



**Australian Government**

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**Department of Education, Employment and Workplace Relations**

# **Funding Agreement**

**between**

**The Commonwealth of Australia**

**and**

**[Insert funding recipient's name]**

**regarding funding for**

**Indigenous Professional Support Units**

**under the**

**Inclusion & Professional Support Program**

**2013-2016**

**Agreement No. [Insert agreement No., if any]**

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PURPOSE

- A. We operate the Program.
- B. You are committed to helping achieve the Program through Your conduct of the Project.
- C. As a result of this commitment, We agree to support the Project by providing the Funding to You, subject to the terms and conditions of this Agreement.
- D. We are required by law to ensure accountability for public money, and You are required to be accountable to Us for the Funding.
- E. You agree to accept the Funding on the terms and conditions set out in this Agreement.

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## OPERATIVE PROVISIONS

### PART A INTRODUCTION

#### 1 Definitions

1.1 In this Agreement, unless the contrary intention appears:

**'Agreement'** means this document, including the Schedule, the Letter of Offer, any attachments or annexures and any documents incorporated by reference.

**'Asset'** means any item of tangible property with a value of more than \$5,000.00, inclusive of GST.

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

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

**'Australian Auditing Standards'** means the standards prepared by the Auditing Standards Board of the Australian Accounting Research Foundation and generally accepted audit practices to the extent they are not inconsistent with those standards.

**'Author'** means a person who is an author of any Project Material or Existing Material for the purposes of Part IX of the *Copyright Act 1968* (Moral Rights).

**'Budget'** means the budget, if any, specified at item E of the Schedule.

**'Commonwealth Material'** means any Material provided by Us to You for the purposes of this Agreement and any Material which is copied from Material so provided..

**'Conflict'** means a conflict of interest, or risk of a conflict of interest, or an apparent conflict of interest arising through You engaging in any activity or obtaining any interest that is likely to interfere with or restrict You in providing the Project to Us fairly and independently.

**'Departmental Officer'** means the person specified in Item T of the Schedule who can receive Notices on Our behalf;

**'Electronic Communication'** has the same meaning as it has in section 5 of the *Electronic Transactions Act 1999*.

**'End Date'** means whichever of the following applies:

- (a) the day specified in item A1.1 of the Schedule;
- (b) if no day is specified in item A1.1 of the Schedule, the day on which You complete all of Your obligations under this Agreement to Our satisfaction; or

(c) regardless of (a) or (b), if We extend this Agreement in accordance with clause 5, the day on which the last extension ends,

unless this Agreement is terminated earlier, in which case the End Date is the day on which this Agreement is terminated.

**'Existing IPR'** means the Intellectual Property Rights in the Existing Material.

**'Existing Material'** means any Material, except Commonwealth Material, in existence prior to execution of this Agreement which is incorporated in, supplied with or as part of, or required to be supplied with or as part of, the Project Material..

**'Funding'** means the amount or amounts, in cash or in kind, payable by Us under this Agreement as specified in item F of the Schedule.

**'GST'** has the same meaning as it has in section 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999*.

**'Guidelines'** means the guidelines specified in item B of the Schedule.

**'Information Privacy Principle'** has the meaning given in the Privacy Act.

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

**'Interest'** means interest calculated at an interest rate equal to the general interest charge rate for a day pursuant to section 8AAD of the *Taxation Administration Act 1953*, on a daily compounding basis.

**'Letter of Offer'** means the letter of offer from Us to You inviting You to enter into this Agreement.

**'Material'** includes documents, reports, equipment, software (including source code and object code), goods, information and data stored by any means including all copies and extracts of the same.

**'Milestone'** means a stage of completion of the Project, as specified in item F of the Schedule.

**'National Privacy Principle'** has the meaning given in the Privacy Act.

**'Notice'** means a notice sent from one party to the other party in accordance with the requirements of clause 38 and **'Notify'** means the action of sending a Notice in accordance with the requirements of clause 38.

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

- (a) is described in item P1.1 of the Schedule;
- (b) We identify, by Notice to You after the Date of this Agreement, as confidential information for the purposes of this agreement; or
- (c) You know or ought to know is confidential to Us.

**'Personal Information'** has the same meaning as it has in section 6 of the Privacy Act.

**'Privacy Act'** means the *Privacy Act 1988*.

**'Privacy Commissioner'** means the Office of the Privacy Commissioner established under the Privacy Act and includes any other entity that may, from time to time, perform the functions of that Office.

**'Program'** means the program specified in item B of the Schedule.

**'Project'** means the project specified in item C of the Schedule, and includes the provision of Project Material specified in that item.

**'Project Material'** means all Material:

- (a) created for the purpose of performing this Agreement;
- (b) incorporated in, supplied or required to be supplied along with the Material referred to in paragraph (a); or
- (c) copied or derived from Material referred to in paragraphs (a) or (b).i.

**'Project Period'** means the period specified in item D of the Schedule.

**'Records'** includes documents, information and data stored by any means and all copies and extracts of the same.

**'Report'** means the reports specified in item M of the Schedule.

**'Schedule'** means the schedule to this Agreement;

**'Secretary'** means a person for the time being performing the duties of the office of Secretary to the Department and includes a person designated in writing by the Secretary to exercise any of the Secretary's powers under this agreement.

**'Serious Event'** means any circumstance in which a child, worker or any other person suffers an injury during or as a result of the Activity for which treatment from a doctor or other medical practitioner was sought or ought reasonably to have been sought, or an incident that draws the attention of the police, or where the child, worker or any other person dies during or as a result of the Project.

**'Specified Acts'** means any of the following acts or omissions by or on behalf of Us:

- (a) using, reproducing, adapting or exploiting all or any part of the Project Material, with or without attribution of authorship;

- (b) supplementing the Project Material with any other Material; or
  - (c) using the Project Material in a different context to that originally envisaged,
- but does not include false attribution of authorship.

**'Specified Personnel'** means the personnel (whether Your employees or subcontractors), or people with specific skills, specified in item K of the Schedule as personnel required to undertake the Project or any part of the work constituting the Project.

**'Start Date'** means the day on which We receive a copy of this Agreement signed by You.

**'Term'** means the period of time specified in clause 4.

**'We', 'Us', 'Our'** includes the Commonwealth's officers, delegates, employees and agents, and Our successors.

**'You', 'Your'** includes, where the context admits, Your officers, employees, agents and subcontractors and Your successors.

**'Your Confidential Information'** means information that is described in item P2.1 of the Schedule.

## 2 Interpretation

### 2.1 In this Agreement:

- (a) words in the singular include the plural, and vice versa;
- (b) words importing a gender include the other gender;
- (c) a reference to a person includes a partnership and a body whether corporate or otherwise;
- (d) clause headings or words in bold format are inserted for convenience only, and have no effect in limiting or extending the language of provisions;
- (e) all references to dollars are to Australian dollars;
- (f) unless stated otherwise, a reference to legislation is to legislation of the Commonwealth, as amended from time to time;
- (g) an uncertainty or ambiguity in the meaning of a provision of this Agreement will not be interpreted against a party just because that party prepared the provision; and
- (h) where a word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning.

### 2.2 No right or obligation in this Agreement is to be read or understood as limiting Your rights to enter into public debate or criticism of Us.

- 2.3 If a reference in this Agreement to a day is to a Saturday, Sunday or a public holiday in the relevant place, then the reference is to be taken to mean the next following day which is not a Saturday, a Sunday or a public holiday in that place.

### **3 Precedence**

- 3.1 In the event of any conflict or inconsistency between any part of:

- (a) the clauses of this Agreement;
- (b) the items in the Schedule;
- (c) any annexure to this document;
- (d) any attachment to this document;
- (e) the Letter of Offer;
- (f) any document incorporated by reference in this Agreement,

then the material in any one of paragraphs (a) to (e) above prevails, to the extent of any conflict or inconsistency, over the material in a subsequent paragraph.

### **4 Term**

- 4.1 This Agreement starts on the Start Date and ends on the End Date.

### **5 Extension**

- 5.1 If specified in item A2.1 of the Schedule, We may extend this Agreement:

- (a) for the number of times;
- (b) for the period(s) of time;
- (c) by advising You in the manner; and
- (d) on the additional terms and conditions, if any,

specified in item A2.1 of the Schedule.

### **6 Survival of clauses**

- 6.1 The operation of:

- (a) clauses 10 [Management of Funding], 11 [Repayment of Funding], 12 [Assets], 17 [Reports], 18 [Commonwealth Material], 19 [Project Material], 20 [Confidential Information], 21 [Personal Information], 22 [Records] and 24 [Indemnity];
- (b) any other provision that is expressly specified as surviving; and
- (c) any provision that by implication is intended to survive,

survive the expiration or earlier termination of this Agreement.

- 6.2 Clauses 15 [Acknowledgment and publicity], 22.2 [Records], and 23 [Access to premises and records] apply during the Term and for 7 years from the End Date.

## PART B PROJECT AND FUNDING

### 7 Project

7.1 You must carry out the Project:

- (a) at the times and in the manner specified in item C of the Schedule;
- (b) within the Project Period;
- (c) in accordance with this Agreement and the Guidelines; and
- (d) diligently, effectively and to a high professional standard.

7.2 You must expend the Funding only in accordance with this Agreement and only in accordance with the Budget, if any, specified at item E of the Schedule.

7.3 You must not act in a way that may bring the Project into disrepute.

7.4 We are not responsible for the provision of any additional money in excess of the Funding.

### 8 Funding

8.1 Subject to sufficient funds being available for the Program, and compliance by You with this Agreement, including compliance with the invoicing requirements, if any, specified in item G of the Schedule, We will provide You with the Funding at the times and in the manner specified in item F of the Schedule.

