



Australian Government
**National Indigenous
Australians Agency**



NIAA

Submission Reference: **986DVJV**

Aboriginals Benefit Account (ABA) Open Grant Opportunity

Application Information

The ABA is a statutory special account established by the Aboriginal Land Rights (Northern Territory) Act 1976 (ALRA). The ABA receives and distributes monies from the Commonwealth based on the value of royalties generated from mining on Aboriginal land in the NT.

The ABA Open Grants provide funding for activities that address the objective of benefiting the lives of Aboriginal people living in the NT. ABA Open Grants fund activities, projects/services that are delivered in the NT and are for the benefit of Aboriginal people.

Please note: ABA grant funding may now be considered for multi-year projects, administrative costs, or wages component for non-ongoing employees and may now be used for multi-year projects and is no longer restricted to one-off projects.

Projects funded under subsection 64(4) of the ALRA should align with the objective and outcome/s of one of the four following categories:

- 1) Supporting Enterprises
- 2) Supporting Community
- 3) Supporting Culture, Language and Leadership
- 4) Supporting Land, Sea and Waters Management and Use.

The Australian Government has committed to increase funding to Indigenous organisations where grant funding aims to benefit Indigenous Australians.

For business/enterprise applications you must consult with IBA. This will provide an independent assessment of viability on your proposal. For applications relating to land acquisition, land management or agriculture you must consult with ILSC. This will provide an independent opinion on your proposal.

Proposed grant activities, projects or services should not be the responsibility of mainstream Government funding (although projects that are the responsibility of mainstream funding may be considered if that funding is not immediately or soon available). Such proposals may be considered where the budget may not be available in the short term.

Grant Round Administration

This grant round is being administered by the National Indigenous Australians Agency.

Closing Date/Time

Applications must be submitted by **11:59pm Australian Eastern Standard Time (AEST) Friday 30 June 2023**.

Making Sure Your Application is Saved

Upon exiting the form please ensure that you use the 'Save and Exit' button. The 'Continue' button should only be used as you intend to progress through the form. For your Application to be saved when exiting, you will need to click on:

- 'Save and Exit', and
- 'Confirm'.

You will know that your application is saved when you are taken from the current form process to the 'Form Saved' page.

Note that the 'Save and Exit' button will ask that you 'Confirm' that you wish to save the Application, which you must do to complete the save process. If this is not done, your Application will not be saved.

You can return to your Application with the data saved using the link on the 'Form Saved' page that says 'Click here to return to your form' and confirming your submission reference ID details.

Grant Opportunity Documents

Read all information in the Grant Opportunity Documents before completing this Application Form. The Grant Opportunity Documents are available on the <https://www.grants.gov.au/> (<https://www.grants.gov.au/>) and <https://www.niaa.gov.au/indigenous-affairs/grants-and-funding/> (<https://www.niaa.gov.au/indigenous-affairs/grants-and-funding/>) websites. Applications will be assessed using the process outlined in the Guidelines.

Application Help

Information about the Application process is available on the <https://www.grants.gov.au/> (<https://www.grants.gov.au/>) and <https://www.niaa.gov.au/indigenous-affairs/grants-and-funding/> (<https://www.niaa.gov.au/indigenous-affairs/grants-and-funding/>) websites.

Applicants must submit any questions relating to the Program or this Application process in writing to aba@official.niaa.gov.au (<mailto:aba@official.niaa.gov.au>). Applicants may submit these questions up until five business days prior to the Closing Time and Date. A response will be provided within five business days.

Applicants may direct any general enquiries, requests for technical help or support in using and/or submitting the Application Form by:

- Phone **1800354612**
- Email to aba@official.niaa.gov.au (<mailto:aba@official.niaa.gov.au>)

Attachment Limits

This Application Form allows users to attach files to support their application, where directed to do so. The maximum size for individual attachments is no larger than 2MB and the form will not accept individual attachments above this size. Please plan to modify your attachment files accordingly if necessary.

Accepted file types:

.bmp, .doc, .docx, .gif, .jpeg, .jpg, .msg, .pdf, .png, .pps, .ppt, .pptx, .txt, .xls, .xlsx, .xlsb, .xlsx.

Note: Compressed files, such as .zip, .rar, are not accepted and foreign characters should not be used in file names.

Sharing this Form

More than one person should not access this form at the same time. If this is done there is a risk that information entered in the form may be lost and not transferred upon submission. If you wish to share this form and access details, please ensure that only one user edits the form at any given time.

To avoid any issues with your submission, ensure each contributor has completed their updates, saved their changes and exited the form prior to another person accessing the same form.

Submission Reference ID

Each Application Form is allocated a unique Submission Reference ID. Each time this Application is accessed you will be required to use this Submission Reference ID.

Submitting Application Form

Once you have completed this Application Form, you must submit it electronically by using the submission section at the end of this form.

Please note: there may be short, scheduled outages to systems as part of regular information technology maintenance that may affect submission of this form. Notification of these outages will be on the website.

Following electronic submission, a message with your Submission Reference ID will appear on your screen. An email will be sent to the main email contact provided in the Application Form. A function is also available on the submission page to allow you to send a receipt email to the address of your choosing. Please save this email receipt for future reference and use it in all correspondence about this Application.

Note: Applications will be assessed using the process outlined in the Grant Opportunity Documents. Applicants will be notified of the grant funding outcome on completion of the assessment process.

National Relay Service (NRS)

The National Indigenous Australians Agency uses the NRS to ensure our contact numbers are accessible to people who are deaf or have a hearing or speech impairment. Please phone 133677 to access the NRS.

Australian Tax Office Reporting

The National Indigenous Australians Agency will need to report details of payments made to the Australian Taxation Office (ATO) as part of the taxable reporting obligations for government entities.

In general terms, the types of payments to be reported to the ATO are:

- Payments made for grants to entities with an Australian Business Number (ABN);
- Payments made for services.

If you receive a payment from the Department that meets the ATO criteria, it will be reported to the ATO as part of the *Taxable payments annual report*.

