Insurance**

98. The Provider must maintain adequate insurance for as long as any obligations remain in connection with this Head Agreement and each Project Agreement and provide the Commonwealth with proof when requested.
99. The Provider is responsible for determining what types and levels of insurance are required.
100. A Project Agreement may include specific additional insurance requirements for a particular Project.
101. Any insurance proceeds relating to an Asset form part of the Grant.

#### **Indemnities**

102. The Provider indemnifies the Commonwealth, its officers, employees and contractors against any claim, loss or damage arising in connection with:
- (a) its delivery of a Project or the performance of its obligations under a Project Agreement; and
  - (b) the Commonwealth's permitted use of Agreement Material and Existing Material.

103. The Provider'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.

## **OTHER MATTERS**

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### **Intellectual property**

104. The Provider owns the Intellectual Property Rights in Agreement Material.
105. The Provider gives the Commonwealth a non-exclusive, irrevocable, royalty-free licence to use, reproduce, publish, adapt and exploit Agreement Material and any Existing Material for Commonwealth purposes. The Provider also gives the Commonwealth the right to licence Agreement Material and any Existing Material to the public under a Creative Commons Attribution (CC BY) licence.
106. The Provider warrants that it is or will be entitled to deal with the Intellectual Property Rights in Existing Material in the manner provided for in clauses 104 and 105.
107. The Commonwealth provides a licence to the Provider to use Commonwealth Material only for the purposes of the relevant Project Agreement.
108. This Head Agreement does not affect ownership of Intellectual Property Rights in Existing Material or Commonwealth Material.

### **Media events and acknowledgement of Commonwealth support**

109. The Provider will acknowledge the Commonwealth's support in any Material published in connection with a Project, and agrees to use any form of acknowledgment the Commonwealth reasonably specifies.
110. The Provider must obtain the Commonwealth's written approval before using the Commonwealth Coat of Arms or departmental logos, and before making any public announcements, or organising or being involved in media events relating to a Project or Project Agreement.

### **Privacy**

111. When dealing with Personal Information in carrying out a Project, the Provider agrees:
- (a) not to do anything which, if done by the Commonwealth, would be a breach of the requirements of Division 2 of Part III of the *Privacy Act 1988 (Cth)*; and
  - (b) to comply with any relevant Commonwealth policies issued from time to time.

### **Confidentiality**

112. The parties will not disclose each other's Confidential Information without prior written consent of the party whose information is to be disclosed.
113. A party will not breach clause 112 to the extent that the Confidential Information is:
- (a) disclosed by a party to its Personnel solely for the purpose of this Head Agreement or a Project Agreement, or to manage, evaluate, or audit a Project or Project Agreement;
  - (b) disclosed by the Commonwealth to another Commonwealth agency, the responsible Minister or in response to a request by a House or Committee of the Parliament of the Commonwealth of Australia;
  - (c) authorised or required to be disclosed by law or, in the case of the Commonwealth, Commonwealth policy;
  - (d) in the public domain otherwise than due to a breach of clause 112.

114. The Commonwealth confirms that, subject to clause 115:
- (a) nothing in this Head Agreement is intended to restrict or prevent the Provider from engaging in public debate on any Commonwealth law, practice or policy;
  - (b) the Provider does not need the Commonwealth's prior approval to be involved in the action referred to in (a).
115. Despite clause 114, the Provider must comply at all times with its obligations under this Head Agreement or a Project Agreement to not disclose Personal Information or confidential information as defined in the *Not-for-Profit Sector Freedom to Advocate Act 2013* (Cth).

### **Record keeping**

116. The Provider must keep full and accurate records relating to the Head Agreement and all Project Agreements, including records relating to Project delivery and Grant expenditure.
117. The Provider must maintain those records for each Project Agreement for 10 years after the Project Agreement End Date or longer period required by legislation.