8.2 In addition to any other rights, We may have under this Agreement, We may suspend a payment of Funding in whole or in part if We form the opinion, in good faith, that You may not be performing one or more of Your obligations in accordance with this Agreement, including but not limited to fraudulent conduct.

8.3 If We exercise Our rights under clause 8.2, You must continue to perform any obligations under this Agreement, unless We direct You otherwise in writing.

8.4 If You earn any amount of interest on the Funding, You must, for the purposes of this Agreement, treat that amount as if it were Funding.

### 9 Goods and Services Tax

#### General

9.1 Unless otherwise indicated, all consideration for any supply made under this Agreement is exclusive of any GST imposed on the supply.

9.2 If one party (**the supplier**) makes a taxable supply to the other party (**the recipient**) under this Agreement, the recipient on receipt of a tax invoice from the supplier must pay without

setoff an additional amount to the supplier equal to the GST imposed on the supply in question.

- 9.3 No party may claim or retain from the other party any amount in relation to a supply made under this Agreement for which the first party can obtain an input tax credit or decreasing adjustment.

#### *Recipient Created Tax Invoice*

- 9.4 You agree to allow Us, if in Our sole discretion We choose to do so, to issue You with a recipient created tax invoice for any taxable supply made under this Agreement within 28 days of determining the value of the taxable supply to which the recipient created tax invoice relates.
- 9.5 If We do not issue You with a recipient created tax invoice within the time period specified in clause 9.4, You must as soon as practicable provide us with a tax invoice in relation to that taxable supply.
- 9.6 Subject to clause 9.5, You must not use a tax invoice in relation to a taxable supply to which a recipient created tax invoice applies.

#### *Adjustment notes*

- 9.7 You must provide Us with an adjustment note if required by the *A New Tax System (Goods and Services Tax) Act 1999*, including where You repay some or all of the Funding to Us.

#### *Interpretation*

- 9.8 A term used in this clause 9 has the same meaning as the corresponding term in the *A New Tax System (Goods and Services Tax) Act 1999*.

## **10 Management of Funding**

- 10.1 You must:
- (a) ensure that the Funding is held in an account in Your name, and which You solely control, with an authorised deposit-taking institution authorised under the *Banking Act 1959* to carry on a banking business in Australia;
  - (b) if specified in item H2.1 of the Schedule, ensure that the account is:
    - (i) established solely to account for and administer the Funding; and
    - (ii) separate from Your other accounts;
  - (c) on request from Us, provide Us and the authorised deposit-taking institution with an authority for Us to obtain all details relating to any use of the account; and
  - (d) identify the receipt and expenditure of the Funding separately within Your accounting Records so that at all times the Funding is identifiable and ascertainable.
- 10.2 You must keep financial Records relating to the Project to enable:

- (a) all income and expenditure related to the Project to be identified in Your accounts;
- (b) the preparation of financial statements in accordance with Australian Accounting Standards; and
- (c) the audit of those Records in accordance with Australian Auditing Standards.

10.3 You must not use the Funding:

- (a) as security to obtain, or comply with, any form of loan, credit, payment or other interest; or
- (b) for the preparation of, or in the course of, any litigation.

## 11 Repayment of Funding

### Definition of 'Surplus Amount'

11.1 If:

- (a) at any time, We in Our sole discretion determine that:
  - (i) an overpayment has occurred, including where an invoice is found to have been incorrectly rendered after payment; or
  - (ii) some or all of the Funding has not been dealt with by You in accordance with this Agreement to Our satisfaction; or
- (b) at the End Date, or, if another date is specified in item C of the Schedule, that date, some or all of the Funding has not been:
  - (i) spent in accordance with this Agreement; or
  - (ii) acquitted to Our satisfaction,

then the amount in paragraph (a) or (b) is a **Surplus Amount** for the purposes of this clause 11.

11.2 We may, in Our sole discretion, divide a Surplus Amount into two amounts and:

- (a) require You to comply with clause 11.3 in relation to one of the two amounts; and
- (b) send You a Notice in accordance with clause 11.4 in relation to the other of the two amounts,

and if We do this, then a reference to 'Surplus Amount' in clauses 11.3 and 11.4, respectively, is to whichever of the two amounts the clause applies to in accordance with clauses 11.2(a) and 11.2(b).

### *We may recover a Surplus Amount*

11.3 Unless We issue You with a Notice in accordance with clause 11.4, a Surplus Amount, and any Interest owed under clause 11.3(c), is a debt due to Us from You; and:

- (a) We may recover the debt from You without further proof of the debt by Us;
- (b) You must repay Us the Surplus Amount within 20 business days of receiving a written Notice from Us, or within any other time period which We specify in the Notice or which We subsequently approve in writing;
- (c) if the Surplus Amount is not repaid to Us within the period of notice referred to in clause 11.3(b), Interest accrues on that Surplus Amount, and is payable by You to Us, from the end date of the period of notice until the Surplus Amount is paid in full;
- (d) We may recover a Surplus Amount, including any Interest owed under clause 11.3(c) by offsetting part or all of the Surplus Amount and Interest owed under clause 11.3(c) against any amount subsequently due to You under:
  - (i) this Agreement;
  - (ii) any other arrangement between You and Us;
  - (iii) any arrangement between You and any agency of the Commonwealth other than Us; or
  - (iv) any two or more of (i),(ii) or (iii).

*We may issue You with directions regarding the Surplus Amount*

11.4 Instead of requiring You to repay a Surplus Amount in accordance with clause 11.3, We may, in Our sole discretion, by Notice to You issue You with directions to deal with the Surplus Amount in accordance with the terms and conditions set out in Our Notice and if We do so, the following provisions apply to the Surplus Amount:

- (a) if You accept, within the period of notice specified in Our Notice, the terms and conditions of Our Notice in relation to the Surplus Amount:
  - (i) this Agreement is varied in accordance with Our Notice;
  - (ii) You must deal with the Surplus Amount in accordance with all the requirements:
    - (A) applying to Funding under this Agreement as if the Surplus Amount were an additional amount of Funding; and
    - (B) specified in Our Notice; and
  - (iii) on and from the day You accept the terms and conditions of Our Notice, We may exercise Our rights under this clause 11 as if the Surplus Amount were part of the Funding; or
- (b) if You:
  - (i) do not accept the terms and conditions of Our Notice; or

- (ii) fail to accept the terms and conditions of Our Notice within the period of notice referred to in Our Notice,

We may send You a Notice in accordance with clause 11.3(a) in relation to the Surplus Amount and clause 11.3 will apply to the Surplus Amount.

#### *Offsetting under this Agreement other debts You owe to Us*

11.5 Without limiting Our rights under this Agreement, under statute, at law or in equity, if You:

- (a) owe the Commonwealth any debt; or
- (b) have any outstanding or unacquitted money,

under any other arrangement with Us or the Commonwealth, We may offset or deduct an amount equal to part or all of the debt or outstanding or unacquitted money against any amounts payable to You under this Agreement.

*Note: clause 9.7 sets out Your obligations in relation to GST in connection with this clause 11.*

## **12 Assets**

12.1 You must not use the Funding to purchase or create any Asset, apart from those detailed in item I of the Schedule, without getting Our prior written approval. Our approval may be subject to conditions. Clauses 12.4 to 12.8 apply only to Assets purchased or created with the Funding.

12.2 Unless specified otherwise in item I of the Schedule, subject to this clause 12, You own any Asset purchased or created with the Funding.

12.3 Clauses 12.5, 12.6 and 12.7 do not apply to any Asset which We own.

12.4 During the Project Period You must:

- (a) use each Asset in accordance with this Agreement and for the purposes of the Project;
- (b) not, without Our prior written approval, encumber or dispose of any Asset, or deal with or use any Asset, other than in accordance with this clause 12;
- (c) safeguard all Assets against theft, loss, damage, or unauthorised use;
- (d) maintain all Assets in good working order;
- (e) maintain all appropriate insurances for all Assets to their full replacement value, noting Our interest in the Asset under this Agreement, and provide satisfactory evidence of this on request from Us;
- (f) maintain registration and licensing of each Asset required by law to be registered or licensed;

- (g) take full responsibility for, and bear all risks relating to, the use or disposal of all Assets;
  - (h) if required in item I of the Schedule, maintain an Assets register in the form and containing the details as specified in item I of the Schedule; and
  - (i) as and when requested by Us, provide copies of the Assets register to Us.
- 12.5 We may require You to pay to Us a proportion of the market value of an Asset which is equivalent to Our contribution to the purchase of the Asset:
- (a) if You sell or otherwise dispose of the Asset during the Project Period (which must be with Our prior written consent and subject to any conditions We may impose); or
  - (b) on completion of the Project Period or earlier termination of this Agreement.
- 12.6 If You fail to make payment as required by clause 12.5 within 20 business days of receiving written Notice from Us:
- (a) You must pay Us the Interest on the amount from the date it was due, for the period it remains unpaid; and
  - (b) the amount and Interest are recoverable by Us as a debt due to Us by You, without further proof of the debt by Us.
- 12.7 If an Asset is lost, damaged or destroyed, You must reinstate the Asset including from the proceeds of the insurance and this clause 12 continues to apply to the reinstated Asset. Any surplus from the proceeds of the insurance must be Notified to Us and used and accounted for as Funding under this agreement.
- 12.8 On completion of the Project or earlier termination of this Agreement We may require You to deal with Assets as We may, at Our sole discretion, direct in writing.

