



Australian Government

**Department of Immigration
and Citizenship**

FUNDING

AGREEMENT

BETWEEN

COMMONWEALTH OF AUSTRALIA

represented by

the Department of Immigration and Citizenship

AND

[insert name of ORGANISATION]

**IN RELATION TO THE PROVISION OF
SETTLEMENT SERVICES UNDER THE
SETTLEMENT GRANTS PROGRAM**

2011-12 or 2011-13 or 2011-14 (select as applicable)

Inclusive of all grants

TABLE OF CONTENTS

| | | |
|-----------|--|-----------|
| 1 | OPERATION OF THIS AGREEMENT | 6 |
| 1.1 | DEFINITION OF TERMS AND INTERPRETATION..... | 6 |
| 1.2 | [RESERVED]..... | 12 |
| 1.3 | ENTIRE AGREEMENT AND VARIATION..... | 12 |
| 1.4 | FUNDED PROJECT | 12 |
| 1.5 | FUNDED AMOUNT | 13 |
| 1.6 | TAXES, DUTIES AND GOVERNMENT CHARGES..... | 16 |
| 1.7 | SERVICE PRINCIPLES | 16 |
| 1.8 | OBLIGATIONS OF THE ORGANISATION..... | 17 |
| 1.9 | ENGAGEMENT OF ILLEGAL WORKERS PROHIBITED | 18 |
| 1.10 | SUBCONTRACTING | 19 |
| 1.11 | ASSETS | 19 |
| 2 | PERFORMANCE MONITORING BY THE DEPARTMENT..... | 22 |
| 2.1 | THE DEPARTMENT'S REPORTING REQUIREMENTS | 22 |
| 2.2 | ADDITIONAL REPORTING AND DOCUMENTARY EVIDENCE..... | 23 |
| 2.3 | NON-ACHIEVEMENT OF PERFORMANCE OBLIGATIONS | 23 |
| 2.4 | CONSEQUENCES OF DELAY IN COMPLETING PERFORMANCE OBLIGATIONS..... | 24 |
| 2.5 | SUSPENSION | 24 |
| 2.6 | RECORD KEEPING | 24 |
| 2.7 | LIAISON AND MONITORING..... | 26 |
| 2.8 | ACCESS TO PREMISES | 26 |
| 3 | DISPUTE AVOIDANCE AND RESOLUTION..... | 27 |
| 3.1 | DISPUTE AVOIDANCE | 27 |
| 3.2 | PROCEDURE FOR DISPUTE RESOLUTION | 27 |
| 4. | TERMINATION | 27 |
| 4.1 | TERMINATION FOR CONVENIENCE | 27 |
| 4.2 | TERMINATION FOR DEFAULT BY THE ORGANISATION | 28 |
| 4.3 | CONSEQUENCES OF TERMINATION UNDER <i>CLAUSE 4.2</i> | 29 |
| 4.4 | TERMINATION BY MUTUAL AGREEMENT..... | 29 |
| 4.5 | OBLIGATIONS OF ORGANISATION ON TERMINATION..... | 29 |
| 5 | CONFLICT OF INTEREST | 30 |
| 5.1 | NO CONFLICT OF INTEREST AT TIME OF SIGNING | 30 |
| 5.2 | DISCLOSURE OF CONFLICT OF INTEREST DURING THE FUNDED TERM | 30 |
| 5.3 | PREVENTING CONFLICT OF INTEREST..... | 30 |
| 6 | INSURANCE..... | 31 |

| | | |
|-----------|--|-----------|
| 6.1 | INSURANCE COVER REQUIRED..... | 31 |
| 6.2 | WARRANTY AS TO ADEQUACY..... | 31 |
| 7 | PRIVACY ACT 1988 (COMMONWEALTH)..... | 31 |
| 7.1 | PRIVACY, DISCLOSURE AND LIABILITY..... | 31 |
| 8 | INDEMNITY..... | 33 |
| 8.1 | ORGANISATION TO INDEMNIFY THE DEPARTMENT..... | 33 |
| 8.2 | PROPORTIONATE INDEMNITY..... | 33 |
| 8.3 | RIGHT TO INDEMNITY NOT EXCLUSIVE OF OTHER RIGHTS..... | 33 |
| 8.4 | INDEMNITY TO CONTINUE..... | 34 |
| 9 | DISCLOSURE OF CONFIDENTIAL INFORMATION..... | 34 |
| 9.1 | CONFIDENTIAL INFORMATION..... | 34 |
| 9.2 | APPROVAL TO DISCLOSE..... | 34 |
| 10 | COMMONWEALTH MATERIAL..... | 34 |
| 10.1 | OWNERSHIP..... | 34 |
| 10.2 | RETURN..... | 34 |
| 10.3 | USE..... | 34 |
| 11 | INTELLECTUAL PROPERTY RIGHTS..... | 34 |
| 11.1 | INTELLECTUAL PROPERTY VESTS IN THE ORGANISATION..... | 34 |
| 11.2 | INDEMNITY REGARDING LIABILITY FOR INFRINGEMENT OF INTELLECTUAL PROPERTY..... | 34 |
| 11.3 | PUBLICATIONS AND PUBLICITY..... | 35 |
| 11.4 | CONTINUATION OF <i>CLAUSE 11</i> | 35 |
| 12 | APPLICABLE LAW..... | 35 |
| 13 | COMPLIANCE WITH LAW..... | 35 |
| 14 | WAIVER..... | 36 |
| 15 | ASSIGNMENT AND NOVATION..... | 36 |
| 16 | NEGATION OF PARTNERSHIP, AGENCY AND EMPLOYMENT..... | 36 |
| 17 | NOTICES..... | 36 |
| 17.1 | SERVICE OF NOTICE..... | 36 |
| 17.2 | RECEIPT OF NOTICE..... | 37 |
| 17.3 | GRANT MANAGER AND PROJECT MANAGER..... | 37 |
| | SCHEDULE 1 – CLIENT SERVICE CHARTER (SEE <i>CLAUSE 1.7.1(H)</i>)..... | 40 |
| | SCHEDULE 2 – SUMMARY OF APPROVED FUNDED GRANTS (SEE <i>CLAUSE 1.4</i>)..... | 41 |

SCHEDULE 3 – REPORTS (SEE *CLAUSE 2.1.1 AND 2.2*)43

SCHEDULE 4 – INSURANCE (SEE *CLAUSE 6*).....45

SCHEDULE 5 – DEED OF CONFIDENTIALITY (SEE *CLAUSE 7.1*).....46

SCHEDULE 6 – RECOGNITION OF FUNDING (SEE *CLAUSE 11.3*)53

SCHEDULE 7 – CONFIDENTIAL INFORMATION (SEE *CLAUSE 9.1.1*).....54

SCHEDULE 8 – PROJECT TITLE AND PROJECT DESCRIPTION, APPROVED WORK PROGRAM, CLIENT TARGETS, FUNDED AMOUNT AND ASSETS (SEE *CLAUSE 1.4 AND 1.11*).....55

SCHEDULE 8 – ATTACHMENT A – APPROVED BUDGET(S)/WORK PROGRAM(S)58

SAMPLE

THIS AGREEMENT IS MADE

BETWEEN

COMMONWEALTH OF AUSTRALIA ('the Commonwealth'), represented by the Department of Immigration and Citizenship ('the Department')

AND

Insert Organisation Name ('Organisation'), Australian Business Number (ABN) *insert ABN*, having its registered office at *insert street address*.

GRANT ID: *insert grant ID/s*

PURPOSE:

- a) The Department has responsibility for providing Settlement Services to facilitate the equitable participation of Migrants, Refugees and Humanitarian Entrants in Australian society. The Department provides Settlement Grants Program (SGP) funding to various types of Organisations as one means through which this outcome can be achieved.
- b) The objective of the SGP is to deliver services which assist clients (individuals or groups) and communities in the Settlement Services Target Group and the dependants of skilled Migrants with low English proficiency in rural and regional areas to become self-reliant and participate equitably in Australian society as soon as possible after arrival.
- c) Under the SGP, the Department wishes to fund eligible Organisations to provide a range of services to benefit Migrants, Refugees and Humanitarian Entrants.
- d) The Organisation, having fully informed itself of all aspects of the Funded Grant including the Project(s)/sub-projects, has undertaken to deliver all activities and outcomes in accordance with this Agreement, including the Approved Work Program(s) and the Approved Budget(s).
- e) The Department has agreed to accept the Organisation's offer to undertake Project(s)/sub-projects under the Funded Grant(s) on the terms and conditions set out in this Agreement.

1 OPERATION OF THIS AGREEMENT

1.1 Definition of terms and interpretation

(a) In this Agreement, unless the contrary intention appears:

| | |
|--------------------------|---|
| Activities | means the agreed activities and/or Settlement Services specified in the Approved Work Program(s) produced and/or provided by the Organisation on behalf of the Department; |
| Activity Material | means all Material: (a) created or required to be created as part of, or for the purpose of, performing the obligations by the Organisation under this Agreement, including documents, publicity materials, equipment, software (including source code and object code), goods, information and data stored by any means; (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); |
| Agreement | means this Funding Agreement between the Department and the Organisation and includes the <i>Schedules</i> to this Agreement and any variations to this Agreement; |
| Approved Auditor | means a person (but excludes any person or class of persons notified by the Department) who is: (a) registered as a company auditor under the <i>Corporations Act 2001</i> (Cth) or an appropriately qualified (as determined by the Department) member of the Institute of Chartered Accountants in Australia, CPA Australia or the National Institute of Accountants; and (b) not a principal, member, shareholder, officer, agent, subcontractor or employee of the Organisation or of a related body corporate as defined in section 9 of the <i>Corporations Act 2001</i> (Cth), or the Organisation's accountant; |
| Approved Budget | means the budget set out at <i>Schedule 8</i> , prepared by the Organisation and approved by the Grant Manager, which |

| | |
|--|--|
| | itemises the costs of undertaking the Funded Grants; |
| Approved Work Program(s) | means the Work Program(s) set out at <i>Schedule 8 (Attachment A)</i> , which specifies the outcomes and activities the Organisation is required to provide over the Funded Term in return for funding, and includes any variations as approved by the Grant Manager and notified to the Organisation in writing; |
| Asset | means any item of tangible property, purchased, leased, created or otherwise brought into existence either wholly or in part with use of the Funding Amount, which has a value of over \$2,000 inclusive of GST, but does not include Activity Material; |
| Audited Financial Statement of Income and Expenditure | means a full financial report of the Organisation's utilisation of the Funding Amount, in accordance with the Approved Budget(s), for the implementation and delivery of the Approved Work Program(s), which has been examined and certified by an Approved Auditor; |
| Client | means a person in relation to whom the Organisation provides Settlement Services under this Agreement; |
| Client Service Charter | means Client Service Charter described in <i>Clause 1.7.1(h)</i> ; |
| Commonwealth | means the Commonwealth of Australia as represented by the Department, or any other Australian Government agency that may administer this Agreement from time to time; |
| Commonwealth Material | means any material provided or made available by the Department to the Organisation for the purposes of this Agreement or which is copied or derived from material so provided; |
| Confidential Information | means information that: <ul style="list-style-type: none"> (1) is by its nature confidential, and <ul style="list-style-type: none"> (a) is designated by a Party as confidential; or (b) the recipient knows or ought to know is confidential; (2) but does not include information which: |

- (a) is or becomes public knowledge other than by breach of this Agreement
- (b) is in the possession of the recipient without restriction in relation to disclosure before the date of receipt from the discloser
- (c) has been independently developed or acquired by a Party; or
- (d) is required by law to be disclosed;