Further information is available on the [Australian Taxation Office \(http://www.ato.gov.au/\)](http://www.ato.gov.au/) website.

Privacy

The National Indigenous Australians Agency, supported by the Community Grants Hub, uses an integrated Smartform service assisted by the Department of Industry, Science, Energy and Resources on www.business.gov.au (<http://www.business.gov.au/>).

If you are providing information to access a non-Department of Industry, Science, Energy and Resources program, that information will not be accessed by Department of Industry, Science, Energy and Resources employees. The only exception to this is where Senior Analysts within the Department of Industry, Science, Energy and Resources require access to your information for the sole purpose of troubleshooting technical errors. Where this occurs Senior Analysts will only access the data with permission and at the request of client agencies.

The National Indigenous Australians Agency, supported by the Community Grants Hub, will be able to access the Application as part of the form support services.

By submitting the Application you acknowledge that the information provided in the Application may be shared with other Commonwealth and law enforcement agencies for the prevention and detection of fraud.

For more information about how the Department of Industry, Science, Energy and Resources protects your privacy and personal information, please see the Department of Industry, Science, Energy and Resources' [Privacy Policy \(https://www.business.gov.au/legal-notices/privacy\)](https://www.business.gov.au/legal-notices/privacy). The Community Grants Hub [Privacy Policy \(https://www.communitygrants.gov.au/privacy\)](https://www.communitygrants.gov.au/privacy) and [WCaG Accessibility \(https://www.communitygrants.gov.au/accessibility\)](https://www.communitygrants.gov.au/accessibility) Information and the National Indigenous Australians Agency [Privacy](#)

Policy (<https://www.niaa.gov.au/pmc/who-we-are/accountability-and-reporting/privacy-policy>) should also be read and understood.

Use of Information

Your Submission Reference is:

986DVJV

Please send yourself a link to this saved form by entering your email address below. This email will detail your Submission Reference, the date and time this application process will close, and a link to access your saved form.

If you have any questions relating to this Application phone 1800354612 or email aba@official.niaa.gov.au (mailto:aba@official.niaa.gov.au).

Your email address*

s47F @abccd.com.au

Confirm your email address*

s47F @abccd.com.au

Use of Information

The National Indigenous Australians Agency may use the information, other than personal information, provided in this Application Form to assist it to:

- comply with the Australian Government requirement to publish the details of all grant recipients on the GrantConnect website,
- inform staff negotiating and establishing Grant Agreements of risks and issues that need to be addressed in the Grant Agreement for that program, and/or
- inform future assessments for Applications.

All information including personal information provided in this Application may be shared with other Commonwealth and law enforcement agencies for the purpose of preventing and detecting fraud. This includes personal information of any third party provided in this Application.

You can only apply if you agree to the use of the information you provide in this form for the purposes listed above.

Check this box if you agree to the use of the information you provide in this Application Form.

I agree*

Existing Grant Recipient

Is the Applicant an existing Grant Recipient? *

You must respond to this question.

Select 'No' if the Applicant is not an existing recipient of a grant through the National Indigenous Australians Agency or Community Grants Hub.

Select 'Yes' if the Applicant is an existing recipient of a grant through the National Indigenous Australians Agency or Community Grants Hub. If yes is selected you then must enter your organisation ID number in the next field. The Applicant's organisation ID number should be entered as it appears on the Grant Agreement. After entering the organisation ID, click on the 'Search' button to validate the ID to bring back key organisation details for this Application. Should there be any issues with validation, a message will be returned to give a choice on actions to progress. If you require assistance, please call 1800354612.

Yes No

Applicant Details

Are you applying as a Trustee on behalf of a Trust? *

Note: The Trustee will enter into a Grant Agreement with the National Indigenous Australians Agency (should the applicant be successful).

Yes No

Does the Organisation have an Australian Business Number (ABN)? *

You must respond to this question. For further details refer to <http://www.abr.business.gov.au/> (<http://www.abr.business.gov.au/>).

Yes No

Enter your ABN into the Australian Business Number (ABN) field and click the Validate ABN button to retrieve your registration details.

Australian Business Number (ABN)*

46184296702

Enter the ABN Branch Number relevant to the Applicant's ABN, if applicable. This is limited to 3 digits.

ABN Branch Number

Note: If the details displayed are out of date or incorrect, please update them now via the Australian Business Register website (<https://www.abr.gov.au/>) then re-enter and validate the ABN.

Australian Company Number (ACN) / Australian Registered Body Number (ARBN)

Legal/registered entity name*

DJIGARDABA ENTERPRISE ABORIGINAL CORPORATION

If you have Business Names registered, you can select the relevant Business Name. If you have not registered your Business Name, you can either select "Same as Legal Entity" or "Other" in the "registered business name" field. If "Other" is selected, you will be asked to provide the Applicant's registered business name in another field that will become available.

Business name of the Applicant*

Same as Legal Entity

Date of registration of ABN

19 Jul 2002

Australian Business Register (ABR) provided Entity Type

Other Incorporated Entity

State

NT

Postcode

0886

GST Registered - Checkbox is ticked if the Applicant is GST Registered.

Registered as Charity - Checkbox is ticked if the Applicant is registered as a charity with the Australian Charities and Not-for-profit Commission (ACNC).

Does the Organisation have any of the following types of Incorporation Number: Australian Company Number (ACN), Australian Registered Business Number (ARBN), Registration Number, Indigenous Corporation Number (ICN), Incorporated Association Number (IAN)? *

Note:

An ACN (Australian Company Number) is a nine-digit number issued by the Australian Securities and Investments Commission (ASIC). It is a unique identifier purely for companies incorporated under the Corporations Act 2001 of the Commonwealth.

An ARBN (Australian Registered Body Number) is a nine-digit number issued by the Australian Securities and Investments Commission (ASIC). Some organisations can only conduct business in their 'home' state or territory. By becoming a registered Australian body, these organisations can trade throughout all states and territories within Australia.