### **13 Subcontracting**

- 13.1 You must not, without Our prior written approval, subcontract the performance of any obligations under this Agreement. In giving approval, We may impose terms and conditions as We think fit.
- 13.2 The subcontractors We have approved at the Start Date, and any terms and conditions relating to their use, are identified in item J of the Schedule.
- 13.3 You must ensure that in any subcontract You:
- (a) reserve a right of termination to take account of Our right of termination under clauses 29 [Termination with costs and reduction] and 30 [Termination for default] of this Agreement and Our right of revocation of approval of a subcontractor under clause 13.6 of this Agreement; and
  - (b) bind the subcontractor, with respect to Us, to all relevant terms and conditions of this Agreement including, but not limited to, clauses: 19.10 [Project Material], 20

[Confidential information], 21 [Personal Information], 22 [Records], 23 [Access to premises and records], 25 [Insurance], 31 [Negation of employment, partnership or agency] and 36 [Compliance with laws and policies].

- 13.4 You are fully responsible for the performance of Your obligations under this Agreement, even if You subcontract some or all of Your obligations.
- 13.5 Despite any approval given by Us under clause 13.1, You are responsible for ensuring the suitability of a subcontractor for the work proposed to be carried out and for ensuring that the work meets the requirements of this Agreement.
- 13.6 We may revoke Our approval of a subcontractor on any reasonable ground by giving written notice to You. On receipt of the notice You must, at Your own cost, promptly cease using that subcontractor and arrange their replacement with personnel or another subcontractor acceptable to Us.
- 13.6 If We revoke Our approval of a subcontractor, You remain liable under this Agreement for the past acts or omissions of Your subcontractors as if they were current subcontractors.
- 13.7 You must not enter into a subcontract under this Agreement with a subcontractor named by the Director of the Equal Opportunity for Women in the Workplace Agency as an employer currently not complying with the *Equal Opportunity for Women in the Workplace Act 1999*.

## 14 Specified Personnel

- 14.1 You must ensure that the Specified Personnel, if any, listed in item K of the Schedule undertake activities on the Project in accordance with the terms of this Agreement.
- 14.2 If Specified Personnel are unable to undertake activities on the Project, You must notify Us immediately. You must, if requested by Us, provide replacement personnel acceptable to Us without additional payment and at the earliest reasonable opportunity.
- 14.3 We may give notice on reasonable grounds related to performance of the Project requiring You to remove personnel (including Specified Personnel) from work on the Project. If We do so, You must, at Your own cost, promptly arrange for the removal of the personnel from work on the Project and their replacement with personnel acceptable to Us.
- 14.4 If You are unable to provide acceptable replacement personnel, We may terminate this Agreement under clause 31 [Termination for default].

## 15 Acknowledgement and publicity

- 15.1 You must, in all publications, promotional and advertising materials, public announcements and activities by You or on Your behalf in relation to the Project, or any products, processes or inventions developed as a result of the Project, acknowledge the financial and other support You have received from Us, in the manner set out in item L of the Schedule
- 15.2 You must ensure that all advertisements, promotional activities and any other public relations matters in relation to this agreement are consistent with the requirements set out in item L of the Schedule and the Guidelines.

- 15.3 We reserve the right to publicise and report on the awarding of Funding to You, including Your name, the amount of the Funds given to You and the title and a brief description of the Project.

## 16 Liaison and monitoring

### *Liaison and monitoring*

- 16.1 You must:

- (a) liaise with and provide information to the Departmental Officer, or a person nominated by the Departmental Officer, as reasonably required by the Departmental Officer;
- (b) comply with all reasonable requests, directions, or monitoring requirements received from the Departmental Officer;
- (c) immediately notify Us of a Serious Event or any circumstance that could have resulted in the occurrence of a Serious Event but did not; and
- (d) provide any other information to Us as specified in the Schedule.

### *Delay*

- 16.2 You must take all reasonable steps to minimise delay in meeting Your obligations under this Agreement.
- 16.3 If You become aware that You may be delayed in meeting any of Your obligations under this Agreement, You must immediately Notify Us of the:
- (a) cause and nature of the delay; and
  - (b) steps You will take to limit the delay.
- 16.4 If We approve the steps You Notify to Us in accordance with clause 16.3(b), You must comply with them.
- 16.5 You must comply with any reasonable direction We give to You in relation to limiting the delay.

## 17 Reports

- 17.1 You must provide Us with the Reports specified in item M of the Schedule.
- 17.2 Subject to clause 17.6, unless item M of the Schedule provides otherwise, You must provide Us with:
- (a) a certificate that all Funding received was expended for the Project and in accordance with this Agreement;
  - (b) an audited detailed statement of income and expenditure in respect of the Funding, which must include:

- (i) a definitive statement as to whether the financial accounts are true and fair; and
    - (ii) if You are required to hold the Funding in a separate account in accordance with clause 10.1(b), a statement of the balance of that account; and
  - (c) an audit statement that the Funding was expended for the Project and in accordance with this agreement.
- 17.3 The certificate referred to in clause 17.2(a) and the audits referred to in clauses 17.2(b) and (c) must:
- (a) contain the details, if any, specified in item M of the Schedule;
  - (b) be provided to the Departmental Officer:
    - (i) within one month (or other period specified in item F of the Schedule) of the end of the Project Period; and
    - (ii) at the other times specified in item F of the Schedule, if any.
- 17.4 The certificate referred to in clause 17.2(a) must be provided by the person specified in item M of the Schedule or, if no person is specified, by Your chief executive officer, chief internal auditor or board member.
- 17.5 Subject to clause 17.6, the audits referred to in clauses 17.2(b) and (c) must:
- (a) comply with the Australian Auditing Standards; and
  - (b) be carried out by a person who is:
    - (i) registered as a company auditor under the *Corporations Act 2001*, or a member of the Institute of Chartered Accountants in Australia (who is entitled to use the letters CA or FCA), or of CPA Australia (who is entitled to use the letters CPA or FCPA) or the National Institute of Accountants (who is entitled to use the letters MNIA, FNIA, PNA or FPNA); and
    - (ii) not a principal, member, shareholder, officer or employee of You (Your holding company or a subsidiary of You or Your holding company).
- 17.6 If You are audited by the Auditor-General or a State or Territory Auditor-General:
- (a) for all of the Term; and
  - (b) the Funding is included in the income and expenditure which is subject to the audit,
- then, instead of the certificate and audits referred to in clause 17.2, You may provide Us with:

- (c) a detailed statement of income and expenditure for the Funding, which must include:
    - (i) a definitive statement as to whether the financial accounts are true and fair; and
    - (ii) if You are required to hold the Funding in a separate account in accordance with clause 10.1(b), a statement of the balance of that account; and
  - (d) a statement that the Funding was expended for the Project and in accordance with this Agreement.
- 17.7 The statements referred to in clauses 17.6(c) and (d) must be:
- (a) certified by:
    - (i) Your chief executive officer; and
    - (ii) the senior executive officer employed by You who has primary responsibility for managing Your audit functions; and
  - (b) delivered at the times and in the manner specified in clause 17.3.
- 17.8 In addition to any other rights We have under this Agreement, We may at any time direct You to provide Us with any information We may reasonably require to determine to Our satisfaction that You have sufficient financial resources to continue carrying on business, and You must comply with Our direction within the time frame We specify.

## **PART C MATERIAL AND INFORMATION**

### **18 Commonwealth Material**

- 18.1 Ownership of all Commonwealth Material, including Intellectual Property Rights in that Material, remains vested at all times in Us but We grant You a licence to use, copy and reproduce that Material only for the purposes of this Agreement and in accordance with any conditions or restrictions specified in item N of the Schedule.
- 18.2 You must keep safely and maintain Commonwealth Material You have been given for the purposes of this Agreement.
- 18.3 Subject to 18.4, You must deal with all Commonwealth Material remaining in Your possession on the End Date as follows:
- (a) in accordance with the requirements set out in item N of the Schedule; or
  - (b) if no requirements are specified at item N of the Schedule, return to Us or destroy the Commonwealth Material,
- within the 10 business days after the End Date.

- 18.4 If at any time We provide You with a written direction in relation to Commonwealth Material, You must comply with the direction.

## 19 Project Material

### *Ownership*

- 19.1 Unless otherwise specified in item O of the Schedule, and subject to this clause 19, You own the Project Material and the Intellectual Property Rights in Project Material immediately on their creation.

### *Licences – Project Material*

- 19.2 Unless We, in item O of the Schedule, specify that We own the Intellectual Property Rights in the Project Material:
- (a) You grant Us a permanent, irrevocable, free, worldwide, non-exclusive licence, including a right of sublicense, to use, reproduce, adapt and exploit the Intellectual Property Rights in the Project Material for any purpose; and
  - (b) if for any reason You are unable to comply with clause 19.2(a), You must arrange for the grant to Us of the licence in clause 19.2(a).
- 19.3 If We, in item O of the Schedule, specify that We own the Intellectual Property Rights in the Project Material, We grant You a licence to use, copy and reproduce that Material only for the purposes of this Agreement and in accordance with any conditions or restrictions specified in item O of the Schedule.

### *Licences - Existing Material*

- 19.4 You:
- (a) grant Us, or arrange for the grant to Us of, a permanent, irrevocable, free, worldwide, non-exclusive licence (including a right of sublicense) to use, reproduce, adapt and exploit the Intellectual Property Rights in the Existing Material for any purpose; and
  - (b) must not include any Existing Material in the Project Material unless You grant Us, or arrange for the grant to Us of the licence set out at 19.4(a).