### **Work health and safety**

118. The Provider must ensure that appropriate work health and safety policies and procedures are in place at any premises or facilities that it is using to deliver a Project.
119. If the Provider is using premises or facilities that are owned or controlled by the Commonwealth, it agrees to:
- (a) communicate, consult and coordinate with the Commonwealth in relation to health and safety matters arising from that use, in accordance with the *Work Health and Safety Act 2011* (Cth); and
  - (b) comply with all reasonable directions and procedures issued by the Commonwealth about work health and safety, and all security procedures for the premises or facility, which are notified by the Commonwealth from time to time, or that can be reasonably inferred from the Provider's use of the premises or facilities.

### **Commonwealth policies and laws**

120. In carrying out its obligations under a Project Agreement, the Provider agrees to comply with:
- (a) any applicable laws and requirements of the Commonwealth, or a State, Territory or local government, including maintaining all qualifications, permits, registrations and licences required for the lawful delivery of the Project; and
  - (b) any relevant Commonwealth policies and guidelines notified to it by the Commonwealth from time to time.

### **Compliance with Criminal Code**

121. The Provider will advise its Personnel that they are Commonwealth public officials for the purposes of section 142.2 of the Criminal Code, and that this means that acting with the intention of dishonestly obtaining a benefit for any person is punishable by penalties, including imprisonment.
122. The Provider also acknowledges that giving false or misleading information to the Commonwealth is a serious offence under section 137.1 of the Criminal Code.

### **Dispute resolution**

123. A party will not initiate legal proceedings against the other in relation to a dispute unless they have:
- (a) used reasonable endeavours to resolve the dispute by negotiation, and failed; and
  - (b) given the other party 20 business days notice of their intention to initiate legal proceedings.

124. The Provider must continue to perform its obligations under all Project Agreements despite any dispute.
125. The procedure for dispute resolution does not apply to action relating to termination, reduction in scope or urgent litigation.

#### **Debt and interest**

126. The Provider agrees to pay each amount owed or payable to the Commonwealth, or which the Commonwealth is entitled to recover from the Provider under a Project Agreement, including any interest, as a debt due to the Commonwealth without any further proof of the debt.
127. Where the Commonwealth notifies the Provider that an amount is to be paid or repaid to it, the Provider must make the payment or repayment within 20 business days of receiving the notice (or other time notified by the Commonwealth).
128. If the payment or repayment does not occur within 20 business days, the Provider agrees to pay interest on the amount outstanding after the due date, until the amount is paid in full.
129. Interest will be calculated at the general interest charge rate for a day determined under section 8AAD of the *Taxation Administration Act 1953* (Cth), on a daily compounding basis.
130. The Provider agrees that any obligation to pay interest under clauses 128 and 129 represents a reasonable pre-estimate of the loss incurred by the Commonwealth.

#### **Transition**

131. The parties acknowledge that a smooth transition from one project or provider to another is essential to achieving real outcomes for the relevant Indigenous community.
132. The Provider agrees to give reasonable assistance and cooperation to other providers or other interested parties to ensure a smooth transition at the beginning and end of each Project, and upon expiry or termination of a Project Agreement.
133. The Provider agrees to comply with all reasonable directions issued by the Commonwealth relating to transition (including requiring the Provider to transfer equipment or Assets to another provider).

#### **Notices**

134. A party giving notice under this Head Agreement or a Project Agreement must do so in writing, by facsimile transmission or by email. A notice is taken to have been received:
  - (a) if delivered by hand – upon delivery to the relevant address;
  - (b) if sent by pre-paid post – 5 business days after the date of posting to the relevant address;
  - (c) if sent by facsimile transmission – upon receipt by the sender of a facsimile confirmation receipt; and
  - (d) if sent by email – at the time of receipt under section 14A of the *Electronic Transactions Act 1999* (Cth) as if the notice was being given under a law of the Commonwealth.
135. Notices under this Head Agreement (only) should be given using the contact details at the front of this Head Agreement. Notices under a Project Agreement should be given using the contact details for the relevant Project set out in the Project Schedule. The parties must inform each other as soon as practicable if the contact details change.