A Registration Number is a form of Incorporation Number for a Cooperative that has been established and/or registered under the relevant legislation in the State or Territory in which they were formed.

An ICN (Indigenous Corporation Number) is a number issued by the Office of the Registrar of Indigenous Corporations under the Corporations (Aboriginal and Torres Strait Islander) Act 2006 – CATSI Act.

An IAN (Incorporated Association Number) is a number given to an Incorporated Association that has been incorporated or registered under the relevant incorporated associations legislation in the State or Territory in which they were formed.

Yes No

Enter the Incorporation Number/s. *

ACN	ARBN
<input type="text"/>	<input type="text"/>
ICN	Registration Number
<input type="text" value="4023"/>	<input type="text"/>
IAN	
<input type="text"/>	

What is the registered business address and main contact details of the Applicant?

The business address must be completed in full and not be a PO Box. For example: Level 1 Main Building 220 Business Street Canberra City ACT 2601

Note: the address fields accept the characters of A to Z, 0 to 9, () , . ' & - / \ @ , all other characters including carriage returns are not accepted.

Please note that if an Applicant selects 'Unable to validate' following an initial failed validation attempt, the National Indigenous Australians Agency will use this non-validated address for correspondence.

Floor / Building; Unit; Apartment

Red Lily Outstation

Street number, name and type*

Arnhem Highway

Suburb/Town*

JABIRU

State*

NT

Postcode*

0886

Address NOT Validated Unable to validate

Main Telephone*

s47F

Main email address*

deac.kakadu@gmail.com

Web address

What is the postal address of the Applicant?

The postal address must be completed in full. For example: Level 1 Main Building 220 Business Street Canberra City ACT 2601 Note: the address fields accept the characters of A to Z, 0 to 9, () . , ' & - / \ @ , all other characters including carriage returns are not accepted.

 Same as business address above

Floor / Building; Unit; Apartment

PO Box / Street number, name and type*

PO Box 106

Suburb/Town*

JABIRU

State*

NT

Postcode*

0886

What is the Applicant's financial email address for the receipt of National Indigenous Australians Agency payment advice should the Application be successful?

You must respond to this question. 350 character limit.

The email address must be entered in a valid format without spaces (eg. example@business.com.au).

Payment advice includes Recipient Created tax invoices (RCTIs).

Financial email address*

deac.kakadu@gmail.com

Does the Applicant operate as not-for-profit? *

For eligibility requirements, refer to the Guidelines.

For further details about not-for-profit organisations refer to the [Australian Tax Office website\(https://www.ato.gov.au/Non-profit/Getting-started/\)](https://www.ato.gov.au/Non-profit/Getting-started/).

You must respond to this question.

Select 'No' if the Applicant operates for profit.

Select 'Yes' if the Applicant operates as not-for-profit.

Yes No

Eligibility Requirements

What is the Applicant's entity type? *

For a list of eligible entity types, refer to the Guidelines.

If you are unsure about the Applicant's entity type, please seek professional advice (e.g. from your lawyer or accountant) or refer to the Australian Business Register website for further information.

You must respond to this question. Choose the entity type that is relevant to the Applicant from the list.

NOTE: Use the field's scroll-bar or the keyboard's down-arrow to view all available options.

Indigenous Corporation

Is the Applicant able to provide documentation to support the entity type? *

You must respond to this question. At least one attachment must be provided if the response to "Is the Applicant able to provide documentation to support the entity type?" was 'Yes'.

Select 'No' if the Applicant is not able to provide documentation to support the entity type.

Select 'Yes' if the Applicant is able to provide documentation to support the entity type. If 'Yes' is selected, click the 'Click to Upload' button to add the file in each attachment section and then click the 'Add Attachment' button to add sections for subsequent attachments. Note: the maximum size permitted per attachment file is 2mb and the overall form has the capacity to take 15MB of attachments in total. Once a file has been uploaded or an attachment section has been added, select the appropriate 'X' symbol button to delete.

NOTE: There is a maximum of 2 attachments for this question if the response is Yes.

Yes No

List of attachments (Note: Attach any relevant documentation. Mandatory to provide at least one document where it has been indicated that the Applicant is able to provide documentation to support their entity type.)

Attachment 1 *

File: Certificate of Incorporation Djigardaba Enterprise Aboriginal Corporation.pdf

Is this proposal a resubmission from a previous ABA grant funding round within the last 18 months? *

Select 'Yes' if the proposal was submitted in a previous ABA grant funding round in the last 18 months

Select 'No' if the proposal has not be submitted in a previous ABA grant funding round

Select 'Unknown' if you are unsure

Note: Any proposal resubmitted will be assessed in accordance with the assessment process outlined in the ABA Guidelines as part of a competitive round.

You must respond to this question.

Please select the most appropriate option.

- Yes
- No
- Unknown

Proposal Purpose *

Please identify which purpose your proposal falls under.

You must respond to this question.

Please select the most appropriate option.

- Business
- Land Acquisition or Management, Agricultural or Pastoral
- Other

Consultation with Appropriate Body *

Business proposals are required to consult with Indigenous Business Australia (IBA) and land acquisition or management or agricultural proposals are required to consult with the Indigenous Land and Sea Corporation (ILSC).

If you are required to consult with IBA or ILSC please outline the results of your consultation. You must also attach written correspondence from the IBA or ILSC in the following section of this application form.

If you are not required to consult with IBA or ILSC enter 'Not applicable'

You must respond to this question.

This field accepts the characters of A to Z, 0 to 9, () , . ' & - / \ @, other characters and formatting are not accepted.

Not applicable - Djigardaba Enterprise Aboriginal Corporation has been advised by Anastacia Ampt that due to a conflict of interest, DEAC does not need to consult with IBA.

(Limit: approx 150 words, 1000 characters)

Characters entered: 172

Land Tenure *

Does your proposal require a lease, licence or other interest in Aboriginal land?

If yes, please provide details of any application to a land council or other relevant body, and where this application is up to.