*Note: This clause 19 does not affect the ownership of Existing Material or Existing IPR.*

### *Use of Project Material*

- 19.5 If You are an Author, whether You are the sole Author or a joint Author, of any Project Material or Existing Material, You consent to the performance of the Specified Acts by Us or any person licensed by Us to use, reproduce, adapt and exploit that Project Material or Existing Material.
- 19.6 You agree:

- (a) to obtain from each Author (other than You) of any Project Material or Existing Material a written consent to the performance of the Specified Acts (whether occurring before or after the consent is given) by Us or any person licensed by Us to use, reproduce, adapt and exploit that Project Material or Existing Material; and
- (b) upon request, to provide the executed original of each consent to Us.

### General

- 19.7 You must comply with any request that We make of You at any time to bring into existence, sign, execute or otherwise deal with any document that may be necessary or desirable to give effect to this clause 19.
- 19.8 You warrant that You are entitled, or will be entitled at the relevant time, to deal with the Intellectual Property Rights in the Project Material in accordance with this clause 19.
- 19.9 If requested by Us, You must provide Us with a copy of the Project Material in the form requested by Us and within the time frame We specify.

### Our compliance with section 6C of the Freedom of Information Act 1982 (Cth)

- 19.10 If this Agreement is a Commonwealth contract, and We receive a request for access to a document relating to the performance of this Agreement which was created by, or is in the possession of:
- (a) You; or
  - (b) any of Your subcontractors,
- You must immediately on receipt of a written Notice from Us provide Us with the document as specified in the Notice.

- 19.11 In clause 19.10, 'document', 'Commonwealth contract' and 'subcontractor' have the same meaning as in the *Freedom of Information Act 1982*.

## 20 Confidential Information

- 20.1 Subject to clause 20.5:

- (a) You must not, without Our prior written approval, disclose any of Our Confidential Information to a third party; and
- (b) We must not, without Your prior written approval, disclose any of Your Confidential Information to a third party.

- 20.2 In giving written approval to disclosure, a party may impose conditions as it thinks fit, and the other party agrees to comply with the conditions.

- 20.3 We may at any time require You to arrange for any person engaged in, or in relation to, the performance or management of this agreement to give written undertakings, in a form required by Us, relating to the non-disclosure of Our Confidential Information.

- 20.4 If You receive a request under clause 20.3, You must promptly arrange for all undertakings to be given and if We request it, promptly provide Us with a copy of the undertakings.
- 20.5 The obligations on the parties under this clause 20 will not be breached if information:
- (a) is disclosed by Us to the responsible Minister;
  - (b) is disclosed by Us, in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia;
  - (c) is authorised or required by law to be disclosed; or
  - (d) is in the public domain otherwise than due to a breach of this clause 20.
- 20.6 Nothing in this clause 20 limits Your obligations under clause 21 [Personal Information] or clause 23 [Access to Premises and Records].

## **21 Personal Information**

- 21.1 You agree to:
- (a) comply with the Information Privacy Principles when doing any act or engaging in any practice in relation to Personal Information for the purposes of this Agreement, as if You were an agency as defined in the Privacy Act; and
  - (b) deal with Personal Information received, created or held by You for the purposes of this Agreement only to fulfil Your obligations under this Agreement and in accordance with any conditions or restrictions specified in item Q of the Schedule.
- 21.2 An act done or a practice engaged in by You or a subcontractor to meet (directly or indirectly) an obligation under this Agreement:
- (a) is authorised by this clause 21 for the purposes of sub-sections 6A(2) and 6B(2) of the Privacy Act even if the act or practice is inconsistent with a National Privacy Principle or an approved privacy code (as defined in the Privacy Act) that applies to You or the subcontractor; but
  - (b) is subject to the other obligations in this Agreement including this clause 21.
- 21.3 In this clause 21, "received" includes "collected".

## **22 Records**

- 22.1 You must make and keep full and accurate Records of the conduct of the Project including progress against the Milestones (if any), the receipt and use of Funding (in accordance with Australian Accounting Standards), the acquisition of Assets and the creation of Intellectual Property Rights in Project Material (other than Reports).
- 22.2 Subject to Your obligations under clause 21, Records must be retained by You for 7 years after the End Date.

## 23 Access to premises and records

- 23.1 You must at all reasonable times give the Auditor-General, the Privacy Commissioner, the Departmental Officer, a member of Our Investigations Branch on production of photo identification, or any person authorised in writing by the Secretary:
- (a) reasonable access to:
    - (i) Your employees and equipment;
    - (ii) premises occupied by You;
    - (iii) Material; and
  - (b) reasonable assistance to
    - (i) inspect the performance of the Project;
    - (ii) locate and inspect Material;
    - (iii) make copies of Material and remove those copies, relevant to the Project.
- 23.2 The rights referred to in clause 23.1 are subject to:
- (a) the provision of reasonable prior notice to You; and
  - (b) Your reasonable security procedures.
- 23.3 If a matter is being investigated which, in the opinion of a member of Our Investigations Branch, or any person authorised in writing by the Secretary, may involve an actual or apprehended breach of the law, clause 23.2(a) will not apply.
- 23.4 The requirement for access specified in clause 23.1 does not in any way reduce Your responsibility to perform Your obligations under this Agreement.
- 23.5 A breach of Your obligations under clause 23.1 is, for the purposes of clauses 28 [Remedies] and 30 [Termination for breach], a breach which is not capable of being rectified.

## PART D MANAGING RISK

### 24 Indemnity

- 24.1 You agree to indemnify Us against any:
- (a) loss or liability incurred by Us;
  - (b) loss of or damage to Our property; or

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

arising from:

- (d) any act or omission by You, or any of Your employees, agents, or subcontractors in connection with this Agreement, where there was fault on the part of the person whose conduct gave rise to that liability, loss, damage, or expense;
- (e) any breach by You or any of Your employees, agents, or subcontractors of obligations or warranties under this Agreement;
- (f) any use or disclosure by You, Your officers, employees, agents or subcontractors of Personal Information held or controlled in connection with this Agreement; or
- (g) the use by Us of the Project Material, including any claims by third parties about the ownership or right to use Intellectual Property Rights (including moral rights) in Project Material.

24.2 Your liability to indemnify Us under this clause 24 will be reduced proportionately to the extent that any fault on Our part contributed to the relevant loss, damage, expense, or liability.

24.3 Our right to be indemnified under this clause 24 is in addition to, and not exclusive of, any other right, power, or remedy provided by law, but We are not entitled to be compensated in excess of the amount of the relevant loss, damage, expense or liability.

24.4 In this clause 24, "fault" means any negligent or unlawful act or omission or wilful misconduct.

## 25 Insurance

25.1 You must, for as long as any obligations remain in connection with the Project, either:

- (a) maintain with an insurance company authorised by the Australian Prudential Regulatory Authority established under the *Australian Prudential Regulatory Authority Act 1988*; or
- (b) warrant that You have, if You are a self-insurer and We agree that You may self-insure to satisfy Your obligations under this Agreement,

the following insurance:

- (c) public liability for not less than \$10 million for each claim;
- (d) worker's compensation as required by law; and
- (e) professional indemnity for not less than \$5 million for each claim, and in the aggregate, for each year,

unless otherwise specified in item R of the Schedule.

- 25.2 When requested, You must provide Us, within 10 business days of the request, with evidence satisfactory to Us that You have complied with Your obligation to insure.

## **26 Conflict of interest**

- 26.1 You warrant that, to the best of Your knowledge after making reasonable inquiries, at the Start Date no Conflict exists or is likely to arise in the performance of Your obligations under this Agreement.
- 26.2 If during the Term, a Conflict arises, or is likely to arise, You must:
- (a) immediately notify Us in writing of that Conflict and of the steps You propose to take to resolve or otherwise deal with the Conflict;
  - (b) make full disclosure to Us of all relevant information relating to the Conflict; and
  - (c) take steps as We may, if We choose to, reasonably require to resolve or otherwise deal with that Conflict.
- 26.3 If You fail to notify Us under this clause 26, or are unable or unwilling to resolve or deal with the Conflict as required, We may terminate this agreement under clause 30 [Termination for default].

## **PART E DISPUTES AND TERMINATION**

### **27 Dispute resolution**

- 27.1 Subject to clause 27.3, the parties agree not to commence any legal proceedings in respect of any dispute arising under this Agreement, which cannot be resolved by informal discussion, until the procedure provided by this clause 27 has been used.
- 27.2 The parties agree that any dispute arising during the course of this Agreement is dealt with as follows:
- (a) the party claiming that there is a dispute will send the other party a written Notice setting out the nature of the dispute;
  - (b) the parties will try to resolve the dispute through direct negotiation by persons who they have given authority to resolve the dispute; and
  - (c) the parties have 10 business days from the receipt of the Notice by the other party to reach a resolution or to agree that the dispute is to be submitted to mediation or some other alternative dispute resolution procedure,
- and if:
- (d) there is no resolution of the dispute;

- (e) there is no agreement on submission of the dispute to mediation or some alternative dispute resolution procedure; or
- (f) there is a submission to mediation or some other form of alternative dispute resolution procedure, but there is no resolution within 15 business days of the submission, or extended time as the parties may agree in writing before the expiration of the 15 business days,

then either party may commence legal proceedings.

27.3 This clause 27 does not apply if:

- (a) either party commences legal proceedings for urgent interlocutory relief;
- (b) action is taken by Us under clauses 11 [Repayment of Funding], 23 [Access to premises and records], 28 [Remedies for breach], 29 [Termination with costs or reduction], 30 [Termination for default]; or
- (c) an authority of the Commonwealth, a State or Territory is investigating a breach or suspected breach of the law by You.

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

## **28 Remedies for breach**

28.1 Notwithstanding any other rights available to Us under this Agreement, if:

- (a) You fail to rectify a breach of this Agreement within 10 business days of receiving a Notice from Us, or within such other period We specify;
- (b) You fail to fulfil, or You are in breach of, any of Your obligations under this Agreement that are not capable of being rectified, as determined by Us; or
- (c) an event has occurred which would entitle Us to terminate this Agreement in whole or in part under clause 30 [Termination for default],

We may, by providing Notice to You, immediately exercise one or more of the remedies set out in clause 28.2.