Day means a business day, that is not a Saturday, Sunday or public holiday in the State or Territory in which the Organisation undertakes the Funded Project(s)/sub-projects;

Deed of Confidentiality means a confidentiality undertaking in the form of *Schedule 5*;

Department means the Department of Immigration and Citizenship or such other agency which may, from time to time, be responsible for administering this Agreement on behalf of the Commonwealth;

Depreciated means the amount representing the reduction in value of an Asset calculated in accordance with Australian Accounting Standards;

Existing Material means all Material in existence prior to the date of this Agreement:

- (1) incorporated in,
- (2) supplied with, or as part of, or
- (3) required to be supplied with, or as part of,

the Activity Material;

Force Majeure Event means any event, act or circumstance or combination of events, acts and circumstances which is beyond the reasonable control of either party;

Funded Amount means the total sum of all money specified in each *Schedule 8 Part d (b)*, including any money earned by the Organisation as interest on the Funded Amount, payable by the Department in Funding Instalments to the Organisation for satisfactory performance of the

| | |
|---------------------------------------|---|
| | Approved Work Program(s), in accordance with the Approved Budget; |
| Funded Project(s)/sub-projects | means the Project(s)/sub-projects as itemised in the Work Program funded by the Department and carried out in accordance with <i>Clause 1.4</i> |
| Funded Term | means the period set out in each project under <i>Schedule 8</i> ; |
| Funding Instalment | means an instalment of the total Funded Amount, as listed in <i>Schedule 8 Part d(c)</i> payable for undertaking the Funded Project(s)/sub-projects in accordance with this Agreement; |
| Grant or Funded Grant | means the funding for each individual grant as accepted by the Organisation and specified in each <i>Schedule 8 Part D(h)</i> , each of which is identified by a unique number as notified by the Department; |
| Grant Manager | means the Department's officer specified in <i>Clause 17.3</i> , or as notified by the Department in writing from time to time |
| Humanitarian Entrant | means the generic term used for a Migrant who enters Australia as a permanent resident under a Humanitarian visa, as well as others that fall into the category of Refugee; |
| Intellectual Property Rights | includes all copyright and neighbouring rights, all rights in relation to inventions (including patent rights), plant varieties, registered and unregistered trademarks (including service marks), registered designs, confidential information (including trade secrets and know how) and 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 <i>Taxation Administration Act 1953 (Cth)</i> , on a daily compounding basis; |

| | |
|--|---|
| Management Committee/Board | means those members or directors of the Organisation who are elected or appointed to manage the Organisation; |
| Material | means any subject matter in relation to which Intellectual Property Rights may arise; |
| Migrant | means a holder of a: <ol style="list-style-type: none"> 1) visa, which permits the holder to enter and reside in Australia for an unlimited period of time; or 2) provisional visa, which is a temporary visa that is granted to a non-citizen on the basis of a relationship with an Australian citizen, Australian permanent resident or eligible New Zealand citizen, granted under the <i>Migration Regulations 1994</i>; |
| Moral Rights | includes the following rights of an author of copyright material: <ol style="list-style-type: none"> 1) the right of attribution of authorship; 2) the right of integrity of authorship; and 3) the right not to have authorship falsely attributed; |
| Online Settlement Client Activity Reports (OSCAR) | means Online Settlement Client Activity Reports (OSCAR) that are provided to the Department in accordance with <i>Clause 2.1.2(e)</i> ; |
| Organisation | includes the officers, employees, agents, volunteers, subcontractors, and successors, of the Organisation; |
| Outcomes | means the intended settlement results or consequences of the Approved Work Program(s); |
| Parliamentary Appropriation | means the appropriation of funds by the Parliament of Australia which authorises the Department to use Commonwealth monies to provide SGP funding; |
| Parties | means the Department and the Organisation; |
| Referral | means either: <ol style="list-style-type: none"> (1) <i>A formal referral</i>: <ol style="list-style-type: none"> (a) from the Organisation to mainstream government and other service providers; or (b) from mainstream government and other service |

providers to the Organisation,
where an appointment or introduction is made for the Client. This contact can be by telephone, email, letter or physically taking the Client to the appointment or introduction;

Or

(2) *An informal referral:*

- (a) from the Organisation to mainstream government and other service providers; or
- (b) from mainstream government and other service providers to the Organisation,

where the Client is given the relevant name and contact details and advised to make their own appointment or contact;

Refugee

means a Migrant who enters Australia as a permanent resident under visa subclass 200, 201, 202, 203 or 204, or any other visa subclasses as the Department may notify the Organisation from time to time;

Report

means a report that is provided to the Department in accordance with *Clause 2*;

Settlement Grants

Means:

Target Group

- 1) individual Migrants, who are, permanent residents who have arrived in the last five years as humanitarian entrants or as family stream Migrants with low English proficiency;
- 2) communities which require assistance to develop their capacity to organise, plan and advocate for services to meet their own needs and which are still receiving significant numbers of new arrivals; and
- 3) dependants of skilled Migrants in rural and regional areas who have low English proficiency, including Prospective Marriage visa holders and Provisional Spouse and interdependency visa holders and their dependents;

Settlement Services

means the services provided by the Organisation in accordance with this Agreement; and

Undepreciated

in relation to the value of an Asset, means the value of the Asset which has not been depreciated.

- (b) In this Agreement:
- (i) words importing a gender include any other gender, words in the singular number include the plural, and words in the plural number include the singular;
 - (ii) clause headings, words capitalised, in brackets or in bold format in this Agreement are for convenient reference only and have no effect in limiting or extending the language of the provisions to which they refer;
 - (iii) reference to any statute or legislative provision includes any statutory modification, substitution or re-enactment of that legislation or legislative provision;
 - (iv) a reference to a *Schedule*, Item, or Attachment is a reference to a *Schedule*, Item, or Attachment of a *Schedule* to this Agreement, and such *Schedules* form part of this Agreement;
 - (v) where any conflict arises between the terms and conditions contained in the Clauses of this Agreement and any Item of a *Schedule*, the terms and conditions of the Clauses in this Agreement prevail to the extent of the inconsistency;
 - (vi) any reading down or severance of a particular provision does not affect the other provisions of this Agreement;
 - (vii) all references to dollars are to Australian dollars; and
 - (viii) a reference to a clause is a reference to a clause in this Agreement unless otherwise specified.

1.2 [Reserved]

1.3 Entire Agreement and variation

1.3.1 This Agreement constitutes the entire agreement between the Parties and supersedes all communications, negotiations, arrangements and agreements, whether oral or written, between the Parties with respect to the subject matter of this Agreement.

1.3.2 Unless otherwise provided in this Agreement no agreement or understanding varying this Agreement, including in particular the scope or content of the Approved Work Program(s), will be legally binding upon either Party unless agreed in writing between the Parties, in the form of a deed of variation.

1.4 Funded Project(s)/sub-projects

1.4.1 In consideration of receiving the Funded Amount, the Organisation will, in consultation with the Grant Manager, complete the Approved Budget(s) set out at *Schedule 8* and the Approved Work Program(s) set out in *Schedule 8 (Attachment A)*, and, undertake the

Funded Project(s)/sub-projects in accordance with:

- (a) that Approved Work Program;
- (b) that Approved Budget;
- (c) the service principles and obligations specified in *Clauses 1.7 and 1.8*; and
- (d) the other requirements of this Agreement.

1.4.2 The Department or the Organisation may seek a review of the Approved Work Program(s) during the Funded Term, and seek agreement to amendments to the Approved Work Program(s) in accordance with *Clause 1.3.2*.

1.5 Funded Amount

1.5.1 Subject to:

- (a) Parliamentary Appropriation;
- (b) the Organisation's compliance with all requirements under this Agreement;
- (c) the provisions of this *Clause 1.5* and *Clause 2.5*; and
- (d) the receipt of a correctly rendered tax invoice

the Department will pay the Funded Amount to the Organisation in Funding Instalments. For the avoidance of doubt, any money earned by the Organisation as interest on the Funded Amount must be used and dealt with by the Organisation as if the money earned was part of the Funded Amount.

1.5.2 If Funding Instalments cover more than 12 months from the commencement of this Agreement, the payment of any Funding Instalments in the second and subsequent 12 months of this Agreement is subject to:

- (a) the satisfactory completion of a preliminary interview by the Department and a satisfactory assessment of outcomes in relation to the Organisation's performance in the previous year. The preliminary interview is not in any way intended to replace, supplement, or otherwise be an indication of the Department's acceptance of the Fourth Progress Report for that financial year; and
- (b) the Department's approval of:
 - (i) an Approved Work Program(s); and
 - (ii) an Approved Budget that cover the next 12 months of Funding Instalments.

1.5.3 The Organisation will use the Funded Amount only for the purposes of, and in accordance with, this Agreement. The Department will not take any responsibility for the provision of additional funds to meet any expenditure in excess of the Funded Amount.

1.5.3A The Organisation will ensure that:

- (a) the Funded Amount is held in a bank account, which is:
 - (i) in the Organisation's name, and under the Organisation's sole control with an authorised deposit-taking institution authorised under the *Banking Act 1959* (Cth) to carry on banking business in Australia;
 - (ii) an account that bears a rate of interest reasonably required by the Department; and
 - (iii) where required by the Grant Manager:
 - (A) established solely for the purposes of accounting for, and administering, any Funded Amount provided by the Department to the Organisation under this Agreement; and
 - (B) separate from the Organisation's other operational accounts, and
- (b) the Organisation:
 - (i) notifies the Department, prior to the receipt of any Funded Amounts, of details sufficient to identify the accounts;
 - (ii) provides the Department and the authorised deposit-taking institution with a written authority for the Department to obtain any details relating to any use of the accounts;
 - (iii) if the accounts change, notifies the Department within 10 Days of the change occurring, provide the Department with the details of the new accounts, and comply with *Clauses 1.5.3A(a)* and *(b)(ii)* above in respect to the new accounts;
 - (iv) unless the Organisation is a sole director company or an individual, ensures that as a minimum, two signatories, who have the Organisation's authority to do so, are required to operate the accounts; and
 - (v) identifies the receipt and expenditure of the Funded Amount separately within its accounts and records so that at all times the Funded Amount is identifiable and ascertainable.

1.5.4 The Organisation will **not**:

- (a) commit to any expenditure of any of the Funded Amount beyond the end of a financial year, or allow any of the Funded Amount to be used for any purpose not authorised by this Agreement;
- (b) transfer funds between Funded Grants;
- (c) transfer funds between sub-project(s) within a Funded Grant;
- (d) use any of the following as any form of security for the purpose of obtaining or complying with any form of loan, credit, payment or other interest or for the preparation of, or for the purposes of, any litigation:
 - (i) the Funded Amount;
 - (ii) this Agreement or any of the Department's obligations under this Agreement;
 - (iii) any Assets; or
 - (iv) Intellectual Property Rights in Activity Material.

1.5.5 The Organisation will return any of the Funded Amount that has not been spent or

committed for expenditure under any project(s)/sub-projects by the Organisation by the end of each financial year to the Department within 30 Days of the end of that financial year, or such other period notified by the Department, after the due date of the End of Financial Year Report described in *Schedule 3*.