If No, enter 'Not Applicable'.

You must respond to this question.

This field accepts the characters of A to Z, 0 to 9, () , . ' & - / \ @ , other characters and formatting are not accepted.

Djigardaba Enterprise Aboriginal Corporation's business proposal is to purchase 48% of the Cooinda Lodge and Yellow Waters Cruise business from Gagadju Association Inc. There is existing tenure held by the Cooinda Lodge business by way of lease from the Commonwealth, which will be replaced by a lease from a new Land Trust when the Commonwealth freehold title is replaced with ALRA freehold title. The issue of the new title and new lease is understood to be imminent.

(Limit: approx 150 words, 1000 characters)

Characters entered: 469

Employees *

Please identify your current total number of employees.

You must respond to this question.

This field accepts numeric characters only.

0

Aboriginal and/or Torres Strait Islander Employees *

Please identify your current total number of employees that identify as Aboriginal and/or Torres Strait Islander.

You must respond to this question.

This field accepts numeric characters only.

0

Governance

Relevant Persons *

Has any senior official or person to be involved in delivering the Activity been involved in any of the following events in the last 5 years?

You must tick at least one of the boxes below.

You may be contacted to provide more information and documentation in relation to these events.

Governance Investigation of relevant person(s)

Any business failure of relevant person(s) including business failure of entities in which they hold, or held at the time of the event, a management or board position. Examples of a business failure include a Court Ordered or a Creditors Voluntary Administration Liquidation, External Administration, or Receivership

Bankruptcies of relevant person(s)

Bankruptcy proceedings, including part IX Debt Agreement or Part X Insolvency Agreements, against relevant person(s)

Litigation against relevant person(s) including judgement debts

or

None of the above apply and there is no adverse information on any relevant person associated with this entity.

Reportable Events *

Select the appropriate box(es) that relate to any events to which your entity may have been subjected in the last 5 years.

You must tick at least one of the boxes below.

You may be contacted to provide more information and documentation in relation to these events.

Governance Investigation of your organisation or related entities

Litigation or liquidation proceedings

A contract with your entity terminated by the other party

Contingent liabilities of a material amount

Overdue tax liabilities

Factors which might impact on your entity. For example, pending significant litigation, business commitments, collections by debt collection agencies on behalf of creditors, or potential liquidation proceedings.

Any significant change in your entity's financial position not reflected in the financial statements provided.

Any other particulars which are likely to adversely affect your capacity to undertake this project

or

None of the above events apply and there is no adverse information on my entity.

FOI/2324/050

Does the Applicant have the following documents? *

A 'Yes' or 'No' response to all sub questions on whether the Applicant is able to provide the following documents is Mandatory.

- Documented organisational and financial policies and procedures.
- Business plan and/or strategic plan.
- Risk management plan.

Note: You may be required to provide copies of the above documentation within 7 days upon request.

- | | | |
|---|--------------------------------------|-------------------------------------|
| 1. Documented organisational and financial policies and procedures. * | <input type="radio"/> Yes | <input checked="" type="radio"/> No |
| 2. Business plan and/or strategic plan. * | <input checked="" type="radio"/> Yes | <input type="radio"/> No |
| 3. Risk management plan. * | <input type="radio"/> Yes | <input checked="" type="radio"/> No |

Project/Activity Details

Provide a short title for this proposal. *

You must respond to this question. 250 character limit.

NOTE: This field accepts the characters of A to Z, 0 to 9, () . , ' & - / \ @, all other characters including carriage returns are not accepted.

Acquisition of 48 percent of the Gagadju Lodge Cooinda Hotel and Yellow Waters Cruise business in Kakadu National Park

(Limit: 250 characters)

Characters entered: 118

Provide a brief summary of the proposal. *

You must respond to this question. 1000 character limit (approximately 150 words). The character count includes letters, numbers, spaces, paragraph marks, bullet points etc.

NOTE: In this field, please only enter the characters of A to Z, 0 to 9, () . , ' & - / \ @. Other characters should not be entered as there is a risk of data corruption.

Question Instructions:

- The response should be easy to understand and written in plain English. Try not to use technical terms, acronyms, or lingo.
- Your response should be a stand-alone summary of your project, or explain how you will implement the services detailed in the Grant Opportunity Guidelines.
- The description may be used as part of our application review, and may be copied or published for reporting or grant agreement purposes.

Djigardaba Enterprise Aboriginal Corporation (DEAC) represents the Murumburr clan of the Cooinda region of Kakadu National Park. Since 2002, DEAC has aspired to own the Gagadju Cooinda Lodge and Yellow Water Boat Cruise for the benefit of the Murumburr clan members. DEAC has negotiated an acquisition price of \$1.2M for 48% of the Cooinda business operations from Gagadju Association Inc. DEAC is currently in negotiations with IBA for loan finance. It would be of great benefit to DEAC members if an ABA grant could fund the purchase of the business, associated due diligence, legal and consulting costs and 12 months of transitional administrative support. The purchase of the business would provide DEAC with an income stream to enable the provision of benevolent services to members, a ranger program, hospitality and tourism training and employment opportunities for Murumburr clan members.

(Limit: approx 150 words, 1,000 characters)

Characters entered: 898

In which service area/s is the Applicant proposing to deliver the Project/Activity? *

Instructions:

- The Service Area Type field below indicates the areas used in this Application form.
- If applicable, select a State to refine the available service area values.
- A list of values will appear in the Available service area/s for selection. Choose the appropriate value/s and click Add to insert the highlighted value/s into the Chosen service area/s. Repeat the process as required.

IMPORTANT NOTE:

The form only allow 40 service areas available for selection. If you wish to apply for more services areas, a separate form/s will need to be completed.

Tips:

- To choose multiple values to add at one time, use Shift+Left-Click to select a group of values, or use
- Ctrl+Left-Click to select a range of alternating values, and then click the Plus symbol.
- To delete from the 'chosen service area/s', highlight the value in the box on the right and click the Minus symbol.