28.2 The remedies We may exercise are:

- (a) suspending, withholding, or deferring any payment payable under this Agreement;
- (b) imposing additional conditions on the payment of the Funding under this Agreement as specified by Notice to You;
- (c) reducing the scope of this Agreement, but without Us being liable to make any payment to You which would be payable to You if the reduction in scope were made under clause 29 [Termination with costs and reduction].

*Note: We will exercise Our rights under this clause 28 reasonably and in good faith, taking account the nature of the relevant breach.*

28.3 If We take action under this clause 28, We will set out in Our Notice to You:

- (a) the reasons for the action;
- (b) the duration, if applicable, of the action; and
- (c) any corresponding variation to this Agreement.

## **29 Termination with costs and reduction**

29.1 We may, at any time by written notice to You, terminate this Agreement in whole or reduce the scope of this Agreement without prejudice to the rights, liabilities, or obligations of either party accruing prior to the date of termination. If We terminate or reduce in scope this Agreement We will only be liable for:

- (a) payments under the payment provisions of this Agreement that were due before the effective date of termination; and
- (b) subject to clauses 29.3 and 29.4, any reasonable costs incurred by You and directly attributable to the termination or partial termination of this Agreement

29.2 On receipt of a Notice of termination or reduction in scope You must:

- (a) stop work as specified in the Notice;
- (b) take all available steps to:
  - (i) minimise loss resulting from the termination or reduction in scope; and
  - (ii) protect Commonwealth Material and Project Material; and
- (c) continue work on any part of the Project not affected by the Notice.

29.3 If there is a reduction in scope of the obligations under this Agreement, Our liability to pay any part of the Funding will, in the absence of agreement to the contrary, abate proportionately to the reduction in the obligations under this Agreement.

29.4 We are not liable to pay compensation for:

- (a) loss of Your prospective profits for a termination or reduction in scope under this clause 29; or
- (b) loss of any benefits that would have been conferred on You had the termination or reduction not occurred.

## **30 Termination for default**

30.1 We may immediately terminate this Agreement by giving written Notice to You of the termination if:

- (a) We are satisfied that any statement made in Your application for Funding is incorrect, incomplete, false or misleading in a way which may have affected:
  - (i) the original decision to approve the Funding;
  - (ii) the terms and conditions of this Agreement; or
  - (iii) action taken by Us under this Agreement;
- (b) You fail to fulfil, or are in breach of any of Your obligations under this Agreement and either:
  - (i) if the breach is rectifiable, You do not rectify the omission or breach within 10 business days of receiving a Notice in writing from Us to do so; or
  - (ii) the breach is not capable of being rectified;
- (c) You are unable to pay all Your debts when they become due;
- (d) if You are an incorporated body:
  - (i) You fail to comply with a statutory demand within the meaning of section 459F of the *Corporations Act 2001*;
  - (ii) proceedings are initiated to obtain an order for Your winding up or any shareholder, member or director convenes a meeting to consider a resolution for Your winding up;
  - (iii) You come under one of the forms of external administration referred to in Chapter 5 of the *Corporations Act 2001* or equivalent provisions in other legislation, or an order has been made to place You under external administration; or
  - (iv) notice is served on You or proceedings are taken to cancel Your incorporation or registration or to dissolve You as a legal entity;
- (e) if You are an individual, You become bankrupt or enter into a scheme of arrangement with creditors;
- (f) You cease to carry on a business relevant to the performance of the Project; or
- (g) We become expressly entitled to terminate this Agreement under any other provision of this Agreement.

## **PART F ADMINISTRATION**

### **31 Negation of employment, partnership or agency**

- 31.1 You are not, by virtue of this Agreement, or for any purpose deemed to be Our employees, partners or agents.

- 31.2 You must not represent Yourself, and must ensure that Your employees, partners, agents or sub-contractors do not represent themselves, as being Our employees, partners or agents.

## **32 Entire agreement, variation and severance**

- 32.1 This Agreement records the entire agreement between the parties in relation to its subject matter.
- 32.2 Except for action We are expressly authorised to take elsewhere in this Agreement, no variation of this Agreement is binding unless it is agreed in writing and signed by the parties.
- 32.3 If a court or tribunal says any provision of this Agreement has no effect or interprets a provision to reduce an obligation or right, this does not invalidate, or restrict the operation of, any other provision.

## **33 Waiver**

- 33.1 If either party does not exercise (or delays in exercising) any rights under this Agreement, that failure or delay does not operate as a waiver of those rights.
- 33.2 A single or partial exercise by either party of any of its rights under this Agreement does not prevent the further exercise of that right.
- 33.3 Waiver of any provision of, or right under, this Agreement:
- (a) must be in writing signed by the party entitled to the benefit of that provision or right; and
  - (b) is effective only to the extent set out in the written waiver.
- 33.4 In this clause 33, 'rights' means rights or remedies provided by this Agreement or at law.

## **34 Assignment and novation**

- 34.1 You must not assign Your rights under this Agreement without prior written approval from Us.
- 34.2 You agree not to negotiate with any other person to enter into an arrangement that will require novation of this Agreement without first consulting Us.

## **35 Incorporation**

- 35.1 If You are a body corporate, You warrant that Your constitution is not inconsistent with this Agreement.
- 35.2 You must notify Us if You intend to amend Your constitution in a way which affects Your ability to comply with this Agreement.
- 35.3 If You alter Your constitution in a way which affects Your ability to comply with this Agreement, We may terminate this Agreement under clause 30.1(g) [Termination for default].

### **36 Compliance with laws and policies**

36.1 You must, in carrying out Your obligations under this Agreement, comply with:

- (a) all relevant statutes, regulations, by-laws and requirements of any Commonwealth, state or territory jurisdiction or local government authority; and
  - (b) any of Our policies notified by Us to You in writing,
- including those listed in item S of the Schedule.

### **37 Applicable law and jurisdiction**

37.1 The laws of the Australian Capital Territory apply to the interpretation of this Agreement.

37.2 The parties agree to submit to the non-exclusive jurisdiction of the courts of the Australian Capital Territory in respect to any dispute under this Agreement.

### **38 Notices**

38.1 A party giving a Notice under this agreement must do so in writing or by Electronic Communication:

- (a) if given by You, marked for the attention of the Departmental Officer specified in item T1.1 of the Schedule; or
- (b) if given by Us, marked for the attention of the person specified in item T2.1 of the Schedule,

and hand delivered or sent by pre-paid post or Electronic Communication to the address of the other party specified in the Schedule.

38.2 A Notice given under clause 38.1 is taken to be received:

- (a) if hand delivered, on delivery;
- (b) if sent by pre-paid post, 5 business days after the date of posting; or
- (c) if sent by Electronic Communication, at the time that would be the time of receipt under the *Electronic Transactions Act 1999* if a notice was being given under a law of the Commonwealth.

## **PART G PROVISION OF CHILD CARE SERVICES**

### **39 Working with children checks**

*Complying with applicable state or territory requirements*

39.1 In connection with the Project, You must not involve a person in Working with Children Activities unless:

- (a) the person is not prohibited by law from being employed or otherwise involved in Working with Children Activities; and

- (b) You and the person have complied with all Commonwealth and State or Territory legal requirements which apply to the person's employment or engagement in Working with Children Activities.

*Failure to comply with this clause*

39.2 If You fail to comply with clause 39.1, We may at Our sole discretion immediately terminate this Agreement, in accordance with clause 30.1(g).

*Definitions*

39.3 In this clause 39, 'Working with Children Activities' means the performance for You, or on Your behalf, of any of Your obligations under this Agreement which involves contact, regardless of whether that contact is:

- (a) supervised or not; and
- (b) physical or non-physical (including over the internet, via telephone or any other form of communication),

with an individual or a group of individuals where the individual, or at least one member of the group, is:

- (c) under the age of 18 years; or
- (d) a person who may be unable to take care of themselves, or are unable to protect themselves against harm or exploitation by reason of age, illness, trauma or disability, or any other reason.

## **PART H TRANSITION IN, TRANSITION OUT**

### **40 Transition in**

*Transition in*

40.1 You must, if We direct You, provide any person or child care service We specify, who was on the Start Date receiving or was entitled to continue to receive any benefit under the Program, with that benefit under the Project, which that person or child care service was receiving, or was entitled to continue to receive, under the Program at or immediately before the Start Date.

### **41 Transition out**

*Transition out period*

41.1 We may Notify You that We are deeming a transition out period.

- 41.2 The transition out period must:
- (a) start not more than six months before the End Date; and
  - (b) end on or before the End Date.
- 41.3 If We Notify You under clause 41.1, Our Notice must specify the start and end date of the transition out period and specify any sufficient assistance and cooperation which You must provide to Us in addition to the requirements in clause 41.4.
- 41.4 If We Notify You under clause 41.1, You must comply with Our directions in relation to:
- (a) assisting, by whatever means We specify, any person or child care service to continue to receive a benefit which You were providing or had provided under the Project, if that person or child care service is receiving, or would be entitled to continue to receive, that benefit under the Program at the End Date; and
  - (b) transferring Project Material and Commonwealth Material in Your possession to Us or to any person We specify.
- 41.5 If We Notify You under clause 41.1, You must continue to deliver the Project in accordance with this Agreement, unless We Notify You otherwise.