- 1.5.6 Subject to the Department's prior written approval, where the Funded Term is more than 12 months, the Organisation may carry over surplus funds of up to 5% of the Funded Grant in limited circumstances. The Organisation must provide sound reasons for carrying over funds and where appropriate supporting evidence for consideration by the Department. Should the Department not grant approval for the organisation to carry over any surplus funds, those funds must be returned to the Department in accordance with *Clause 1.5.5*
- 1.5.7 Any Funded Amount owed to, or not returned to the Department in accordance with *Clause 1.5*, including any interest earned on the Funded Amount, will, without prejudice to any other rights available to the Department under this Agreement, under statute, at law or in equity, be recoverable by the Department, at its absolute discretion, as a debt due to the Department by the Organisation without further proof of the debt by the Department being necessary.
- 1.5.8 Subject to contrary stipulation, where any debt is owed to the Department, unless the Department notifies otherwise, Interest accrues on that debt if it is not repaid within 30 calendar days of receipt of a notice requiring payment from the Department or the due date for the payment, whichever is the earlier, until the amount is paid in full.
- 1.5.9 In respect of any obligation the Organisation may have under this Agreement to pay the Department Interest, the Organisation agrees that the Interest represents a reasonable pre-estimate of the loss incurred by the Department.
- 1.5.10 Without limiting the Department's rights under this Agreement, under statute, at law or in equity, if the Organisation:
- (a) owes the Department any payment or debt under this Agreement; or
 - (b) has outstanding or unacquitted money under any arrangement with the Department or the Commonwealth,
- the Department may offset or deduct an amount equal to that payment or debt owed, or outstanding or unacquitted money, against any other payments due to the Organisation under this Agreement or any other agreement with the Commonwealth
- 1.5.11 The Department will notify the Organisation if it exercises its rights under *Clause 1.5.10* within 10 Days after having exercised those rights.
- 1.5.12 Notwithstanding any action taken by the Department under *Clause 1.5.10*, the Organisation must continue to perform its obligations under this Agreement, unless the Department agrees otherwise in writing.

1.6 Taxes, duties and Government charges

- 1.6.1 In relation to taxable supplies within the meaning of *A New Tax System (Goods and Services Tax) Act 1999* (the GST Act) made under this Agreement, the Organisation, if it is registered for GST, will issue the Department with a tax invoice in accordance with the GST Act, before any Funded Amounts are payable to the Organisation as consideration for the Taxable Supply.
- 1.6.2 Unless expressly stated to the contrary, all dollar amounts in this Agreement are exclusive of GST.
- 1.6.3 Subject to *Clause 1.6*, all taxes, duties and government charges imposed in Australia or overseas in connection with this Agreement must be borne by the Organisation.
- 1.6.4 The Organisation must not claim from the Department any amount for which the Organisation can claim an Input Tax Credit.
- 1.6.5 Where any debt is repaid, including by offset under *Clause 1.5*, an Adjustment Note must be provided to the Department if required by the GST Act.

1.7 Service Principles

- 1.7.1 The Organisation agrees that, in undertaking the Project(s)/sub-projects described in the Approved Work Program(s) for the Grant(s), it will be guided by the Service principles. In doing so, the Organisation will:
- (a) involve the Clients in the design strategies to address the Client's settlement needs;
 - (b) provide Settlement Services in such a way as to promote and encourage Client self-reliance;
 - (c) work with the Department to identify Clients and their needs;
 - (d) develop a tailored response to meet a Client's needs;
 - (e) work with Clients, other Organisations receiving Funded Amounts, and other relevant Organisations to deliver services in a coordinated way, minimising gaps and duplication;
 - (f) seek continuous improvement in the quality and effectiveness of the Settlement Services provided;
 - (g) have a complaints process that is actively promoted to Clients;
 - (h) comply with, communicate during the first contact with Client, and publicly display in any waiting room or waiting place where the Funded Project(s)/sub-projects is being undertaken, a Client Service Charter:
 - (i) in the form described in *Schedule 1*; or
 - (ii) in any other form, approved by the Department as consistent with the Client Service Charter in *Schedule 1*.

1.8 Obligations of the Organisation

1.8.1 In addition to its obligations specified elsewhere in this Agreement, the Organisation will:

- (a) undertake the Project(s)/sub-projects described in the Approved Work Program(s) to a high standard and in accordance with generally accepted professional, technical and ethical principles and work place standards, and relevant best practice to the Department's satisfaction;
- (b) comply with all reporting and financial accountability requirements as set out in this Agreement, in a timely manner and to a high standard, to the Department's satisfaction;
- (c) where required, employ personnel funded under this Agreement who have the skills and qualifications required for the delivery of the Approved Work Program(s) at a salary commensurate with those skills and qualifications, and in accordance with relevant legislation;
- (d) disclose to the Department if it is awarded funding from another source which duplicates all or part of the Funded Amount, which may result in a variation of the Approved Work Program(s), Funded Amount and/or termination of this Agreement;
- (e) ensure its Management Committee/Board strategically guides and effectively manages this Agreement; and
- (f) ensure that it and its Management Committee/Board, employees, agents, volunteers and subcontractors do not represent themselves as officers, employees or agents of the Commonwealth or the Department by virtue of this Agreement.

1.8.2 The Department requires that all officers, employees and Management Committees/Boards of the Organisation, or any other persons, involved in the performance of this Agreement, and in particular the administration of the Funded Amount, observe, and demonstrate at all times, the highest standards of professional practice, including, by:

- (a) acting with honesty, fairness, due care and diligence;
- (b) behaving ethically and professionally and being openly accountable for their actions;
- (c) not becoming involved in activities disruptive to, or violence threatening harm to, the Australian community or a group within the Australian community;
- (d) avoiding any illegal or unlawful practice or activity; and
- (e) being sensitive to the diversity of the Australian public.

- 1.8.3 The Department expressly reserves the right to take any action it deems necessary to monitor and ensure that the Organisation meets the requirements of *Clause 1.8*.
- 1.8.4 The Organisation will inform the Department and remove from the administration of the Funded Amount, or take any other action directed by the Department, against any person who:
- (a) does not meet the requirements outlined in *Clause 1.8.2*; or
 - (b) has a background involving any conduct or activities which at any time has demonstrated breaches of the requirements outlined in *Clause 1.8.2*.
- 1.8.5 The Department may direct the Organisation to reasonably remove any of its employees or volunteers from performing activities in relation to the Funded Project(s)/sub-projects described in the Approved Work Program(s) for any reason outlined in *Clause 1.8.2*. The Organisation acknowledges that in doing so, the Department may be prevented by law from disclosing the particulars of the reason for the direction for removal.
- 1.8.6 Any need to replace any of the Organisation's employees or volunteers during the course of this Agreement will not constitute an act or event that is beyond the reasonable control of the Organisation in meeting the requirements of this Agreement.
- 1.8.7 For the avoidance of doubt, no right or obligation arising from this Agreement is to be read or understood as limiting the Organisation's rights to enter into public debate or criticism of the Australian Government or its Personnel.

1.9 Engagement of Illegal Workers prohibited

- 1.9.1 For the purposes of this *Clause 1.9*, an "illegal worker" is a person who is an Unlawful Non-Citizen, or a Non-Citizen who is performing work in breach of a Visa Work Condition, and the following definitions also apply:
- (a) "Non-Citizen" has the same meaning as under the *Migration Act 1958*;
 - (b) "Unlawful Non-Citizen" has the same meaning as under the *Migration Act 1958*;
and
 - (c) "Visa Work Condition" means a condition of a visa restricting the work that the Non-Citizen may do in Australia.
- 1.9.2 The Organisation must:
- (a) ensure that no employee or independent contractor, including those engaged by any subcontractors, is an illegal worker;
 - (b) ensure that any subcontract entered into for the purpose of this Agreement contains an equivalent clause to this *Clause 1.9*;
 - (c) remove, or cause to be removed, any illegal worker from any involvement in the carrying out of the Services and arrange for their replacement at no cost and immediately upon becoming aware of the involvement of the illegal worker;

(d) when requested in writing, provide evidence within 14 Days, that it has taken all reasonable steps to ensure that it has complied and is complying with its obligations under this *Clause 1.9*.

1.9.3 For the avoidance of doubt, compliance with the Organisation's obligations under this *Clause 1.9* will not constitute a force majeure event, give rise to an entitlement to claim any delay or otherwise excuse the Organisation from compliance with its obligations under this Agreement.

1.10 Subcontracting

1.10.1 The Organisation will not, without the prior written approval of the Department, subcontract the performance of any part of the Funded Project(s)/sub-projects. In giving written approval, the Department may impose such terms and conditions as it thinks fit. In particular, the Organisation agrees to ensure that:

- (a) any subcontractor is made aware of the Organisation's obligations under this Agreement; and
- (b) any subcontract entered into for the purpose of this Agreement contains equivalent terms to *Clauses 1.8, 1.9, 2.6, 2.8, 5 and 7*.

1.10.2 Despite any approval given by the Department, the Organisation will be responsible for ensuring the suitability of a subcontractor for the activities proposed to be carried out under this Agreement and for ensuring that such activities meet the requirements of this Agreement.

1.10.3 The Organisation will be fully responsible for the performance of this Agreement even if the Organisation has subcontracted the performance of any part of those activities.

1.11 Assets

Acquisition of Assets

1.11.1 The Organisation will not use the Funded Amount to acquire or create any Asset, apart from those detailed in the Approved Budget, without getting the Department's prior written approval. Approval may be given subject to any conditions the Department may impose.

Ownership of Assets

1.11.2 Unless it is specified in *Schedule 8 Part (e)* that the Department or a third party own the Asset then, subject to this *Clause 1.11* and the terms of any relevant lease, the Organisation will own any Asset acquired by it with the Funded Amount, subject to:

- (a) its continued use for the purposes of this Agreement; and
- (b) any requirement to transfer all or any of the Assets, if the Department requires it pursuant to this Agreement.

Terms applicable to Assets

- 1.11.3 If the Department or a third party owns the Asset, or the Asset is leased by the Organisation from a third party, then:
- (a) if the Department or a third party owns the Asset, *Clauses 1.11.6, 1.11.9 and 1.11.10* do not apply; and
 - (b) if the Asset is leased, the Organisation will ensure that the terms of the lease are consistent with this *Clause 1.11* except for *Clauses 1.11.6, 1.11.7, 1.11.8 and 1.11.10*.

Use of Assets

- 1.11.4 During the Funded Term the Organisation will use any Asset in accordance with this Agreement and for the purposes of the Funded Project(s)/sub-projects.

Organisation's responsibility for the Assets

- 1.11.5 Throughout the Funded Term, the Organisation will:
- (a) not encumber or dispose of any Asset, or deal with or use any Asset other than in accordance with this *Clause 1.11*, without the Department's prior written approval;
 - (b) hold all Assets securely and safeguard them against theft, loss, damage or unauthorised use;
 - (c) maintain all Assets in good working order;
 - (d) maintain all appropriate insurances for all Assets to their full replacement cost noting the Department's interest, if any, in the Asset under this Agreement;
 - (e) if required by law, maintain registration and licensing of all Assets;
 - (f) be fully responsible for, and bear all risks relating to, the use or disposal of all Assets;
 - (g) maintain an Assets' register in the form and containing the details as described in *Schedule 8 Part e*; and
 - (h) as and when requested by the Department, provide copies of the Assets register described in *Clause 1.11.5 (g)* above to the Department.

Sale or disposal of Assets

- 1.11.6 If the Organisation disposes of an Asset during the Funded Term (which will be with the Department's prior written consent and subject to any conditions the Department may impose), the greater of the following proportions will be accounted for and used as part of the Funded Amount:
- (a) the proportion of the sale proceeds from the Asset; or

- (b) the proportion of the Undepreciated value of the Asset, that is equivalent to the proportion of the cost of the Asset that was purchased using the Funded Amount.