Service Area/s

Northern Territory

Proposal Start Date *

What is the planned start date for the proposal?

You must respond to this question.

Use the calendar icon or type in the field using the format dd/m m/yyyy

16 Jan 2023

Proposal End Date *

What is the planned end date for the proposal?

You must respond to this question.

Use the calendar icon or type in the field using the format dd/m m/yyyy

30 Jun 2024

Aboriginal Employment Opportunities Created *

What is the total number of direct Aboriginal employment opportunities that will be created during the life of the funded project?

You must respond to this question.

This field accepts numeric characters only.

2

Longer Term Aboriginal Employment Opportunities *

What is the total number of longer term Aboriginal employment opportunities the proposal will provide?

You must respond to this question.

This field accepts numeric characters only.

30

ABA Category *

Identify the main category your proposal falls under.

You must respond to this question.

Please select the most appropriate option.

- Supporting Enterprises
- Supporting Community
- Supporting Culture, Language and Leadership
- Supporting Land, Sea and Waters Management and Use

Proposed Delivery Location *

Identify where in the Northern Territory your proposal will be delivered?

Note: If your proposal will be delivered in multiple locations estimate the breakdown of delivery per location.

You must respond to this question.

This field accepts the characters of A to Z, 0 to 9, () , ' & - / \ @ , other characters and for matted g are not accepted.

JABIRU NT 0886

(Limit: approx 15 words, 100 characters)

Characters entered:

14

Financial co-contribution

Please identify the financial contribution that will be provided by the applicant for this

proposal.

Express your answer as a single figure (grant total) GST excluded.

Note: the budget template you are required to complete should not include the financial contribution.

This field accepts numeric characters only.

Total cost of the proposal *

Express the total cost of the proposal in a single figure.

This figure should be the total ABA funding requested plus the financial co-contribution. The figure should be GST exclusive.

You must respond to this question.

This field accepts numeric characters only.

Financials

Provide a breakdown of the proposed grant funding by the chosen service area/s. *

You must complete a separate row for each chosen service area.

Please note that you must complete the "In which service area/s is the Applicant proposing to deliver the Activity?" question before you can commence this question.

	Amount(\$ exc GST)	Amount(\$ exc GST)	Amount(\$ exc GST)	Amount(\$ exc GST)	Amount(\$ exc GST)	Total funding	Approx.% of Total
Financial year	2021-2022	2022-2023	2023-2024	2024-2025	2025-2026		
Northern Territory	\$0.00	\$1,320,000.0	\$180,000.00	\$0.00	\$0.00	\$1,500,000.0	100
Total funding	\$0.00	\$1,320,000.0 0	\$180,000.00	\$0.00	\$0.00	\$1,500,000.0 0	

Provide bank account details for receipt of grant payments should the Application be successful. *

You must respond to this question.

Bank account details for the receipt of payments:

- BSB Number: Enter the BSB number for the Applicant's nominated bank account. Must be 6 digits only. Do not enter spaces or other

characters.

- Account Number: Enter the account number for the Applicant's nominated bank account. Must be 2 to 9 digits only. Do not enter spaces or other characters.
- Account Name: Enter the account name for the Applicant's nominated bank account. The account name should be as it appears on the bank statement. 60 character limit. The character count includes letters, numbers, spaces, paragraph marks, bullet points etc. NOTE: This field accepts the characters of A to Z, 0 to 9, () , . ' & - / \ @ , all other characters including carriage returns are not accepted.

BSB number*

s47G(1)(a)

Account number*

s47G(1)(a)

Account name*

s47G(1)(a)

Assessment Criteria

Criterion 1: Benefits to Aboriginal people in the NT *

To demonstrate this, you must address:

- What project category the grant activity is aligned to.
- What project category benefits will be delivered.
- How the grant activity will achieve benefits.
- Who will benefit.
- How the benefits will be measured and sustained over time.

Proposed efforts to:

- Provide Indigenous employment opportunities (in projects where employment will be generated).

AND/OR

- Include Indigenous organisations in your grant activity and broader supply chain (if you are not an Indigenous applicant).

You must respond to this question.

This field accepts the characters of A to Z, 0 to 9, () , . ' & - / \ @ , other characters and for matting are not accepted.

48% ownership of the Gagadju Cooinda hotel and Yellow Waters Boat Cruise business operations should provide DEAC with an annual income stream to enable the provision of benevolent programs for its members, commencing with the development of a health and aged care strategy, an education and training strategy, a housing strategy, a wellbeing and a youth strategy to address members needs and service delivery. In conjunction with the hotel management company that operates the Cooinda resort, DEAC will be able to provide, hospitality and tourism training as well as employment opportunities for Murumburr clan members in Hospitality, Tourism, Tour Guiding, retail, ground maintenance, housekeeping and land management. With a reliable income stream and the resulting capacity increase that DEAC will develop, DEAC will be able to work together with Parks Australia to conduct a weed and fire management program and feral animal control on the property and surrounding areas. Yellow Water billabong weed management (Salvinia) will be a major focus.

(Limit: approx 300 words, 2000 characters)

Characters entered:

1047

Criterion 2: The need for the proposed activity within an Aboriginal community or communities *

To demonstrate this, you must address and/or provide:

- Details of which key stakeholders (including the communities and individuals that will benefit) have been identified, consulted, can vouch for the need and are in support of the grant activity.
- Confirmation the grant activity is not the immediate responsibility of mainstream funding sources (you may need to provide evidence to confirm this).
- A statement or statistics that describe the relevant social conditions or circumstances the grant activity seeks to improve.
- The services or facilities that are currently available, if any, to improve these social conditions or circumstances.

You must respond to this question.

This field accepts the characters of A to Z, 0 to 9, () , . ' & - / \ @, other characters and formatting are not accepted.