## SCHEDULE

### A. End Date and extensions (clauses 4 and 5)

- A1.1 The End Date is 30 September 2016.
- A2.1 We may extend this Agreement as follows:
- (a) number of extensions: up to two;
  - (b) period of time of each extension: a minimum of one year to a maximum of three years.
  - (c) manner of advising You of each extension: By Notice in accordance with clause 38 sent to You not later than 6 months before the End Date;
  - (d) additional terms and conditions: We may increase the amount of Funding payable to You by the amount specified in the Notice We send You in accordance with item A2.1(c).

### B Program and Guidelines (clause 7)

- B1.1 The Program is the Inclusion and Professional Support Program: Indigenous Professional Support Units 2013 – 2016.
- B1.2 The Guidelines are the *Inclusion and Professional Support Program Guidelines 2013 – 2016* as amended from time to time by Us, and which are available through the following means:
- The Guidelines may be viewed and/or downloaded at:
- [\[insert website address here\]](#).
- B1.3 The Inclusion and Professional Support Program principles are:
- (a) **Equity of access**—eligible Early Childhood Education and Care (**ECEC**) services, regardless of their geographic location or service type, will have equitable access to support services provided by the IPSP.
  - (b) **Inclusion**—the IPSP supports eligible ECEC services to be inclusive of all children.
  - (c) **Professional workforce**—the IPSP supports an increase in the professionalism of the ECEC workforce, and is proactive in meeting the needs of the ECEC workforce and ECEC service management.
  - (d) **Quality**—the IPSP assists eligible ECEC services to provide quality ECEC services by actively promoting the National Quality Framework, the Early Years Learning Framework and the Framework for School Age Care.
  - (e) **National consistency**—eligible ECEC services can expect to have access to IPSP services that are delivered in an efficient, flexible, culturally appropriate and timely manner.
  - (f) **Integrated approach**—IPSP Grant Recipients will work collaboratively with each other and develop organisational relationships that support an integrated approach to service delivery.

- (g) **Capacity building and strengths-based approach**—IPSP Grant Recipients will use a strengths-based approach (that is: understanding the capacity and capability of the ECEC service as a starting point for determining the type and intensity of assistance and support required) to build the capacity of eligible ECEC services to continuously improve the quality of their environment.
- B1.4 Under the Program, in Your capacity as an Indigenous Professional Support Unit You are expected to provide support that is based on evidence and good practice and that meets the needs of the managing bodies and staff in Indigenous focused Budget Based Funded (BBF) services, in order to:
- (a) improve the quality of the education and care service they provide;
  - (b) assist them to implement approved learning frameworks, including the Early Years Learning Framework; and
  - (c) improve governance and build the capacity of the service and its managing body.
- B1.5 You must widely promote Your services and contact details to Indigenous focused BBF services and other IPSP Grant Recipients. In so doing, You must undertake the communication activities set out in Item C3.1.

## C Project (clause 7)

### *Project overview*

- C1.1 The name of the Project is: The provision of inclusion and professional support activities by an Indigenous Professional Support Unit 2013-2016.
- C1.2 The Project consists of the following components:
- (a) providing support and training to management and employees in Indigenous focused BBF services;
  - (b) undertaking communication activities;
  - (c) providing support to raise the cultural competence of mainstream ECEC services;
  - (d) development of IPSU Region Plan and undertaking six monthly reviews of the IPSU Region Plan;
  - (e) undertaking networking and collaboration;
  - (f) participation in IPSP forums; and
  - (g) participation in and cooperating with Our data collection, performance monitoring and compliance activities.

### *Alternative date by which Funding must be spent (clause 11.1(b))*

- C1.3 None specified.

### *General requirements relating to the Project*

- C1.4 You must undertake the Project in: **[insert name of IPSU Region]**
- C1.5 You must deliver the Project in accordance with this Agreement and the Guidelines.

C1.6 You must deliver the Project in a way that:

- (a) improves the quality of Indigenous focused BBF services;
- (b) supports Indigenous focused BBF services to implement approved learning frameworks, including the Early Years Learning Framework; and
- (c) improves governance and builds the capacity of Indigenous focused BBF services and their managing bodies.

C1.7 In this Schedule, unless the contrary intention appears:

- (a) **'IPSP Grant Recipient'** means any person engaged as:
  - (i) the National Inclusion Support Subsidy Provider;
  - (ii) an Inclusion Support Agency;
  - (iii) a Professional Support Coordinator; or
  - (iv) an Indigenous Professional Support Unit. other than You.
- (b) **'Region'** means the area at item C1.4, details of which are as specified in the 'Region Profiles' document included in the Request for Application Pack for the Program, issued by Us on 9 December 2011.

under the Program.

C1.8 In this Schedule, unless the contrary intention appears, each of the following terms has the same meaning as the corresponding term used in the Guidelines (listed in alphabetical order): 'Bicultural Support', 'children with additional needs', 'ECEC service', 'eligible ECEC service', 'Flexible Support Funding', 'inclusion support', 'Inclusion Support Agency (ISA)', 'Inclusion Support Subsidy', 'Indigenous Professional Support Unit (IPSU)', 'Indigenous focused BBF service', 'Indigenous focused Budget Based Funded service', 'IPSU Region Plan', 'Library', 'minor request', 'National Inclusion Support Provider', 'National IPSU Alliance', "no wrong door" approach, 'priority groups', 'Professional Support Coordinator', 'Specialist Equipment', 'tailored intensive support'.

*Support and training for Indigenous focused BBF services*

C2.1 You must assist Indigenous focused BBF services in the Region specified in item C1.4 as follows:

- (a) Provide and/or facilitate professional development, support and training to management and employees in relation to minimum standards and high quality service provision, in regulated and non-regulated BBF services, with reference to the relevant state and territory licensing requirements and the National Quality Standard, in accordance with this Agreement and the Guidelines;
- (b) Provide support and advice to Indigenous focused BBF services experiencing difficulties, or that are identified as being at risk of failing to meet requirements under their funding agreements, and refer them to other relevant service providers including the Professional Support Coordinators for tailored intensive support;
- (c) Provide tailored intensive support to Indigenous focused BBF services at the direction of Us and/or a Professional Support Coordinator;

- (d) Refer Indigenous focused BBF services to the Professional Support Coordinator, where necessary, to assist them to improve the quality of their services;
- (e) Where appropriate, facilitate partnering and mentoring between Indigenous focused BBF services and non-Indigenous services;
- (f) Assist Indigenous focused BBF services to access other IPSP support and resources, including the Inclusion Support Subsidy, Flexible Support Funding, Specialist Equipment, and Bicultural Support as appropriate;
- (g) Foster relationships between Indigenous focused BBF services and Us to support the development of the Budget Based Funding workforce;
- (h) Assist Indigenous focused BBF services in linking with relevant community groups, services and organisations;
- (i) Assist Indigenous focused BBF services to identify their professional development needs and opportunities and support them to access relevant resources that cannot be provided by You;
- (j) Provide pathways for Indigenous focused BBF services to access information that promotes high quality programs for children;
- (k) In consultation with Us and other relevant stakeholders, develop a IPSU Region Plan for the delivery of IPSU services across the Region, in accordance with this Agreement and part E of the Guidelines;
- (l) Adopt a 'no wrong door' approach to all requests for IPSP services, and link Indigenous focused BBF services needing additional support to make their environment more inclusive, to the local Inclusion Support Agency or Professional Support Coordinator as appropriate; and
- (m) Develop and use a fee structure, approved by Us, for provision of significant support to Professional Support Coordinators and Inclusion Support Agencies.

#### *Communication Activities*

C3.1 You will undertake at least the following communication activities:

- a) Maintain a 1800 phone line to provide a central point of contact for Indigenous focused BBF services seeking professional development and support;
- b) Actively promote the contact details and range of support available from You to Indigenous focused BBF services within the Region, as defined in item C1.4, and network with other relevant services and IPSP providers;
- c) Develop a range of communication activities and resources suited to Indigenous focused BBF services and their managing bodies;
- d) Establish strategies for updating Indigenous focused BBF services with the latest ECEC research and news from the sector; and
- e) Establish, maintain and promote a website providing relevant information about Your available services and how ECEC services can access these.

#### *Support to raise the cultural competence of mainstream ECEC services*

C4.1 When requested by DEEWR or other IPSP Grant Recipients, You must work in collaboration with Professional Support Coordinators and Inclusion Support Agencies to assist eligible

mainstream ECEC services to become more culturally competent, inclusive and supportive of Indigenous children and families, and Indigenous educators. For minor requests of assistance, You must provide this support and advice free of charge. When requests are for significant assistance, You may provide the support on a fee for service basis in line with the fee structure agreed by Us.

#### *Development of a IPSU Region Plan*

- C5.1 You must develop a draft IPSU Region Plan for the Project Period at item D1.1, for the Region at item C1.4 and submit it to Us for Our approval by the due date specified in the table at item F3.1.
- C5.2 You must, if We require it, amend a draft IPSU Region Plan, in accordance with Our directions and resubmit it to Us for Our approval within the timeframe specified by Us.
- C5.3 When a draft IPSU Region Plan is satisfactory to Us, We may approve it.
- C5.4 You must undertake the Project in each Region in accordance with the IPSU Region Plan We have approved for that Region.
- C5.5 You must review the IPSU Region Plan on a six monthly basis. If any adjustments are required so the Plan remains relevant to the needs of the Region, You must seek Our approval to amend the IPSU Region Plan accordingly.
- C5.6 You must undertake needs analysis processes that draws on data sources such as surveys, including those undertaken by Us, in planning and reviewing how You deliver support to Indigenous focused BBF services.