Loss, damage or destruction of Assets

- 1.11.7 If any of the Assets are lost, damaged or destroyed, the Organisation will promptly reinstate the Assets, including from the proceeds of any relevant insurance, and this *Clause 1.11* continues to apply to the reinstated Assets. The proportion of any surplus from the proceeds of any relevant insurance, which reflects the proportion of the cost of the Asset that was purchased using the Funded Amount, will be notified to the Department and accounted for and used as part of the Funded Amount under this Agreement.

Dealing with Assets

- 1.11.8 During the Funded Term, the Department may require the Organisation to deal with any Asset as the Department may, at its sole discretion, direct in writing.
- 1.11.9 Subject to *Clause 1.11.8* if, on completion of the Funded Term, or the earlier termination of the Funded Term, an Asset has not been fully Depreciated, the Organisation will, as the Department may direct in writing:
- (a) pay to the Department within 30 Days after completion of the Funded Project(s)/sub-projects or earlier termination of the Funded Term, an amount equal to the proportion of the Undepreciated value of the Asset that is equivalent to the proportion of the cost of the Asset that was purchased using the Funded Amount;
 - (b) sell the Asset for the best price reasonably obtainable and pay to the Department within 30 Days of the sale the proportion of the proceeds of the sale that is equivalent to the proportion of the cost of the Asset (less an amount equal to the reasonable disposal costs incurred by the Organisation) that was purchased using the Funded Amount; or
 - (c) continue to use the Asset for the purposes, and in accordance with any conditions, notified by the Department.

Failure to make payment

- 1.11.10 Amounts payable to the Department under *Clause 1.11.9* form part of the Funded Amount and are recoverable as such. If the Organisation fails to make payment as required by *Clause 1.11.9*:
- (a) the Organisation will pay the Department the Interest on the relevant amount from the date it was due, for the period it remains unpaid; and

- (b) the relevant amount, and Interest owed under this *Clause 1.11*, will, without prejudice to any other rights available to the Department under this Agreement or at law or in equity, be recoverable by the Department as a debt due to the Department by the Organisation without further proof of the debt by the Department being necessary.

Department's approval

- 1.11.11 The Department's approvals under *Clause 1.11.1* and *Clause 1.11.5(a)* will not be unreasonably withheld. A decision as to whether an approval will be provided will be made within a reasonable time of the request.
- 1.11.12 The operation of this *Clause 1.11* survives the expiration or earlier termination of the Funded Term.

2 PERFORMANCE MONITORING BY THE DEPARTMENT

2.1 The Department's reporting requirements

- 2.1.1 Unless otherwise specified by or negotiated with the Grant Manager, the Organisation will complete and submit the Reports outlined in *Schedule 3*.
- 2.1.2 The Reports will:
 - (a) be completed on the Department's templates as specified in the Reporting *Schedule* to this Agreement;
 - (b) be completed in consultation with the Grant Manager who will specify what the Report should focus on and instruct the Organisation accordingly;
 - (c) identify any issues that affect, or could affect, the timely and satisfactory delivery of the activities, or any other aspect of the delivery of the Funded Project(s)/sub-projects described in the Approved Work Program(s), which may result in a need to vary the Approved Work Program(s) or any other part of this Agreement;
 - (d) report on the Organisation's compliance with the Service Principles and number of complaints received during the relevant period and how these were resolved;
 - (e) where provided on-line, be completed through the Online Settlement Client Activity Reports (OSCAR).
- 2.1.3 The Department will consider all Reports and will notify the Organisation:
 - (a) if the Department is not satisfied with any aspect of any Report or the Organisation's performance as reflected in the Reports, and if it requires the Organisation to rectify, to the satisfaction of the Department, those aspects of the Reports or the Organisation's performance which are of concern; or
 - (b) if it accepts the Reports.

2.2 Additional reporting and documentary evidence

2.2.1 The Organisation will provide any:

- (a) support documentation specified in the Approved Work Program(s) to the Department;
- (b) other information related to this Agreement, or its implementation, that the Department may, from time to time, notify the Organisation that it reasonably requires. Without limiting the generality of this *Clause*, this includes sufficient documentary evidence that the Organisation has been providing relevant Settlement Services to Clients, and expending the Funded Amount in accordance with this Agreement, and
- (c) any documentation detailing budget expenditure for the Funded Grant(s) if requested.

2.3 Non-Achievement of performance obligations

2.3.1 The Organisation will notify the Department in writing, as soon as it becomes aware that:

- (a) an activity specified in the Approved Work Program(s) is not likely to be achieved by the agreed date in *Schedule 3*; or
- (b) the Organisation will not be able to provide any Report by the due date.

2.3.2 The Organisation will provide the Grant Manager with the following details, no later than by the relevant due date:

- (a) the reasons why any of the above have not been, or are not likely to be, achieved;
- (b) how the Organisation proposes to deal with the problem which has caused or may cause the delay;
- (c) whether it will be possible to complete the requirements within a reasonable timeframe and the expected date on which they will be completed; and
- (d) the effect the delay may have on the delivery of the Funded Project(s)/sub-projects or on other activities delivery dates specified in the Approved Work Program(s).

2.3.3 In addition to the obligation contained in *Clause 2.3.1*, the Organisation will notify the Department in writing, as soon as it becomes aware that:

- (a) a change (actual or proposed) in its organisational structure has the potential to effect the delivery of the Settlement Services; or
- (b) the unavailability of personnel involved in the performance of this Agreement has

the potential to effect the delivery of the Settlement Services .

2.4 Consequences of delay in completing performance obligations

- 2.4.1 If the Organisation has notified the Department of a delay in the completion of any performance obligations, as described in *Clause 2.3*, the Department may, at its discretion, either amend the Approved Work Program(s) or allow the relevant date in *Schedule 3* to be extended.
- 2.4.2 If the Department does not accept the reasons for any delays, as specified in *Clause 2.3*, the Department will seek informal resolution of the issues relating to the delay with the Organisation and, subject to the outcome of the resolution, will:
- (a) agree to a new delivery date, or modification of the activities; or
 - (b) proceed to formal dispute resolution procedures outlined in *Clause 3*.

2.5 Suspension

- 2.5.1 Without limiting the Department's rights under this Agreement, under statute, at law or in equity, if the Department considers that:
- (a) the Organisation may be in breach of its obligations under this Agreement, and while the Department investigates the matter;
 - (b) the Organisation's performance of, or compliance with any of its obligations under this Agreement is less than satisfactory; or
 - (c) the Organisation may be engaged in fraudulent activity, and while the Department investigates the matter,
- the Department may, prior to taking action under *Clause 4*, withhold or suspend any payment in whole or in part under this Agreement.
- 2.5.2 The Department will notify the Organisation if it exercises its rights under *Clause 2.5.1* within 10 Days after having exercised those rights.
- 2.5.2A Notwithstanding any action taken by the Department under *Clause 2.5.1* the Organisation must continue to perform its obligations under this Agreement, unless the Department agrees otherwise in writing.
- 2.5.3 If the Department determines that any non-achievement of any of the performance obligations under this Agreement cannot be rectified in a reasonable manner or these constitute a material breach of this Agreement, *Clauses 4.2 and 4.3* will apply.

2.6 Record keeping

- 2.6.1 The Organisation will retain all records and account books relating to the obligations of this Agreement, including the Organisation's:
- (a) progress in conducting the Approved Work Program(s) against the requirements of this Agreement;
 - (b) receipt and use of the Funded Amount in regard to the delivery of the project/sub-project described in the Approved Work Program(s). In particular, the

Organisation must keep financial accounts and records relating to the Approved Work Program(s) so as to enable:

- (i) all receipts and payments related to the Approved Work Program(s) to be identified and reported in accordance with this Agreement;
- (ii) unless notified otherwise by the Department, the preparation of financial statements in accordance with Australian Equivalent of the International Financial Reporting Standards including:
 - (A) an income and expenditure statement for the financial year to date; and
 - (B) a register of the Assets created, acquired, written-off or disposed of during the financial year to date, as outlined in *Schedule 8 Part e*; and
 - (C) the identification of all of its taxation liabilities and payments,
- (c) other funding contributions, including the Organisation's contributions (if any);
- (d) Client files, which should be up-to-date, including a list of all files; and
- (e) any other reporting requirements in the Approved Work Program(s).

2.6.2 The Organisation will, upon request by the Grant Manager, provide to the Department extracts or copies of any such records, financial statements and account books.

2.6.3 For the purposes of verification to the Department, the Organisation may make and retain a copy of the following information, which must be kept by Organisation in accordance with the requirements of *Clause 7*:

- (a) the name and address of a Client;
- (b) the period in which Settlement Services were provided to a Client;
- (c) the nature of those Settlement Services;
- (d) the outcome of those Settlement Services;
- (e) statistical information relating to a Client that is to be aggregated with statistical information relating to other Clients;
- (f) documents to support any Tax Invoices that the Organisation submits to the Department; and
- (g) the information in Clauses 2.6.3(a) to (f) in relation to any groups of Clients.

2.6.4 If the Organisation:

- (a) becomes bankrupt, insolvent or enters into voluntary administration;
- (b) makes an assignment of its estate for the benefit of creditors or enters into any arrangement or composition with its creditors or has a receiver, or a receiver and manager, appointed on behalf of debenture holders or creditors;
- (c) goes into liquidation or passes a resolution to go into liquidation, otherwise than for the purpose of reconstruction, or being subject to any petition or proceeding in a court for the compulsory winding-up of the Organisation, or being subject to the supervision of the courts either voluntarily or otherwise; or

(d) ceases trading or the carrying on of activities at any time during 7 years from the date of expiration or termination of this Agreement,

the organisation will promptly inform the Department of the event, and will deal with all records and accounts relating to the obligation of this Agreement as directed by the Department.

2.6.5 Clause 2.6 will apply for the Funded Term of this Agreement and continue for 7 years from the date of expiration or termination of this Agreement.

2.7 Liaison and monitoring

2.7.1 The Organisation will:

- (a) liaise with and provide information to the Department as reasonably required by the Department; and
- (b) comply with the Department's reasonable requests, directions, or monitoring requirements.

2.8 Access to Premises

2.8.1 The Organisation will allow:

- (a) the Grant Manager;
- (b) the Australian National Audit Office;
- (c) the Ombudsman's Office; and
- (d) other persons authorised by the Grant Manager,

to access the Organisation's premises at all reasonable times and to inspect and copy all relevant documentation and records, however stored, in the Organisation's possession or control, for purposes associated with the Agreement or any review of performance under the Agreement.

2.8.2 The rights referred to in *Clause 2.8.1* are subject to:

- (a) the provision of reasonable prior notice to the Organisation, unless in connection with fraudulent or other unlawful activity, in which case the Department may not provide any notice;
- (b) compliance with the Organisation's reasonable security procedures;
- (c) each party bearing its own cost arising out of or in connection with any access or inspection; and
- (d) if appropriate, execution of a deed of confidentiality relating to non-disclosure of the Organisation's Confidential Information.

2.8.3 The Organisation will ensure that any subcontract entered into for the purpose of this Agreement contains an equivalent clause granting the rights specified in this *Clause 2.8*.

2.8.4 *Clause 2.8* applies for the term of the Agreement and for a period of 7 years from the date of expiration or termination of the Agreement.

3 DISPUTE AVOIDANCE AND RESOLUTION

3.1 Dispute avoidance

3.1.1 If an issue arises that could result in a dispute in relation to this Agreement, before resorting to dispute resolution procedures described in *Clause 3.2* below, the Parties will attempt to settle by negotiation any such issue. However, termination of this Agreement remains a final option of both Parties to this Agreement.