Obtaining 48% ownership is an important step in the pursuit of 100% ownership of the land and infrastructure on which the Cooinda Lodge business operates which has been a dream held by local Murumburr clan members over generations. It will enable Murumburr clan members to have the financial and operational capacity to manage the land and water that they are culturally responsible for. Achieving this goal will provide much relief and happiness to senior Murumburr Traditional owners who have wished for this country to come back into their care all their lives. The grant activity is not the immediate responsibility of mainstream funding sources. The grant activity will provide economic independence to DEAC and enable the provision of benevolent programs to DEAC members, commencing with the development of a health and aged care strategy, an education and training strategy, a housing strategy, a wellbeing and a youth strategy to address members needs and service delivery. Currently there are none of these services or facilities available on the Murumburr clan estate. Local Aboriginal organisations in support of this activity are as follows: Gagadju Association Inc (GAI); Djigardaba Enterprises Aboriginal Corporation (DEAC)

(Limit: approx 300 words, 2000 characters)

Characters entered: 1238

Criterion 3: Capacity to deliver the proposed activity *

To demonstrate this, you must address:

- An outline or other evidence of your capacity to deliver this grant activity, including to manage and acquit the grant. Your experience successfully delivering a similar activity is good evidence.
- For corporations, an outline or other evidence of your governance arrangements.
- The key steps you will take to successfully implement this proposed activity, including experience in delivering a similar activity and whether staff have capacity.
- Evidence that the activity is viable and costed.
- Your identification of risks and how you will manage these risks.
- How you will monitor performance.

You must also ensure that:

- Indigenous Business Australia (IBA) reviews your proposal to provide advice on whether it is viable, with their comments included in your application (if yours is a business project).
- Indigenous Land and Sea Corporation (ILSC) reviews your proposal to provide advice on whether it considers your proposal is viable, with their comments included in your application (if your application is a land acquisition or agriculture project).

You must respond to this question.

This field accepts the characters of A to Z, 0 to 9, () , ' & - / \ @ , other characters and for matting are not accepted.

DEAC historically existed with no funding, just the goodwill and in-kind support of Murumburr members and volunteers. DEAC's capacity hitherto has been limited by its lack of funding. In the 2021 financial year, DEAC received funding from the Yellow Water levy entitlements that allowed the engagement of external legal and financial support to commence the negotiations with GAI regarding the purchase of its 48%. The DEAC board, chairman and secretary provide significant in-kind support to the organisation.

DEAC's acquisition of 48% of the Cooinda business will not impact on the actual ongoing operations of the Cooinda property or the Yellow Water cruises. IBA Investments holds 52% of KT (GLC) Pty Ltd the operating company. There is a hotel management agreement with Accor group to operate the hotel, service station, the Yellow Water cruises, the Warradjan Cultural centre concession and any other associated activities. The Cooinda business operations will continue to be run by the hotel management company who will report to the KT (GLC) Pty Ltd board who are business focused and hold the hotel management company to account on behalf of the shareholders DEAC and IBA.

The DEAC Board will not have any direct involvement in hotel business operations and will not deal directly with the hotel management company. The existing KT (GLC) Board will do that on their behalf and the DEAC representatives on the KT (GLC) board will report back to DEAC at their meetings.

The Board of Directors of KT (GLC) Pty Ltd will be made up of DEAC representatives, IBA representatives and business focused external Directors with legal, financial or hospitality and tourism experience.

The 48% acquisition of the Cooinda Lodge and associated tourism operations will provide DEAC with an income stream that should enable it to employ an operations manager who can liaise directly with the hotel management company and with both the KT (GLC) Pty Ltd and the DEAC board.

(Limit: approx 300 words, 2000 characters)

Characters entered: 1962

Additional Information

Organisational Membership/Ownership *

What percentage of the organisational membership/ownership identify as Indigenous Australians?

You must respond to this question.

Note: This field accepts numeric characters only. This number must be entered as a percentage.

For example, if your organisation has 3 Indigenous owners out of a total 10 owners, please enter '30'.

100

Organisational Board/Management Committee *

What percentage of the organisational board/management committee identify as Indigenous Australians?

You must respond to this question.

Note: This field accepts numeric characters only. This number must be entered as a percentage.

For example, if your organisation has 6 Indigenous board members out of a total 10 board members, please enter '60'

Business Plan/Project Management Plan *

Is your proposal a Business proposal over \$500,000? If yes, you must submit a business plan.

Is your proposal a Non-business proposals over \$500,000? If yes, you must submit a Project Management Plan.

You must respond to this question.

Note the 1.5mb limit per attachment. Multiple documents should be scanned into a single document. Compressed or zip files are not accepted. File names must be unique and not include foreign characters.

Yes

No

Provide attachment *

File: DEAC Strategic Plan 2023-2025 final approved 4Jun22.pdf

Quotes *

Does your proposal include the delivery of infrastructure or the purchase of good and services?

If yes, you must submit quotes that are no more than 12 months old.

You must respond to this question.

Note the 1.5mb limit per attachment. Multiple documents should be scanned into a single document. Compressed or zip files are not accepted. File names must be unique and not include foreign characters.

Yes

No

Provide attachment *

File: QUOTES for DEAC ABA application Sep 22.pdf

Consultation with Indigenous Business Australia (IBA)/Indigenous Land and Sea

Corporation (ILSC) *

Is your proposal a Business proposal? If yes, you must submit evidence of your consultation with IBA.

Is your proposal a Land Acquisition or Management, Agricultural or Pastoral proposal? If yes, you must submit evidence of your consultation with ILSC.

You must respond to this question.

Note the 1.5mb limit per attachment. Multiple documents should be scanned into a single document. Compressed or zip files are not accepted. File names must be unique and not include foreign characters.

Yes

No

Consortium Applications (including joint, partnership or auspice applications) *

Does the Applicant plan to deliver the Project/Activity as the lead organisation as part of a consortium?

You must respond to this question.

Please select the most appropriate option.

Yes

No

If the Application is successful, the Applicant will be offered a Grant Agreement as the lead agency and held liable for all obligations contained in the Grant Agreement's Terms and Conditions. This includes monitoring, management, financial performance, service outcomes and insurance coverage.