#### *Networking and collaboration*

- C6.1 You must, in relation to the Region:
  - (a) establish, to Our satisfaction, effective and collaborative partnerships with all stakeholders, including the PSC and ISAs;
  - (b) encourage better service integration and collaboration between IPSP Grant Recipients;
  - (c) work closely with the PSC and ISAs in Your Region to share knowledge and resources. Where appropriate, You will collaborate with IPSP Grant Recipients in other Regions; and
  - (d) in the case of tailored intensive support, You may refer Indigenous focused BBF services to PSCs for additional support. You must collaborate with the relevant PSC in determining the level of tailored intensive support required and the most appropriate method to provide the support.
- C6.2 You must contribute to the development of a standardised approach to the national needs analysis to be developed by Us.

#### *Participation in IPSP forums and Alliances*

- C7.1 You must attend and participate in IPSP forums and alliances in accordance with this Agreement, the Guidelines.

- C7.2 You must attend and participate in the following forums:
- (a) IPSU Alliance meetings, (these are usually held twice each year, with one meeting aligned with the National IPSP Conference);
  - (b) National IPSP Conferences, and
  - (c) State/Territory IPSP Forums.
- C7.3 You must meet the costs of attending and participating in the state or territory meeting specified in item C7.2 (c) in accordance with the amount specified for this purpose in the Budget for the Region, in Item E of this Schedule.
- Note: We will provide funding separately from this Agreement for each meeting of the national IPSU Alliance to enable the national IPSU Alliance to hold two face-to-face meetings per year (one of which will coincide with the National IPSP Conference).*
- C7.4 You must share the findings of Your annual needs analysis at IPSP forums and with Professional Support Coordinators and Inclusion Support Agencies. This information may be used by the Professional Support Coordinators to identify current and future professional support needs of the Indigenous ECEC sector.
- C7.5 You must host and chair a national IPSU Alliance meeting, if You are rostered to do so, and record the meeting to Our satisfaction, including:
- (a) making and keeping a record of issues discussed;
  - (b) noting actions recommended and the responsible party for taking that action;
  - (c) drafting minutes of the meeting and providing the minutes and a list of action items to all attendees of the meeting; and
  - (d) providing an overview report, together with the minutes and the list of action items, to Us.
- C7.6 We will maintain a roster for the purposes of item C7.5 and inform You when You are rostered to host and chair a national PSC Alliance meeting.
- C7.7 The IPSU Alliance will:
- (a) offer opportunities to share information and respond to issues experienced by Indigenous focused BBF services;
  - (b) look for opportunities for innovation;
  - (c) identify strategies for collaboration and information sharing between IPSP Grant Recipients; and
  - (d) review program progress toward Your objectives.
- C7.8 The IPSU Alliance must invite representatives from the PSC Alliance and ISA Alliance to attend meetings.

*Participating in and cooperating with Our data collection, performance monitoring and compliance activities*

- C8.1 You must:

- (a) implement Our data collection processes;
- (b) undertake Our surveys of the Program; and
- (c) participate and cooperate in Our performance monitoring activities, including monitoring visits conducted by Us,

as directed by Us from time to time.

## **D Project Period (clause 7)**

D1.1 The Project Period starts on 1 January 2013 and ends on the later of:

- (a) 30 June 2016; and
- (b) unless otherwise specified in accordance with item A2.1(d), the last day of any extension of this Agreement made in accordance with clause 5 and with item A2 of this Schedule,

unless this Agreement is earlier terminated, in which case the Project Period ends on the day on which this Agreement is terminated.

## **E Budget (clause 7)**

*Budget for the first year of the Project*

E1.1 The Budget for the Project is as follows:

- (a) Budget for **[insert name of Region]** Region:

**The Budget for the first year of the Project will be inserted here**

*Note that the first year of the project spans two financial years and that from 1 July 2013 the budgets will operate on a financial year basis.*

*Budgets for financial years after the financial year 2012-2013*

E2.1 You must, during the Project Period, for each financial year after the financial year 2012-2013:

- (a) by 31 July, submit a draft Budget for each Region to Us, for Our consideration ; and
- (b) if directed by Us, amend any draft Budget for a Region in accordance with Our direction(s) and submit the amended draft Budget to Us by the date We direct, for Our consideration and decision whether to approve it.

E2.2 The Budget for each Region for each financial year after the financial year 2012-2013 is the Budget for that Region as approved by Us.

*General obligations applying to the Budget*

E3.1 In relation to the Budget, You must ensure that You spend, in the applicable financial year:

- (a) no less than 75 per cent of the total annual Funding allocated for each Region for 'Project delivery' items in the Budget for that Region; and
  - (b) no greater than 25 per cent of the Funding allocated for each Region for 'Administration items' in the Budget for that Region.
- E3.2 You must not, within any financial year, transfer or reallocate any Funding between any of the budget items set out in a Budget for a particular Region unless:
- (a) the transfer or reallocation complies with the requirements specified in item E3.1; and
  - (b) if the amount You propose to transfer is equal to or greater than ten percent of the total amount of the annual Funding for that Region, We have given Our prior written approval.
- E3.3 You must not use any of the Funding for:
- (a) international travel;
  - (b) purchase of a motor vehicle; or
  - (c) any capital works.

## **F Milestones and Funding (clauses 7, 8 and 9)**

### *Milestones*

- F1.1 You must carry out the Project to Our satisfaction and in accordance with, and by the due dates for, the Milestones set out in the table at item F3.1.

### *Funding*

- F2.1 Subject to item F2.4, the total amount of Funding, We will pay You for this Project in the financial year 2012-2013 is \$[insert amount], exclusive of GST. For the 2013-2014 financial year, the total amount of Funding, We will pay You for this Project is the amount of Funding We paid You in the 2012-2013 financial year multiplied by two, and increased by the amount of any increase in the Commonwealth annual budget appropriation for the Program. For financial years subsequent to the 2013-2014 financial year, the total amount of Funding, We will pay You for this Project is the amount for the previous financial year, increased by the amount of any increase in the Commonwealth annual budget appropriation for the Program.
- F2.2 Subject to Your compliance with this Agreement, We will pay the Funding in the instalments set out in the table at item F3.1.
- F2.3 If, in relation to the payment of an instalment of the Funding specified in item F2.1 We issue You with a recipient created tax invoice in accordance clause 9.4, We will pay You the amount of the instalment not later than 30 days after We issue You with the recipient created tax invoice. Otherwise, We will pay You the amount of the instalment not later than 30 days after You provide Us with a tax invoice properly rendered in accordance with item G.

- F2.4 All income You generate from undertaking the Project, including but not limited to: fees for service, consultancy services, training, resources and bank interest, forms part of the Funding. You must clearly identify such amounts in the financial reports. You must use these amounts for the Project in accordance with this Agreement.
- F.2.5 You must not charge fees to Indigenous focused BBF services for the provision of professional development and support.
- F2.6 Indigenous ECEC services that do not meet eligibility requirements, as outlined in the Guidelines, may be supported on a fee-for-service basis. Fees will be determined by You and approved by Us, and must have regard to the capacity of the ECEC service to pay.

*Table of Milestones and instalments of Funding*

- F3.1 The table set out below specifies the Milestones and instalments of Funding for the purposes of items F1.1 and F2.2. A Milestone is not achieved until all the requirements for that Milestone are completed to Our satisfaction.

<b>Financial Year</b>	<b>Description of Milestone</b> <b>Receipt by Us from You of:</b>	<b>Due date of Milestone</b>	<b>Proportion of total Funding payable (GST excl) as % of annual allocation</b>
<b>2012-2013</b> (01/01/2013 – 30/06/2013)	<ul style="list-style-type: none"> <li>a signed Agreement and</li> <li>submission of a draft IPSU Region Plan 2013-16 for Our approval</li> </ul>	1 January 2013	100%
<b>2013-2014</b>	<ul style="list-style-type: none"> <li>Your completed first Six Monthly IPSU Report , for the period: 1 January 2013 to 30 June 2013 and</li> <li>a draft Budget for the 2013-2014 financial year</li> </ul>	31 July 2013	50%
	<ul style="list-style-type: none"> <li>Your completed Audited Financial Acquittal Report for the period: 1 January 2013 to 30 June 2013</li> </ul>	30 September 2013	
	<ul style="list-style-type: none"> <li>Your completed second Six Monthly IPSU Report for the period: 1 July 2013 to 31 December 2013</li> </ul>	31 January 2014	50%
<b>2014-2015</b>	<ul style="list-style-type: none"> <li>Your completed third Six Monthly IPSU Report for the period: 1 January 2014 to 30 June 2014;</li> <li>Your Annual Progress Report for period: 1 January 2013 to 30 June 2014 (18 months) and;</li> <li>a draft Budget for the 2014-2015 financial year</li> </ul>	31 July 2014	50%
	<ul style="list-style-type: none"> <li>Your completed annual Audited Financial Acquittal Report for the period:</li> </ul>	30 September 2014	

	1 July 2013 to 30 June 2014		
	<ul style="list-style-type: none"> <li>Your completed fourth Six Monthly IPSU Report, for the period: 1 July 2014 to 31 December 2014,</li> </ul>	31 January 2015	50%
<b>2015-16</b>	<ul style="list-style-type: none"> <li>Your completed fifth Six Monthly IPSU Report for the period: 1 January 2015 to 30 June 2015; and</li> <li>Your Annual Progress Report for : 1 July 2014 to 30 June 2015 and</li> <li>a draft Budget for the 2015-2016 financial year</li> </ul>	31 July 2015	50%
	<ul style="list-style-type: none"> <li>Your completed annual Audited Financial Acquittal Report for the period 1 July 2014 to 30 June 2015.</li> </ul>	30 September 2015	
	<ul style="list-style-type: none"> <li>Your completed sixth Six Monthly IPSU Report for the period 1 July 2015 to 31 December 2015</li> </ul>	31 January 2016	50%
<b>2016-17</b>	<ul style="list-style-type: none"> <li>Your completed seventh Six Monthly IPSU Report for the period: 1 January 2016 to 30 June 2016; and</li> <li>Your Annual Progress Report for: 1 July 2015 to 30 June 2016</li> </ul>	31 July 2016	
	<ul style="list-style-type: none"> <li>Your completed annual Audited Financial Acquittal Report for the period 1 July 2015 to 30 June 2016</li> </ul>	30 September 2016	

## **G Invoice requirements (clause 8)**

G1.1 Invoices forwarded by You must be correctly addressed and include the:

- (a) the title of the Project;
- (b) Your name and ABN;
- (c) the name of the Departmental Officer;
- (d) the Agreement number, or the date of execution, of this Agreement;
- (e) amount being invoiced (including a description of the deliverables or Milestones that the invoice relates to); and
- (f) Your account details for payment of the invoice by electronic funds transfer.