3.2 Procedure for dispute resolution

3.2.1 Any dispute arising during the course of this Agreement will be dealt with as follows:

- (a) first, the Party claiming that there is a dispute will send to the other Party a written notice setting out the nature of the dispute;
- (b) second, both Parties will try to resolve the dispute by direct negotiation, including by referring the matter to persons who may have the authority to intervene and direct some form of resolution;
- (c) third, the Parties have 14 calendar days from the sending of the notice to reach a resolution or to agree that the dispute will be submitted to mediation or some other form of alternative dispute resolution procedure; and
- (d) lastly, if:
 - (i) there is no resolution or agreement; or
 - (ii) there is a submission to mediation or some other form of alternative dispute procedure, but there is no resolution within 21 calendar days of the submission, or such extended time as the Parties may agree in writing before the expiration of the 21 calendar days,

then termination remains an option to either Party, or either Party to the dispute may commence legal proceedings.

3.2.2 Notwithstanding the existence of a dispute, each Party will continue to perform its obligations under this Agreement.

3.2.3 This *Clause 3.2* does not prevent a Party from applying to a court for urgent interlocutory relief in relation to a breach of this Agreement by the other Party.

4. TERMINATION

4.1 Termination for convenience

4.1.1 The Department may, at any time by written notice, terminate this Agreement, or reduce its scope. If this Agreement is so terminated or reduced in scope, the Department will be liable only for:

- (a) payments due under this Agreement for activities completed to the satisfaction of

the Department before the effective date of termination; and

- (b) subject to *Clause 4.1*, any reasonable costs incurred by the Organisation and directly attributable to the termination or reduction in scope of this Agreement.

4.1.2 In the event of a reduction in scope, the Department's liability to pay the Funded Amount will, in the absence of agreement to the contrary, abate proportionately to the reduction in the activities being undertaken.

4.1.3 The Department will not be liable to pay compensation in an amount which would, in addition to any amounts paid or due, or becoming due, to the Organisation under this Agreement, together exceed the Funding Amount. The Organisation will not be entitled to compensation for loss of prospective profits.

4.2 Termination for default by the Organisation

4.2.1 If the Organisation:

- (a) becomes bankrupt, insolvent or enters into voluntary administration;
- (b) makes an assignment of its estate for the benefit of creditors or enters into any arrangement or composition with its creditors or has a receiver, or a receiver and manager, appointed on behalf of debenture holders or creditors;
- (c) goes into liquidation or passes a resolution to go into liquidation, otherwise than for the purpose of reconstruction, or being subject to any petition or proceedings in a court for the compulsory winding-up of the Organisation or being subject to the supervision of the court either voluntarily or otherwise;
- (d) ceases trading or the carrying on of activities, or suffers events which will lead to the Organisation ceasing trading or carrying on activities;
- (e) suffers execution against any Assets of the Organisation which has an adverse effect on the Organisation's ability to perform its obligations under this Agreement;
- (f) changes its membership structure or nature so that in the opinion of the Department the Organisation cannot carry out its obligations under this Agreement;
- (g) fails to:
 - (i) undertake the Funded Project(s)/sub-projects described in the Approved Work Program or proceed in a manner so as to endanger the performance of activities under this Agreement; or
 - (ii) remedy any other default by the Organisation of any obligation to be performed or observed under this Agreement,

within 30 Days of being given notice in writing by the Department requiring the

Organisation to remedy the default;

- (h) assigns its rights otherwise than in accordance with the requirements of this Agreement; or
- (i) fails to obtain, or ceases to hold, insurance as specified and required under this Agreement, irrespective of whether or not the Organisation held any insurance at the time this Agreement was entered into and irrespective of the type of insurance (if any) held by the Organisation at that time,

the Department may, in addition to any other right or remedy it may have, by notice in writing to the Organisation, terminate this Agreement by giving another notice, and 30 Days to remedy the default.

4.3 Consequences of termination under *Clause 4.2*

4.3.1 If this Agreement is terminated under *Clause 4.2*, the Organisation will:

- (a) immediately return to the Department any part of the Funded Amount not expended at the time of termination; and
- (b) immediately repay to the Department that part of the Funded Amount that has been spent in breach of this Agreement.

4.4 Termination by mutual agreement

4.4.1 If the Organisation wishes to terminate this Agreement or any sub-project(s) in the Agreement, it must give reasonable notice in writing to the Department with reasons for the termination.

4.4.2 The Department may either accept or reject the Organisation's request for termination at its sole discretion.

4.4.3 The Organisation must continue to:

- (a) undertake the Funded Project(s)/sub-projects;
 - (b) provide any Reports; and
 - (c) meet any conditions reasonably required by the Department,
- until the date agreed by the Department, if any, for termination of this Agreement.

4.5 Obligations of Organisation on termination

4.5.1 Upon receiving a notice of termination, the Organisation must, in the specified timeframe:

- (a) stop work as specified in the notice;
- (b) take all available steps to minimise loss resulting from that termination and to protect Commonwealth Material and Activity Material;

- (c) continue work on any part of the Funded Project(s)/sub-projects not affected by the notice;
- (d) subject to *Clause 4.1* where the Department is terminating for convenience, repay to the Department in the manner directed by the Grant Manager such part (if any) of the Funded Amount which has not been expended or committed for expenditure for the purposes of the Approved Work Program(s); and
- (e) if requested by the Department:
 - (i) provide a financial report or Audited Financial Statement (or part thereof) which has been expended or committed for expenditure for the purposes of the Approved Work Program(s) to the date of termination;
 - (ii) provide to the Department a summary report on the status of the activities undertaken under this Agreement and any part of the Funded Project(s)/sub-projects not delivered at the date of termination; and
 - (iii) return Activity Material and all copies in whatever media and other items of equipment loaned to it by the Department.

5 CONFLICT OF INTEREST

5.1 No conflict of interest at time of signing

5.1.1 To the best of its knowledge at the date of signing this Agreement, the Organisation agrees and warrants that in respect of its Management Committee/Board and any employee, volunteer, agent and/or approved subcontractor, no conflict of interest exists or is likely to arise with the interests of the Commonwealth or the Department in the performance of its obligations under this Agreement.

5.2 Disclosure of conflict of interest during the Funded Term

5.2.1 If during the Funded Term, a conflict of interest arises, or appears likely to arise, the Organisation will:

- (a) notify the Department immediately in writing;
- (b) make full disclosure of all relevant information relating to the conflict or potential conflict; and
- (c) take such steps as the Department may reasonably require to resolve or otherwise deal with the conflict.

5.3 Preventing conflict of interest

5.3.1 The Organisation will use its best endeavours to ensure that its Management Committee/Board and any employee, volunteer, agent and/or approved subcontractor, do not engage in any activity or obtain any interest during the course of this Agreement that is likely to conflict with or restrict the Organisation in performing this Agreement

fairly and independently.

6 INSURANCE

6.1 Insurance cover required

6.1.1 The Organisation will obtain the following insurances and maintain such insurances for the Funded Term and, as relevant, in accordance with *Schedule 4*:

- (a) Public Liability Insurance (to minimum \$10 million cover);
- (b) Professional Indemnity Insurance (to minimum \$5 million cover); and
- (c) Workers' Compensation Insurance.

The Organisation will provide proof of currency of required insurance cover at any time when requested by the Department.

6.1.2 On signing this Agreement the Organisation will provide the Department with a certificate of currency or other document that provides details of the insurance cover and, if requested, a copy of the insurance policy.

6.1.3 The insurance cover should contain no exclusions that relate to Territory, State or Commonwealth Governments.

6.1.4 In the event that the Organisation fails to maintain any of the relevant insurances for the duration of the Funded Term, the Department may suspend or terminate this Agreement. The suspension will continue until the Department receives satisfactory evidence from the Organisation that the relevant insurance has been obtained.

6.1.5 Where an insurance policy expires during the Funded Term, the Organisation will provide the Department with evidence that the insurance has been renewed and a copy of the certificate of currency or other document that provides details of the insurance cover.

6.2 Warranty as to adequacy

6.2.1 The Organisation warrants that it has obtained independent professional advice as to the adequacy of the insurance affected pursuant to this *Clause 6*.

6.2.2 For the avoidance of doubt the provisions of this *Clause 6* are not to be read so as to reduce a Party's liability under any other provision of this Agreement and compliance by the Organisation with the provisions of this *Clause 6* does not limit the Organisation's liability under any other provision of this Agreement.

7 PRIVACY ACT 1988 (COMMONWEALTH)

7.1 Privacy, disclosure and liability

7.1.1 The Organisation will ensure that personal information created and/or held in connection with this Agreement is protected against loss, and against unauthorised

access, use, modification, disclosure or other misuse, in accordance with the *Privacy Act 1988* (the Privacy Act), and that only authorised personnel have access to the personal information after signing a Deed of Confidentiality, as per *Schedule 5*.

7.1.2 The Organisation agrees to comply, and ensure that any subcontractors also comply, with the Information Privacy Principles (IPPs) contained in section 14 of the Privacy Act and National Privacy Principles (NPPs) 7, 8, and 10 to the extent that the content of those principles apply to the types of activities the Organisation, and any subcontractors, are undertaking under this Agreement, as if the Organisation, and any subcontractors, were (in respect to the IPPs) an “agency”, or (in respect to NPPs 7, 8 and 10) an “Organisation” as defined in the Privacy Act.

7.1.3 The Organisation agrees, in respect of personal information held in connection with this Agreement and in accordance with *Schedule 5*:

- (a) to use personal information only for the purposes of fulfilling its obligations under this Agreement;
- (b) not to disclose personal information without the prior written authority of the Department except for the purpose of fulfilling its obligations under this Agreement. The Organisation will immediately notify the Department where it becomes aware that a disclosure of personal information may be required by law;
- (c) to notify individuals whose Personal Information the Organisation holds, that their Personal Information may be disclosed and passed on to the Department and to other persons in relation to providing the Settlement Services;
- (d) not to transfer personal information outside Australia, nor to allow parties outside Australia to have access to it without the prior approval of the Department except for the purpose of fulfilling its obligations under this Agreement;
- (e) to ensure that any person engaged by the Organisation requiring access to any personal information signs a Deed of Confidentiality agreeing not to access, use, disclose or retain personal information except in performing their duties in relation to the Approved Work Program(s);
- (f) to ensure that any person engaged by the Organisation who has signed a Deed of Confidentiality is informed that failure to comply with the undertaking may be a criminal offence and may also lead the Organisation to take disciplinary action against that person;
- (g) to immediately notify the Department where the Organisation becomes aware of a breach of *Clauses 7.1.1, 7.1.2 or 7.1.3* by any person engaged by the Organisation; and
- (h) to co-operate with any reasonable requests or directions of the Grant Manager

arising directly from, or in connection with the exercise of the functions of the Privacy Commission under the Privacy Act or otherwise including but not limited to the issuing of any guideline concerning the handling of personal information.

7.1.4 For the purposes of *Clause 7*, “personal information” has the meaning given to that term in the Privacy Act.

7.1.5 *Clause 7.1* will survive 7 years from the date of expiration or termination of this Agreement.

8 INDEMNITY

8.1 Organisation to indemnify the Department

8.1.1 The Organisation agrees to indemnify the Department from and against any:

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

arising from:

- (d) any act or omission by the Organisation, its employees, volunteers, agents or subcontractors in connection with this Agreement;
- (e) any breach by the Organisation of its obligations under this Agreement;
- (f) any unauthorised use or disclosure by the Organisation, its employees, volunteers, agents or subcontractors of personal information held or controlled in connection with this Agreement; and/or
- (g) any defamatory statement placed by the Organisation, its employees, volunteers, agents or subcontractors in any Department funded or administered publication or computer system.