The panel of consortium members does not enter into a Grant Agreement. The Applicant should obtain agreement prior to submitting this Application.

Further evidence of the consortium arrangements may be sought from successful Applicants prior to the signing of the Grant Agreement.

Subcontractor Arrangements *

Does the Applicant plan to deliver the Project/Activity using subcontractors?

You must respond to this question.

Please select the most appropriate option.

Yes

No

If the Application is successful, the Applicant will be offered a Grant Agreement as the lead agency and held liable for all obligations contained in the Grant Agreement's Terms and Conditions. This includes monitoring, management, financial performance, service outcomes and insurance coverage.

Subcontractors do not enter into a Grant Agreement. The Applicant should obtain agreement prior to submitting this Application.

Further evidence of the subcontractor arrangements may be sought from successful Applicants prior to the signing of the Grant Agreement.

In-kind co-contribution *

Some applicants provide in-kind support for proposals, such as the provision of existing staff or equipment. Please provide details if your proposal will have any in-kind co-contribution. When providing the in-kind co-contribution, you can also provide an estimated value of the in-kind co-contribution.

Note: Any estimated value of in-kind co-contribution is not to be included in your response to your financial co-contribution.

You must respond to this question.

Please select the most appropriate option.

Yes No

Please provide details of these contributions. Please note that you may be requested to provide evidence before your Application is considered further in the assessment process.

Type of in kind support	Can this proposal proceed without this contribution?	Has support been secured?
<div style="border: 1px solid black; padding: 5px;">The DEAC board, chairman and secretary provide significant in-kind support to DEAC</div>	<input type="text" value="No"/>	<input type="text" value="Confirmed"/>

Other Funding *

Does the Activity rely on any contributions other than those requested in this Application (including commercial borrowings, donations and co-contributions)?

You must respond to this question.

Please select the most appropriate option.

Yes No

If Yes, provide details of other contributions which will be relied upon to complete this Activity.

Please note that you may be requested to provide letters of support or other forms of evidence before your Application is considered further in the assessment process.

Source of funding (List a maximum of 10)	Amount of funding (exc GST)	Can this proposal proceed without this funding?	Has funding been secured?
NTG ABDP Funding	\$27,273.00	Yes with chan...	Unconfirmed
Contribution from DEAC Traditional Owner members from Yellow Water Levy funds	\$100,000.00	No	Confirmed
Total funding	\$127,273.00		

Attachments

Bank Account *

Attach evidence of the applicant's bank account.

You must respond to this question.

Note the 1.5mb limit per attachment. Multiple documents should be scanned into a single document. Compressed or zip files are not accepted. File names must be unique and not include foreign characters.

File: 12 DEAC Bank Statement June 2021.pdf

Budget Template *

Please attach a copy of the proposed budget. A copy of the budget template is available on GrantConnect (search Aboriginals Benefit Account) or on the Aboriginals Benefit Account web page ([https://www.niaa.gov.au/resource-centre/indigenous-affairs/more-information-aba-grants\(https://www.niaa.gov.au/resource-centre/indigenous-affairs/more-information-aba-grants\)](https://www.niaa.gov.au/resource-centre/indigenous-affairs/more-information-aba-grants(https://www.niaa.gov.au/resource-centre/indigenous-affairs/more-information-aba-grants))).

Note: The budget should only reflect the total amount of ABA funding you are requesting. Do not include financial co-contributions into the budget template.

You must respond to this question.

Note the 1.5mb limit per attachment. Multiple documents should be scanned into a single document. Compressed or zip files are not accepted. File names must be unique and not include foreign characters.

File: DEAC Budget ABA Application Sep 2022.pdf

Consultation with Key Stakeholders (community/mainstream funding bodies)

Applications are greatly strengthened by letters of support from stakeholders such as those that will benefit from the proposal.

Applicants may also consider using letters from mainstream funding bodies to demonstrate that the proposal isn't the responsibility of the mainstream funding body.

Note the 1.5mb limit per attachment. Multiple documents should be scanned into a single document. Compressed or zip files are not accepted. File names must be unique and not include foreign characters.

File: DEAC Letters Minutes of Support ABA application Sep 22.pdf

Financial Viability

Applicants that do not have a current Funding Agreement with the Department must demonstrate financial viability. This may be provided through a mix of audited financial statements and/or evidence of viability (for example, a certified statement from an approved person).

If you have a Funding Agreement with the Department, you will not need to attach a document.

Note the 1.5mb limit per attachment. Multiple documents should be scanned into a single document. Compressed or zip files are not accepted. File names must be unique and not include foreign characters.

File: DEAC Financial Viability ABA Application Sep 22.pdf

Applicant Contacts

Who is the Applicant's preferred authorised contact person for this Application? *

The person must have authority to act on behalf of the Applicant in relation to this Application.

Title*

First name*

Last name*

Position*

Telephone*

Mobile

Email address*

s47F @gmail.com

Provide an alternate authorised contact for this Application. *

This person must also have authority to act on behalf of the Applicant in relation to this Application.

Title*

Miss

First name*

AYSHA

Last name*

ALDERSON

Position*

Director

Telephone*

s47F

Mobile

s47F

Email address*

deac.kakadu@gmail.com

Declaration

Do you have any actual, potential or perceived conflicts of interest related to or arising from submitting this application? *

NOTE: You must also notify the National Indigenous Australians Agency as soon as possible of any conflicts of interest that arise after submission of this application.

Yes No

Please read and complete the following declaration.

This Declaration must be signed by an authorised representative of the Applicant (or, if this Application is a joint/consortium Application, an authorised representative of the lead organisation). The authorised representative should be a person who is legally empowered to enter into contracts and commitments on behalf of the Applicant.