#### **Relationship between the Parties**

136. A party is not by virtue of this Head Agreement or a Project Agreement the employee, agent or partner of the other party and is not authorised to bind or represent the other party.

### **Conflict of interest**

137. The Provider must promptly notify the Commonwealth of any conflict of interest (actual, potential or perceived) that is relevant to a Project Agreement, and must take appropriate action to resolve the conflict to the Commonwealth's satisfaction.
138. The Provider must keep a conflict of interest register that includes the action taken to resolve the conflict and the outcome of that action.

### **Variation**

139. The Head Agreement and any Project Agreements may only be varied in writing, signed by both parties.

### **Survival**

140. The following clauses survive termination or expiry:
- (a) clauses in this Head Agreement – 16 (tax and invoices), 35 (subcontracting), 40 to 47 (assets), 52 to 58 (reports), 59 to 63 (access to premises and records), 80 (provider not entitled to amount or amount not spent in accordance with a Project Agreement), 81 (unspent Grant amounts), 98 to 101 (insurance), 102 to 103 (indemnities), 105 to 106 (intellectual property), 109 to 110 (media events and acknowledgement of Commonwealth support), 111 (privacy), 112 (confidentiality), 116 to 117 (record keeping), 126 to 130 (debt and interest), and 131 to 133 (transition); and
  - (b) any other clause in this Head Agreement or a Project Agreement which expressly or by implication from its nature is meant to survive.

### **Limitation of rights**

141. The rights that any party has under a provision of this Head Agreement or any Project Agreement do not limit the rights it has under any other provision.

### **Jurisdiction**

142. This Head Agreement and all Project Agreements are governed by the law of the Australian Capital Territory.

## DEFINITIONS

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143. In this Head Agreement and all Project Agreements, unless the contrary appears:

**Adjustable Value** means the cost of an Asset less its decline in value determined in accordance with the Australian Taxation Office Guide to Depreciating Assets 2014, as amended or replaced from time to time.

**Agreement Material** means all Material created by the Provider for the purpose of this Head Agreement or a Project Agreement, and includes all reports.

**Asset** means, unless a Project Schedule states otherwise, any item of real or personal property that has a value or acquisition cost of \$5,000 (excluding GST) or more, and is either:

- (a) Leased or purchased (all or part) using a Grant; or
- (b) transferred to the Provider for the purpose of delivering a Project.

**Capital Works Grant** means a Grant payable under a Project Schedule - Capital Works.

**Confidential Information** means:

- (a) information that is described in a Project Schedule as confidential;
- (b) information that the parties agree in writing after the date of this Head Agreement to be confidential for the purpose of this Head Agreement or a Project Agreement; and/or
- (c) Secret and Sacred Material.

**Commonwealth** includes, where relevant, its officers, employees, contractors and agents.

**Commonwealth Material** means any Material provided by the Commonwealth to the Provider for the purpose of this Head Agreement, or a Project Agreement, or that is copied or derived from that Material.

**Creative Commons Attribution (CC BY) licence** is the CC BY licence 4.0, the terms of which are available on the Creative Commons website: <http://creativecommons.org/licenses/by/4.0/legalcode>.

**Criminal Code** means the Schedule to the *Criminal Code Act 1995* (Cth).

**Existing Material** means Material developed independently of this Head Agreement or a Project Agreement and which is incorporated in, or supplied as part of, any Agreement Material.

**Grant** means:

- (a) the money, or any part of it, payable by the Commonwealth to the Provider for a Project under a Project Schedule; and
- (b) any interest earned on a Grant.

**GST law** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth), and **GST** has the same meaning as in that Act.

**Indigenous Grants** means all funding and grants payable to the Provider and which are administered by the Indigenous Affairs Group of the Department of the Prime Minister and Cabinet.