8.2 Proportionate indemnity

8.2.1 The Organisation’s liability to indemnify the Department under *Clause 8.1* will be reduced proportionately to the extent that any act or omission of the Department contributed to the relevant liability, loss or damage, or loss or expense.

8.3 Right to indemnity not exclusive of other rights

8.3.1 The right of the Department to be indemnified under *Clause 8.1* is in addition to, and not exclusive of, any other right, power or remedy provided under this Agreement or by law, but the Department is not entitled to be compensated in excess of the amount of the relevant liability, loss or damage, or loss or expense.

8.4 Indemnity to continue

8.4.1 *Clause 8.1* will survive 7 years from the expiration or termination of this Agreement.

9 DISCLOSURE OF CONFIDENTIAL INFORMATION

9.1 Confidential Information

9.1.1 If the Parties agree that any clause, item, *Schedule* or detail contained in, or related to, this Agreement is Confidential Information, that Confidential Information must be specified in *Schedule 7 - Confidential Information*.

9.2 Approval to disclose

9.2.1 Neither Party will disclose to any person, except as required by law, any Confidential Information relating to this Agreement, without prior approval in writing of the other Party, which may impose any conditions or restrictions it considers appropriate.

10 COMMONWEALTH MATERIAL

10.1 Ownership

10.1.1 Ownership of all Commonwealth Material remains vested at all times in the Commonwealth.

10.2 Return

10.2.1 On the expiration or earlier termination of this Agreement, the Organisation will return to the Department all Commonwealth Material remaining in its possession.

10.3 Use

10.3.1 The Organisation will ensure that all Commonwealth Material is used, reproduced and adapted only for the purposes of this Agreement and to be responsible for the safe keeping and maintenance of all Commonwealth Material.

11 INTELLECTUAL PROPERTY RIGHTS

11.1 Intellectual Property vests in the Organisation

11.1.1 Intellectual Property in all Activity Material will remain vested in the Organisation. The Organisation grants to the Department a permanent, irrevocable royalty-free, non-exclusive licence (including a right of sub-licence) to use, reproduce, adapt, sub-licence and exploit the Activity Material anywhere in the world.

11.1.2 Notwithstanding *Clause 11.1.1*, Intellectual Property in all Reports prepared under this Agreement vests immediately upon creation of those Reports in the Department.

11.2 Indemnity regarding liability for infringement of Intellectual Property

11.2.1 The Organisation will at all times indemnify and hold harmless the Department, its officers, employees and agents (“those indemnified”) from and against any loss,

including legal costs and expenses on a solicitor/own client basis; or liability incurred or suffered by any of those indemnified arising from any claim, suit, demand, action or proceeding by any person in respect of any infringement of Intellectual Property Rights by the Organisation (including employees, agents, volunteers or subcontractors), in the course of, or incidental to, performing the Approved Work Program(s) or the use by the Department of the Activity Material.

11.3 Publications and publicity

11.3.1 The Organisation must acknowledge the financial and other support it has received from the Commonwealth:

- (a) in all publications, promotional and advertising materials, public announcements and activities, or any other form of information disseminated, by it or on its behalf in relation to the Funded Project(s)/sub-projects, or any products, processes or inventions developed as a result of the Funded Project(s)/sub-projects; and
- (b) in the manner, as set out in *Schedule 6*.

11.3.2 The form of acknowledgement must be approved by the Department before its use.

11.3.3 The Organisation will display a disclaimer on any printed material or other distributed information advising the reader that the contents, information, advice and opinions expressed in the publication or distributed information are those of the Organisation and not the Department. The Department may agree to waive the disclaimer upon request by the Organisation.

11.3.4 The Organisation agrees that Material or information contained in statistics and reports provided under this Agreement may be used by the Department in the course of any activities within the Department's functions. Where the Material or information is used, the Department will acknowledge the role of the Organisation in the preparation and compilation of that Material.

11.4 Continuation of Clause 11

11.4.1 *Clause 11* will continue to apply after the expiration or termination of this Agreement.

12 APPLICABLE LAW

12.1 This Agreement is governed by the laws of the Australian Capital Territory.

13 COMPLIANCE WITH LAW

13.1 The Organisation must, in carrying out this Agreement, comply with all relevant statutes, regulations, by-laws and requirements of the Commonwealth and any State, Territory or local authority and in particular the *Crimes Act 1914*, *Racial Discrimination Act 1975*, *Sex Discrimination Act 1984* and *Disability Discrimination*

Act 1992 and its obligations, if any, under the *Equal Employment Opportunity for Women in the Workplace Act 1999*.

14 WAIVER

14.1 A waiver by the Department of any breach of a condition or provision of this Agreement will not be deemed to be a waiver in respect of any continuing or subsequent breach of that provision, or breach of any other provision. The failure of the Department to enforce at any time any of the provisions of this Agreement will in no way be interpreted as a waiver of such provision.

15 ASSIGNMENT AND NOVATION

15.1 The Organisation will not:

- (a) assign, in whole or in part, its benefits under this Agreement without the prior written approval of the Department; or
- (b) consult with any person or body for the purposes of entering into an arrangement which will require novation of this Agreement without first consulting the Department.

16 NEGATION OF PARTNERSHIP, AGENCY AND EMPLOYMENT

16.1 Nothing in this Agreement constitutes or is taken to constitute:

- (a) a partnership between the Department and the Organisation; or
- (b) any form of agency between the Department and the Organisation.

16.2 Neither the Department nor the Organisation has authority to bind the other Party or contract in the name of the other Party in any way or for any purpose.

17 NOTICES

17.1 Service of notice

17.1.1 Any notice, given or served under this Agreement will be duly delivered by hand or sent by person-to-person registered mail or confirmed facsimile/email transmission to the:

- (a) Department, if in writing, signed by the Organisation's authorised representative at *Clause 17.1.1(b)*, and addressed to the Grant Manager as follows:

(Insert Details)

- *Grant Manager:*
- *Postal address:*
- *Phone number:*
- *Fax number:*

or to another nominated person or address as may be notified from time to time, by the Department in writing to the Organisation.

- (b) Organisation, if in writing, signed by or on behalf of the Department and addressed to the Organisation's authorised representative specified below:

(Insert Details)

- *Organisation name:*
- *Name of authorised representative:*
- *Position of authorised representative:*
- *Postal address:*
- *Phone number:*
- *Fax number:*

or to any other person nominated from time to time by the Organisation, and notified to the Department in writing or through confirmed email, who has the authority to represent and bind the Organisation for the purposes of this Agreement.

17.1.2 For the convenience of the parties, the following is a list of Clauses that require the provision of notices. This list is not exhaustive. Each party will ensure compliance with all their obligations in the Agreement:

- (a) By the Department: *Clauses 1.1, 1.5.5, 1.5.7, 1.5.10, 1.11.9(c), 2.1.3, 2.2.1(b), 2.4.1, 2.5.2, 2.6.1(b)(ii), 2.8.2(a), 3.2, 4.1.1, 4.2.1, and Schedule 3; and*
- (b) By the Organisation: *Clauses 1.5.3A(b)(i), 1.5.3A(b)(iii), 1.11.7, 2.3, 3.2, 4.4, 5.2.1(a), 7.1.3(b), 7.1.3(c), and 7.1.3(g).*

17.2 Receipt of notice

17.2.1 A notice is deemed to be received if:

- (a) delivered personally, on the date of delivery;
- (b) sent by person to person registered mail, on the date that the acknowledgment of the delivery is completed by the recipient; and/or
- (c) sent by facsimile/email on the completion of which verification of complete delivery is received.

17.3 Grant Manager and Project Manager

17.3.1 The Department's Grant Manager is: *(Insert details)*

Grant Manager

- *Postal address:*
- *Phone number:*
- *Fax number:*
- *Email address:*

17.3.2 The Organisation's Project Manager is: *(Insert details)*

Project Manager

- *Postal address:*
- *Phone number:*
- *Fax number:*
- *Email address:*

SAMPLE

SIGNATURES OF PARTIES TO THIS AGREEMENT

SIGNED for and on behalf of the
COMMONWEALTH OF AUSTRALIA

by

(Name)

(Position)

Department of Immigration and Citizenship



Signature

_____/_____/_____
Date

in the presence of

Witness Signature

Print name

SIGNED for and on behalf of the
(insert the Organisation's name)

by

(Name)

(Position)



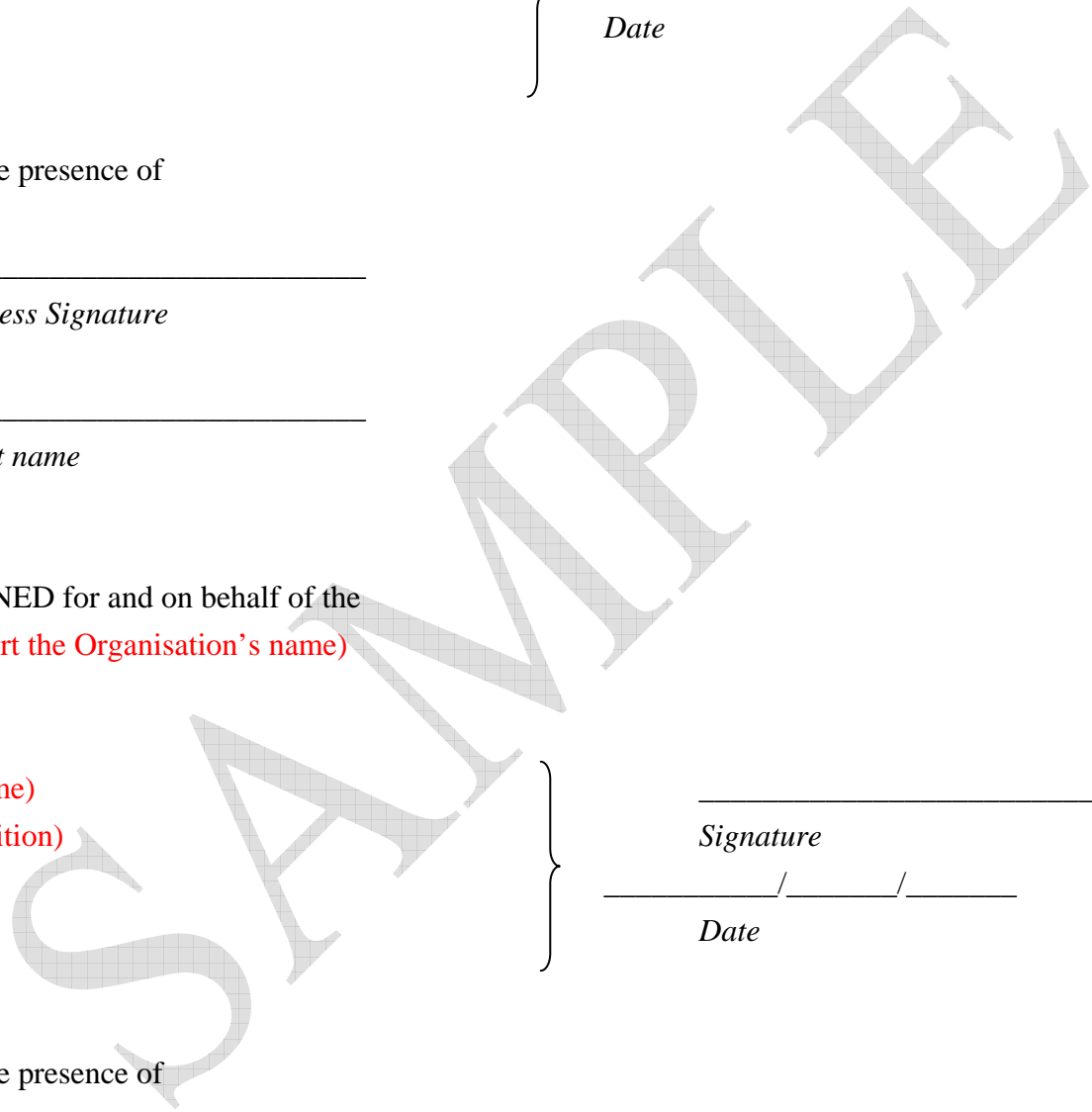
Signature

_____/_____/_____
Date

in the presence of

Witness Signature

Print name



SCHEDULE 1 – CLIENT SERVICE CHARTER (see *Clause 1.7.1(h)*)

Settlement Grants Program Client Service Charter

The staff of(*insert name of Funded Organisation*) are committed to abiding by the principles set out in this Charter, to ensure that our services are of a consistently high standard and founded on client satisfaction.