G1.2 If an invoice relates to a taxable supply made under this Agreement, the invoice must comply with the requirements for a tax invoice, as specified in the *A New Tax System (Goods and Services Tax) Act 1999*.

## H Accounts (clause 10)

H1.1 Your account details are:

**BSB number:** [insert details]

**Account number:** [insert details]

**Account name:** [insert details]

**Institution name:** [insert details]

H2.1 [Either:] You must maintain a separate bank account for the Funding. [Or:] [Reserved].

## I Assets (clause 12)

*Description of Assets*

I1.1 None specified.

*Assets register*

I2.1 Not required.

## J Subcontractors (clause 13)

J1.1 [Either delete table and content of this J1.1 and write:] None specified at the Start Date. [Or:] At the Start Date, subject to the conditions of approval, if any, set out below, We approve the following subcontractors:

Name of subcontractor	Conditions of approval
[insert subcontractor name and ABN]	[insert conditions of approval]

## K Specified Personnel (clause 14)

K1.1 None specified at the Start Date.

## L Acknowledgement and publicity (clause 15)

L1.1 You must acknowledge Our support as follows:

- (a) You must use the IPSP logo We will provide to You in electronic format in all Your communications with stakeholders together with the following text:

*“This project is supported by the Australian Government Department of Education, Employment and Workplace Relations through the Inclusion and Professional Support Program.”*

L1.2 You must use Program naming conventions and logos, in accordance with Our directions or specifications, in all written and electronic promotional material.

L1.3 You must provide all promotional material to Us prior to release, for Our approval.

## **M Reports (clause 17)**

### *General*

M1.1 You must provide Us with the following Reports:

- (a) an IPSU Region Plan for the Region in item C1.4;
- (b) Six Monthly IPSU Reports for the Region;
- (c) Progress Reports against the IPSU Region Plan for the Region including a revised budget for the next financial year for our approval; and
- (d) Audited Financial Acquittal Reports for the Region.

M1.2. You must provide the Reports to Us in electronic format using the templates provided by Us.

M1.3 You must provide each Report by the due date for the Report specified in the table at item F3.1.

### *IPSU Region Plan*

M2.1 The IPSU Region Plan must demonstrate how You plan to undertake the Project in the applicable Region over the Project Period.

M2.2 The IPSU Region Plan must show how You will ensure that professional development and support will be promoted, coordinated and delivered to Indigenous focused BBF services requiring support within the Region and be in accordance with this Agreement and the Guidelines.

M2.3 The IPSU Region Plan must include:

- (a) activities to be undertaken and areas of need identified as priorities to be addressed;
- (b) proposed approaches to delivering and/or facilitating professional development to Indigenous focused BBF services in [the Region];
- (c) a marketing strategy to ensure Indigenous focused BBF services in [the Region] and relevant stakeholders are aware of the services available through You;
- (d) stakeholder management strategies to ensure effective partnerships are built and maintained with all stakeholders including other IPSP Grant Recipients;
- (e) a client satisfaction strategy for receiving feedback from ECEC services on the quality of support provided by You;
- (f) a complaints-handling strategy, which ensures complaints are effectively managed and resolved by You;
- (g) a continuous improvement strategy, which identifies and addresses opportunities to build on and improve the service being delivered;
- (h) communication and referral processes, to access other IPSP services including from the Inclusion Support Agencies and Professional Support Coordinators; and
- (i) a risk management strategy

### *Six Monthly IPSU Reports for the Region*

M3.1 Each Six Monthly IPSU Report must comply with the applicable requirements of clause 17 and the following additional requirements:

- (a) be in the form provided by us; and
- (b) report on all income You generate from undertaking the Project as outlined in item F2.4 in the period of six months for the Region to which the Report relates.

*Progress Reports against the IPSU Region Plan*

M4.1 Each Annual Progress Report must comply with the applicable requirements of clause 17 and the following additional requirements:

- (a) be in the form provided by Us;
- (b) report against progress of identified priorities and activities in the approved IPSU Region Plan, and
- (c) provide a revised budget for the financial year for Our approval .

*Audited Financial Acquittal Report*

M5.1 Each Audited Financial Acquittal Report must comply with the applicable requirements of clause 17 and the following additional requirements:

- (a) be prepared in accordance with Australian Accounting Standards;
- (b) report on income and expenditure in respect of the Funding provided under this Agreement for the Region, with expenditure to be reported against the approved Budget;
- (c) contain verification that You have spent the Funding provided on the Project in the Region and in accordance with this Agreement; and
- (e) any other matters required by Us for accountability purposes.

M5.2 You must provide Us with one hard copy and one electronic copy [in Microsoft Word or compatible format] of the Audited Financial Acquittal Reports. The hard copy must be the original signed copy.

## **N Commonwealth Material (clause 18)**

*Licence in Commonwealth Material – conditions*

N1.1 The licence We grant You in accordance with clause 18.1 is subject to the following conditions or restrictions:

- (a) the licence in clause 18.1 is revocable on 10 business days notice by Us, and expires on the End Date.

*What You must do with the Commonwealth Material at the End Date*

N2.1 [Reserved].

## **O Project Material (clause 19)**

### *Ownership of Project Material and Intellectual Property Rights in Project Material*

O1.1 Not applicable.

### *If We own Intellectual Property Rights in the Project Material – licence in Project Material conditions*

O2.1 Not applicable

## **P Confidential Information (clause 20)**

### *Our Confidential Information*

P1.1 None specified.

### *Your Confidential Information*

P2.1 None specified

## **Q Protection of Personal Information (clause 21)**

Q1.1 Not specified.

## **R Insurance (clause 25)**

R1.1 No further requirements specified.

## **S Compliance with laws and policies (clause 36)**

### *Compliance with Laws*

S1.1 You acknowledge that:

- (a) You must comply with any obligations You have under the *Equal Opportunity for Women in the Workplace Act 1999*;
- (b) when dealing with Your employees, You must comply with the *Fair Work Act 2009*, and obligations under relevant occupational health and safety laws;
- (c) Chapter 7 of the *Criminal Code* provides for offences which attract substantial penalties, including theft of Commonwealth property and other property offences, obtaining property or financial advantage by deception, offences involving fraudulent conduct, bribery, forgery and falsification of documents;
- (d) giving false or misleading information is a serious offence under the *Criminal Code*;
- (e) the publication or communication of any fact or document by a person which has come to their knowledge or into their possession or custody by virtue of the performance of this agreement (other than a person to whom You are authorised to publish or disclose that fact or document) may be an offence under section 70 of the

*Crimes Act 1914*, punishment for which may be a maximum of two years imprisonment;

- (f) in respect of data, including personal information, held in connection with this agreement, any unauthorised and intentional access, destruction, alteration, addition or impediment to access or usefulness of the data stored in any computer in the course of performing this agreement is an offence under Part 10.7 of the *Criminal Code* which may attract a substantial penalty, including imprisonment;
- (g) You are aware of the provisions of section 79 of the *Crimes Act 1914* relating to official secrets;
- (h) You are aware of Your obligations under Part 4 of the *Charter of United Nations Act 1945* and the *Charter of United Nations (Dealing with Assets) Regulations 2008*; and  
*Note: more information about these obligations is available at:*  
[http://www.dfat.gov.au/icat/UNSC\\_financial\\_sanctions.html](http://www.dfat.gov.au/icat/UNSC_financial_sanctions.html)
- (i) You may be subject to the provisions of the *Competition and Consumer Act 2010* and the *Archives Act 1983*.

#### *Compliance with Policies*

S2.1 You must:

- (a) when using Our premises or facilities (including information systems), comply with Our directions and procedures relating to occupational health and safety, environmental management and security (which you acknowledge may change during the term of this agreement); and
- (b) ensure that any person who will have access to official secrets within the meaning of section 79 of the *Crimes Act 1914* signs an acknowledgment that he or she is aware of the provisions of that section.

#### *Protective Security*

S3.1 Not applicable.

#### *Environmental Protection and Biodiversity*

S4.1 Not applicable.

#### *Other Laws and Policies*

S5.1 Not applicable.

## **T Notices (clause 38)**

T1.1 Our Departmental Officer is the person occupying or for the time being performing the duties of the position specified below:

**Name of position:** [insert details]

**Office address:** [insert details]

**Postal address:** [insert details]

**Phone:** [insert details]

**Email:** [insert details]

**Fax:** [insert details]

T1.2 At the Start Date that person was [insert name of DEEWR's Departmental Officer].

T2.1 The person who can accept Notices for You is:

**Name of position:** [insert details]

**Office address:** [insert details]

**Postal address:** [insert details]

**Phone:** [insert details]

**Email:** [insert details]

**Fax:** [insert details]

T2.2 At the Start Date that person was [insert name of this person].

T2.3 You must Notify