**Indigenous Grant Agreements** means any agreement between the Provider and the Commonwealth under which an Indigenous Grant is payable.

**Indigenous Organisation** means an entity that meets the Indigeneity requirement specified in subsection 29-5 of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth).

**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* (Cth)).

**Key Personnel** means any persons identified as key personnel in a Project Schedule.

**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, but does not include Secret and Sacred Material.

**Personal Information** has the same meaning as in the *Privacy Act 1988* (Cth).

**Personnel** means a party's officers (including all directors and board members), employees, agents, contractors, subcontractors and volunteers.

**Project** means all activities and tasks specified for a Project in a Project Schedule for which a Grant is payable.

**Project Agreement** means an agreement between the Commonwealth and the Provider formed in accordance with clauses 4 and 5 of the Head Agreement.

**Project Agreement End Date** means the date specified as the Project Agreement End Date in the relevant Project Schedule.

**Project Agreement Start Date** means the date specified as the Project Agreement Start Date in the relevant Project Schedule.

**Project End Date** means the date specified as the Project end date for a Project in a Project Schedule.

**Project Schedule** means the schedule to a Project Agreement that contains the details of one or more Projects and Grants.

**Project Start Date** means the date specified as the Project start date for a Project in the Project Schedule.

**Provider** includes, where relevant, its Personnel.

**Secret and Sacred Material** means all information and knowledge of special religious, spiritual or customary significance considered to be secret, exclusive or restricted by an Aboriginal person or according to Aboriginal tradition as defined in the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth).

**Vulnerable Person** means:

- (a) a child, being an individual under the age of 18; or
- (b) an individual aged 18 years and above who is or may be unable to take care of themselves against harm or exploitation by reason of age, illness, trauma or disability, or any other reason.

**EXECUTION PAGE**

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**Executed as a Deed**

**Commonwealth:**

**SIGNED, SEALED and DELIVERED for and on behalf of the Commonwealth of Australia as represented by the Department of the Prime Minister and Cabinet by:**

\_\_\_\_\_  
(Name of Commonwealth Representative)

\_\_\_\_\_  
(Signature of Commonwealth Representative)

\_\_\_\_\_  
(Position of Commonwealth Representative)

.../.../...

\_\_\_\_\_  
(Name of Witness in full)

\_\_\_\_\_  
(Signature of Witness)

**Provider:**

**SIGNED, SEALED and DELIVERED for and on behalf of (Provider Name), (ABN) in accordance with its rules:**

\_\_\_\_\_  
(Name and position held by Signatory)

\_\_\_\_\_  
(Signature)

.../.../...

\_\_\_\_\_  
(Name and position held by second Signatory /  
Name of Witness)

\_\_\_\_\_  
(Signature of second Signatory / Witness)

.../.../...

Notes about the signature block:

- if you are an **incorporated association**, the signatories can be any two members of the governing committee of the Association or a member of the governing committee and the Public Officer. Alternatively, the Grant Agreement could be executed using the Common Seal. Associations incorporated in the **Northern Territory** must affix their **Common Seal** unless the Rules of the Association authorise a person to enter into legally binding documents.
- if you are a **company**, generally two signatories are required – the signatories can be two Directors or a Director and the Company Secretary. Affix your **Company Seal**, if required by your Constitution.
- if you are a **company with a sole Director/Secretary**, the Director/Secretary is required to be the signatory in the presence of a witness. Affix your **Company Seal**, if required by your Constitution.
- if you are a **partnership**, a partner must be a signatory in the presence of a witness.
- if you are an **individual**, you must sign in the presence of a witness.
- if you are a **university**, the signatory can be an officer authorised by the legislation creating the university to enter into legally binding documents. A witness to the signature is required.
- if you are a **State or Territory Government**, the delegate must sign for the State/Territory Department/Agency acting on behalf of the State or Territory Government. The delegate must sign in the presence of a witness.