SAMPLE

We will provide our services without discrimination, irrespective of a client's country of birth, language, culture, race, religion or gender. In all our dealings we will strive to be informative, helpful and efficient, while at all times acting with due care and diligence.

What our clients can expect:

- a) To be treated courteously, sensitively, openly and honestly
- b) To be provided with accurate, consistent, timely and clear information
- c) To have suggestions and complaints taken seriously and learnt from
- d) To be looked after by trained staff
- e) The information that you provide to us will be kept confidential. However, to ensure that we are accountable for the funding that we receive from the Australian Government, we may be required to disclose your personal information to the Australian Government and to other persons in the context of the services provided to you. Where we do so, we will make sure that we comply with the requirements of the *Privacy Act 1988*, a copy of which is available on request.
- f) That an interpreter will be arranged should one be needed to use our services
- g) That all Australian laws will be respected and adhered to in our dealings

Help us help you:

So that we can provide a high quality service, it is essential that you:

- a) give us accurate and complete information about your circumstances
- b) let us know as soon as possible if you cannot keep an appointment
- c) let us know if you need an interpreter
- d) be courteous to our staff

If you are dissatisfied with our service or would like to suggest a change:

- a) Please discuss the issue with the person who provided the service or their Manager or Supervisor
- b) If you would prefer not to discuss the matter with the person concerned or their Manager, or you feel he or she has not resolved the issue, please contact us by telephone or drop a written note into the Suggestions Box in the waiting area.(Insert telephone number)
- c) Anonymous complaints will be treated equally, but identifying yourself to us will enable us to respond to your concern.

SCHEDULE 2 – SUMMARY OF APPROVED FUNDED GRANT

{Grant Managers are to insert additional rows or delete rows as required – all new Funded Grants to the organisation must be included}

| SUMMARY OF APPROVED FUNDED GRANT | | | |
|---|----------------------------------|----------------------------------|----------------------------------|
| GRANT ID | Year 1 2011-12 \$ | Year 2 2012-13 \$ | Year 3 2013-14 \$ |
| xx/xxxx | | | |
| xx/xxxx | | | |
| xx/xxxx | | | |
| TOTALS | | | |

SAMPLE

SCHEDULE 3 – REPORTS

(see *Clause 2.1.1 and 2.2*)

Unless otherwise specified by or negotiated with the Grant Manager, the Organisation will complete, and at a minimum, comply with the reporting requirements in this *Schedule 3*, in accordance with the relevant time-frames in Table 1 and Table 2 of this *Schedule 3*.

Notwithstanding any other clause in this Agreement, where the above provisions of this *Schedule 3* change, the Department may notify the Organisation of the change in writing.

(1) Progress Reports

(i) *Interviews (First Progress Report and Third Progress Report):*

Two interviews to be held at 3 and 9 months of each Financial Year by the Department with the Organisation to assess its performance against the Outcomes and Activities set out in the Approved Work Program(s) for the relevant period.

(ii) *Written Reports (Second Progress Report and Fourth Progress Report):*

Two written Progress Reports at 6 and 12 months of each Financial Year to be completed by the Organisation on the Department's template outlining its performance against the Outcomes and Activities set out in the Approved Work Program(s) for the relevant period.

Regardless of whether a Progress Report is in the form of an interview or a written report it will, at a minimum, have the following features:

- (a) Be prepared in consultation with the Grant Manager, who will specify the focus of the Report;
- (b) Identify any issues that affect, or could affect, the Organisation's compliance with the provisions of the Agreement, including:
 - (i) timely and satisfactory delivery of the Activities, or any other aspect of the delivery of the Funded Project(s)/sub-projects described in the Approved Work Program(s), which may result in a need to vary the Approved Work Program(s) or any other part of this Agreement; and
 - (ii) the Organisation's compliance with the Service Principles and number of complaints received during the period and how these were resolved.

(2) Un-audited Financial Statement of Income and Expenditure

The unaudited Financial Statement of Income and Expenditure is provided at the end of the first 6 months of each Financial Year and is prepared by the Organisation on the Department's template. At a minimum, the Un-audited Financial Statement of Income and Expenditure will have the following features:

- (a) Demonstrate how the Organisation has expended the Funded Amount during the first 6 months, or lesser term if specified, of each Financial Year; and
- (b) Provide sufficient evidence of expenditure against the items set out in the Approved Budget, although there is no need to include receipts, records and independent verification of the Organisation's expenditure.

(3) End of Financial Year Audited Financial Statement of Income and Expenditure

The End of Financial Year Audited Financial Statement of Income and Expenditure Reports is provided once every 12 months and is prepared by an Approved Auditor for the Organisation on the Department's template and certified by the Approved Auditor on the Approved Auditor's

letterhead. The Audited Financial Statement of Income and Expenditure covers the entire Funded Amount (inclusive of all projects/sub-projects) for the preceding 12 months.

Table 1 2011-12

| Progress Report | Reporting Period | Reporting Method | Completion Date for Interviews and Reports |
|---|---|--|--|
| First Progress Report | 1 Jul - 30 Sep 11 | Interview by Grant Manager, including supporting documents | On or before 14 Oct 11 |
| Second Progress Report Unaudited Financial Statement | 1 Oct - 15 Dec 11 1 Jul - 15 Dec 11 | Written report by Organisation, including supporting documents | On or before 31 Dec 11 |
| Third Progress Report | 16 Dec - 31 Mar 12 | Interview by Grant Manager, including supporting documents | On or before 13 Apr 12 |
| Fourth Progress Report End of Year Audited Financial Statement | 1 Apr - 30 Jun 12 1 Jul 11 - 30 Jun 12 | Written report by Organisation, including supporting documents | On or before 30 Jul 12 On or before 30 Sep 12 |

Note: 1) For Multi-Year Grants see *Clause 1.5.2*

2) If due dates do not fall on a business day, then the due date is the next business day.

(4) Online Settlement Client Activity Reports (OSCAR)

The minimum requirements of OSCAR are those set by the relevant software program provided by the Department. The Organisation will complete OSCAR according to the end dates set out in Table 2 below. The Department will endeavour to provide results of OSCAR to the Organisation by the indicative dates below:

Table 2 2011-12

| OSCAR entries to be provided to the Department by no later than | Department to provide results of OSCAR to the Organisation on or about |
|--|---|
| 19 September 2011 | 23 September 2011 |
| 5 December 2011 | 9 December 2011 |
| 19 March 2012 | 23 March 2012 |
| 2 July 2012 | 6 July 2012 |

Note: If due dates do not fall on a business day, then the due date is the next business day.

SCHEDULE 4 – INSURANCE

(see *Clause 6*)

PROFESSIONAL INDEMNITY INSURANCE

To meet the requirement to hold professional indemnity insurance under *Clause 6.1* of this Agreement, the Organisation will provide evidence¹ of a current annual professional indemnity insurance policy which meets the following criteria:

- a) must cover the Organisation against liability for any loss or damage arising from the Organisation's activities or operations in performing its obligations under this Agreement;
- b) must provide an **annual policy** with cover up to the specified amount and must not have an excess payable by the Organisation of such an amount as to reduce the amount that may be claimed below the specified amount;
- c) must not contain any Commonwealth exclusion or similar exclusionary clause with the effect (or purported effect) of excluding any claim or claims on the basis of the direct or indirect involvement of the Australian Government in the activities, either directly or indirectly; and
- d) must not contain any other exclusionary clause or provision that has the effect of limiting or restricting the scope of the coverage of the insurance below the general scope required under this Agreement.

¹ Evidence of policy, in the form of a copy of the policy and a Certificate of Currency, stating the class of insurance as Professional Indemnity.

SCHEDULE 5 – DEED OF CONFIDENTIALITY

(see Clause 7.1)

SAMPLE

DEED POLL FOR THE ORGANISATION’S MANAGEMENT COMMITTEE/BOARD MEMBERS/ OFFICERS/EMPLOYEES/AGENTS/ VOLUNTEERS/SUBCONTRACTORS
(strike out as applicable) **HAVING ACCESS TO PERSONAL INFORMATION**

This Deed Poll of Confidentiality (“the Deed”) is made

By:
(Name)

Of:
(Organisation)

I, ‘the Confidant’, am (according to the definitions in the Funding Agreement):

- (a) a member of the Management Committee/Board of the Organisation; or
- (b) an officer, employee, agent, volunteer or subcontractor of the Organisation

(strike out as applicable)

Recitals

- a) I understand that the Organisation has entered into a Funding Agreement (“the Agreement”) with the Department of Immigration and Citizenship (“the Department”), acting for and on behalf of the Commonwealth, to undertake activities relating to the provision of Settlement Services to Migrants.
- b) I understand I may have access to the personal information created and held in connection with the Agreement. I understand that ‘personal information’ collected and recorded by a Commonwealth Department is subject to the Information Privacy Principles (IPPs) contained in Section 14 of the *Privacy Act 1988*.
- c) I undertake that in the performance of the Agreement with the Commonwealth, I will comply with the applicable IPPs, which I have read and understand.
- d) I understand that the Organisation has agreed to obtain this undertaking to observe the clauses relating to the protection of personal information contained in that Agreement, and to inform me here that failure to comply with such undertaking may be a criminal offence and may also lead the Organisation to take disciplinary action against me.

OPERATIVE PROVISIONS

1. Interpretation

1.1 Privacy Act

The Privacy Act refers to the *Privacy Act 1988 (Cth)* which can be accessed through the Office of the Federal Privacy Commissioner Australia website:

<http://www.privacy.gov.au/>

1.2 Definition of terms

For the purposes of this Deed, the terms 'agency', 'approved privacy code' (APC), 'Information Privacy Principles' (IPPs), 'National Privacy Principles' (NPPs) and 'sensitive information' have the same meaning as they have in Section 6 of the Privacy Act.

1.2.1 Definition of Personal Information

In accordance with Section 6 of the Privacy Act, 'personal information' is: information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about a person whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

1.3 Information Privacy Principles

The Information Privacy Principles (IPPs) form Section 14 of the *Privacy Act 1988 (Commonwealth)*. To view the IPPs, go to the following website:

<http://www.privacy.gov.au/publications/ipps.html>

2. Use of Personal Information

2.1 Application of this Clause

This *Clause 2* applies only where the Confidant deals with the personal information when, and for the purposes of, providing services in connection with the Agreement.

2.2 Use of personal information

The Confidant agrees:

- (a) for the purposes of this Deed to be subject to the obligations in the *Privacy Act 1988* ("**Privacy Act**") for a "contracted service provider" under a "Commonwealth contract";

- (b) to use or disclose personal information obtained during the course of providing services in connection with the Agreement, only for the purposes of providing services in connection with the Agreement;
- (c) not to do any act or engage in any practice that would breach an IPP contained in Section 14 of the Privacy Act, which if done or engaged in by an agency, would be a breach of that IPP;
- (d) to carry out and discharge the obligations contained in the IPPs as if it were an agency under the Privacy Act;
- (e) to notify individuals whose personal information the Confidant holds, that complaints about acts or practices of the Confidant may be investigated by the Privacy Commissioner who has power to award compensation against the Confidant in appropriate circumstances;
- (f) not to use or disclose personal information or engage in an act or practice that would breach Section 16F (direct marketing), a National Privacy Principle (NPP) or an Approved Privacy Code (APC) where that section, NPP or APC is applicable to the Confidant unless the act or practice is engaged in for the purpose of discharging, directly or indirectly, an obligation in the course of providing services in connection with the Agreement;
- (g) to disclose in writing to any person who asks, the content of the provisions of the Agreement (if any) that are inconsistent with an NPP or an APC binding a Party to the Agreement;
- (h) to immediately notify the agency if the Confidant becomes aware of a breach or possible breach of any of the obligations in, or referred to in, this *Clause 2*, whether by the Confidant or any subcontractor;
- (i) to comply with any directions by the agency or guidelines issued by the Privacy Commissioner with respect to the handling of personal information; and
- (j) that any third person who undertakes work on behalf of the Confidant who is required to deal with personal information for the purposes of the Agreement is made aware of the obligations of the Confidant set out in *this Clause 2*.

3. **Survival**

This Deed will survive the termination or expiry of the Agreement between the Organisation and the Department or the expiry of the Confidant's agency agreement, employment contract, subcontract with, or obligations to the Organisation.

4. **Signatory Undertaking as to Unauthorised Access, Use, Modification, Disclosure, Retention and Security of Personal Information**

I undertake:

- (a) not to access, use, modify, disclose or retain any personal information I acquire through the performance of my duties or responsibilities in relation to the Agreement; and
 - (b) in addition to any direction as to particular measures specified by my employer or the Department, I agree to take all reasonable measures to ensure that any personal information held in connection with the Agreement is protected against loss, unauthorised access, use, modification or disclosure and against other misuse.
-

5. **Conflict of Interest**

- (a) The Confidant warrants that before entering into this Deed it has disclosed to the Organisation all the past, current and anticipated interests of the Confidant which may conflict with or restrict the Confidant in performing services to the Department fairly and independently.
 - (b) The Confidant must not during the course of this Deed engage in any activity or obtain any interest likely to conflict with or restrict the Confidant in providing services to the Department fairly and independently and must immediately disclose to the Organisation such activity or interest.
-

6. **Criminal Sanctions for a Breach of Undertaking - Offences under the *Crimes Act 1914* (Commonwealth)**

I acknowledge that:

- (a) the publication or communication by the Organisation or associated personnel, including myself, of any fact or document which has come to knowledge or into possession or custody by virtue of the performance of the Agreement (other than to a person to whom the Organisation is authorised to publish or disclose the fact or document) may be an offence under section 70 of the *Crimes Act 1914*, punishment
-

for which may be a maximum of two (2) years' imprisonment;

- (b) (1) the communication of an official secret to a person other than a person to whom I am authorised to communicate it or a person to whom it is, in the interest of the Commonwealth, my duty to communicate it;
- (2) retaining an official secret when I have no right to retain it or when it is contrary to my duty to retain it;
- (3) failing to comply with a direction given by a lawful authority with respect to the retention or disposal of an official secret; or
- (4) failing to take reasonable care of an official secret or to ensure that it is not communicated to a person not authorised to receive it or so conducting myself as to endanger the safety of the official secret, may be an offence under section 79 of the Crimes Act, punishable by a maximum of two (2) years imprisonment.
-

7. Sanctions for a Breach of Undertaking - Disciplinary Matters

I acknowledge that failure to comply with this Deed may lead to disciplinary action, including dismissal without prejudice to any other rights which the Commonwealth may have under this Deed.

8. Return of Personal Information

Immediately upon the Organisation's request, the Confidant agrees:

- (a) in relation to Personal Information it holds in a hard copy form, to return all Personal Information, including copies, to the Organisation; and
- (b) in relation to Confidential Information it holds in an electronic form, to erase the Confidential Information and certify its erasure to the Organisation within 24 hours of the request being made by the Organisation.
-

Executed as a Deed Poll

Name of signatory

Signature

Date _____/_____/20____

In the presence of:

Name of witness

Signature of witness

SAMPLE

SCHEDULE 6 – RECOGNITION OF FUNDING

(see *Clause 11.3*)

ACKNOWLEDGEMENT OF FINANCIAL AND OTHER SUPPORT FROM THE AUSTRALIAN GOVERNMENT

In accordance with *Clause 11.3*, Organisations will appropriately recognise Settlement Grants Program grants received from the Australian Government in all publications, promotional and advertising materials, public announcements and activities by it or on its behalf in relation to the Settlement Services, or any products, processes or inventions developed as a result of the Settlement Services. **The funded Organisations will not use any Commonwealth and/or Department logos**, without prior written approval of the Department.

Any one of the following forms of words should be included:

- “This/The [name of activity/Organisation] received funding from the Australian Government / Department of Immigration and Citizenship under the Settlement Grants Program funding program.”
- “This/The [name of activity/Organisation] was funded by the Australian Government / Department of Immigration and Citizenship under the Settlement Grants Program funding program.”
- “This/The [name of activity/Organisation] was jointly funded by the Australian Government / Department of Immigration and Citizenship under the Settlement Grants Program funding program.”
- “This/The [name of activity/Organisation] received funding from, and the Australian Government / Department of Immigration and Citizenship under the Settlement Grants Program funding program.”
- “This/The [name of activity/Organisation] is supported by financial assistance from the Australian Government / Department of Immigration and Citizenship under the Settlement Grants Program funding program.”
- “This [name of activity/Organisation] is supported by funding from the Australian Government / Department of Immigration and Citizenship under the Settlement Grants Program funding program.”

SCHEDULE 7 – CONFIDENTIAL INFORMATION
(see *Clause 9.1.1*)

SAMPLE

[If there is only one new Funded Grant to an organisation, Grant Mangers need complete only one Schedule 8 (as in previous years) with one work program at Attachment A.

If there are two or more new Funded Grants to an organisation, the Grant Manager is to complete a separate Schedule 8 for each Funded Grant and including one work program for each Funded Grant. In these circumstances, Schedules are to be numbered Schedule 8A, Schedule 8B, Schedule 8C, etc.]

SCHEDULE 8

GRANT ID NUMBER xx/xxxx

**PROJECT TITLE AND PROJECT DESCRIPTION, APPROVED WORK ROGRAM(S),
CLIENT TARGETS, FUNDED AMOUNTAND ASSETS**
(see *Clause 1.4 and 1.11*)

Part a: Project Title and Project Description

The project title and project description from the 'letter of Funding Approval' will be included in the Work Program(s) and form part of Attachment A to this *Schedule 8*.

Part b: Approved Work Program

The Approved Work Program(s) will form Attachment A to *Schedule 8* once it is renegotiated and approved by the Grant Manager.

The Approved Work Program(s) must be attached to this Agreement.

Minister's Conditions (if applicable)

Part c: Target Area and Target Group

Target Area

The Organisation's Target Area for delivery of the Approved Work Program(s) includes the Settlement Regions of

(Specify target area(s)).

Target Group

The Organisation's Target Groups for delivery of the Approved Work Program(s) are *(specify target group(s)).*

Part d: Funded Term, Funded Amount and Funding Instalment

(a) Funded Term

The Agreement commences on the date when it is signed by the Department and, unless terminated earlier in accordance with *Clause 4*, will continue until 30 September in the year of the last Funding Instalment or the return of any Funded Amount under *Clause 1.5*, whichever is the later:

(b) Funded Grant – Grant ID Number xx/xxxx

The Funded Amount is:

\$... (*X Total Grant Funding Amount*), which is \$... (*X Total Funding excluding GST*)
GST exclusive. (*delete GST component if Organisation is not registered for GST and therefore GST gross-up not applicable*).

Subject to satisfactory performance of the Approved Work Program(s), the Funded Amount will be paid in Funding Instalments on the due dates as follows subject to *Clauses 1.5, 1.6 and 2.5* of this Agreement

(c) Funding Instalment – Grant ID Number xx/xxxx

Payment of Funding Instalments (inclusive of all sub-projects) will be due, subject to the terms of this Agreement, on the following dates:

[Grant Managers should delete years in the table below if not relevant to the grant]

| Funding Instalment Due Dates | Amount \$ | GST Amount \$ * [if applicable] | Total \$ (including GST) |
|-------------------------------------|------------------|--|-------------------------------------|
| 01/07/11 | | | |
| 15/10/11 | | | |
| 15/01/12 | | | |
| 15/04/12 | | | |
| Subtotal: | | | |
| 01/07/12 | | | |
| 15/10/12 | | | |
| 15/01/13 | | | |
| 15/04/13 | | | |
| Subtotal | | | |
| 01/07/13 | | | |
| 15/10/13 | | | |
| 15/01/14 | | | |
| 15/04/14 | | | |
| TOTAL: | | | |

Part e: Assets (see Clause 1.11)

(List any previously approved Assets covered by this Agreement and any previous Funding Agreement with DIAC).

You will for the Funded Term of this Agreement maintain an Asset table in the following form and containing the following information:

| Asset Number | Description of Asset | Creation, acquisition or total lease cost | Date, or future date of creation, acquisition or lease | Term of Lease | Location of Asset | Method of and date which Asset was written off or Disposed of |
|---------------------|-----------------------------|--|---|----------------------|--------------------------|--|
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |

APPROVED BUDGET 2011-12

GRANT ID XXXX

| APPROVED BUDGET | | | |
|---|---------------------|---------------------|---------------------|
| ITEM/ACTIVITIES | Sub-Project 1 \$ | Sub-Project 2 \$ | Sub-project 3 \$ |
| SGP Labour Costs | | | |
| Salaries/Wages: | | | |
| Salary On-costs (eg superannuation, leave loading) | | | |
| Training | | | |
| Recruitment | | | |
| Other Labour Costs | | | |
| Subtotal | | | |
| SGP Project Costs | | | |
| Travel (<i>excluding motor vehicle costs</i>) | | | |
| Immigration Assistance (including fees/salaries for migration agents) | | | |
| Marketing and Promotion | | | |
| Equipment (dedicated to project) | | | |
| Venue Hire | | | |
| Catering | | | |
| Other Project Costs (<i>specify</i>) | | | |
| Subtotal | | | |
| Organisational Costs | | | |
| Facilities (including rent, rates, maintenance) | | | |
| Utilities (including telephone) | | | |
| Motor Vehicle (including registration, petrol, maintenance) | | | |
| Office Expenses (eg stationery, postage) | | | |
| IT and Software | | | |
| Accounting, Auditing and Financial | | | |
| Insurance policies | | | |
| Other Organisation Costs (<i>specify</i>) | | | |
| Subtotal | | | |
| TOTAL | | | |

APPROVED WORK PROGRAM

GRANT ID XXXX

(see Clause 1.4)

Organisation Name:

SAMPLE