I declare that:

- The information contained in this form is true and correct.
- I have read, understood and agree to abide by the Guidelines.
- I have read, understood and agree to the Grant Terms and Conditions, should this Application be successful.
- I agree to receiving a Recipient Created Tax Invoice (RCTI) for this funding, if applicable, should this Application is successful.
- I have read, understood and agree to information provided in this Application as detailed in the Use of Information.
- If and where any personal details of a third party are included, the third party has been made aware of, and given their permission for those details to appear in this Application and for their personal information to be shared as detailed in the Use of Information.
- I give consent to the National Indigenous Australians Agency to make public the details of the Applicant and the funding received, should this Application be successful.

I understand and agree to the declaration above.*

I acknowledge that giving false or misleading information to the National Indigenous Australians Agency is a serious offence under Section

FOI/2324/050

137.1 of the Criminal Code Act 1995 (Cth).

Full name of Authorised Officer*

s47F

Position of Authorised Officer*

Consultant

Date

01 Sep 2022

Please provide an estimate of the time taken to complete this Application Form, including:

- actual time spent reading the guidelines, instructions and questions;
- time spent by all employees in collecting and providing the information and;
- time spent completing all questions in the Application Form.

Hours

Minutes

30

A copy of receipt will be sent to: deac.kakadu@gmail.com

Key Information		
Number of applications submitted this round		1
<p>Summary of Proposal: Djigardaba Enterprise Aboriginal Corporation (DEAC) represents the Murumburr Clan of the Cooina Region of Kakadu National Park. Since 2002, DEAC has aspired to own the Gagudju Cooina Lodge and Yellow Water Boat Cruise for the benefit of the Murumburr Clan members. DEAC has negotiated an acquisition price of \$1.2M for 48% of the Cooina business operations from Gagudju Association Inc . DEAC is currently in negotiations with IBA for loan finance. It would be of great benefit to DEAC members if an ABA grant could fund the purchase of the business, associated due diligence, legal and consulting costs and 12 months of transitional administrative support. The purchase of the business would provide DEAC with an income stream to enable the provision of benevolent services to members, a ranger program, hospitality and tourism training and employment opportunities for Murumburr Clan members.</p>		
Is this delivered with a Partner/Consortium Details: N/A		No
What percentage of the organisational membership/ownership identify as Indigenous Australian?		100%
What percentage of the organisations Board/Management committee identify as Indigenous Australians?		100%
Delivery Location/s: JABIRU		
Dates of proposed delivery	Start Date	16/01/2023
	End Date	30/06/2024
A. Grant funding requested (GST exc)		\$1,500,000
B. Financial contribution		\$100,000
C. Total cost of the proposal		\$1,600,000
D. In-kind contribution Details: The DEAC board, chairman and secretary provide significant in-kind support to DEAC.		
E. Requested costs that could be ineligible Details: N/A		\$0
Employment opportunities created	During project	2
	After project	30
Issues of eligibility with the Guidelines: There are no issues of eligibility.		
Consultation with IBA/ILSC		No

s47C

Has the proposal been previously reviewed by ABAAC?	No
---	----

Agency Position			
Position:	Endorsed	Amount Endorsed:	\$1,500,000

s47C

ADDITIONAL DETAIL

Key Information from Assessment		
Summary: No additional details.		
Additional Information		
Legal entity type	Indigenous Corporation	
Registered business address	Red Lily Outstation, Arnhem Highway, JABIRU NT 0886.	
Title of other ABA applications submitted this round	There are no other applications submitted in this round.	
Current non-ABA grants with NIAA	Amount	
N/A	\$0	
ABA Funding History		
Project Name	Date Approved	Amount
N/A	N/A	\$0
Issues with ABA funding	Details: N/A	
Applicant's response regarding the requirement of land tenure on the proposal	Djigardaba Enterprise Aboriginal Corporation's business proposal is to purchase 48% of the Coinda Lodge and Yellow Waters Cruise business from Gagadju Association Inc. There is existing tenure held by the Coinda Lodge business by way of lease from the Commonwealth, which will be replaced by a lease from a new Land Trust when the Commonwealth freehold title is replaced with ALRA freehold title. The issue of the new title and new lease is understood to be imminent.	
Consultation with IBA/ILSC	N/A – Applicant was advised by NIAA that due to a conflict of interest, it did not need to consult with IBA. If approved, a financial viability assessment will be undertaken before a funding agreement is negotiated.	
The applicant's current Indigenous employees	0	
Did the application declare any issues of financial viability or governance?	N/A	
ABA Funding Category	Supporting Enterprises	

FINANCIAL INFORMATION

A. Grant Funding Requested (GST exc)					
Description	2022/23	2023/24	2024/25	2025/26	2026/27
Purchase of Gagadju Association Incshares/units in Gagadju Lodge Cooinda	\$1,200,000	\$0	\$0	\$0	\$0
Financial, Administrative and HR Transitional Support	\$60,000	\$0	\$0	\$0	\$0
Legal, Due Diligence Transitional Support	\$60,000	\$0	\$0	\$0	\$0
Transitional Administrative Support - DEAC Operations Manager (Indigenous) Wages and On Costs	\$60,000	\$60,000	\$0	\$0	\$0
Transitional Administrative Support - DEAC Operations Trainee (Indigenous) Wages and On Costs	\$30,000	\$30,000	\$0	\$0	\$0
TOTAL	\$1,410,000	\$90,000	\$0	\$0	\$0
GRAND TOTAL	\$1,500,000				

B. Other Financial Contribution		
Contributor	Details of the Other Contribution/s	Funding Secured
NTG Aboriginal Business Development Program Funding	\$27,273	Unconfirmed

C. In-kind Contribution	
In Kind Type	Funding Secured
The DEAC board, chairman and secretary will provide in-kind support.	Confirmed

Issues with Budget
Summary of issues: There are no issues with the budget.

Quotes
Summary of quotes (i.e. Issues): There are no issues with quotes provided.

Attachments
Bank Details
Budget
Certificate of Incorporation Djigardaba Enterprise Aboriginal Corporation
IBA Financial Viability
DEAC Letters Minutes of Support ABA application Sep 22
QUOTES – business purchase and fees
Strategic Plan 2023-2025
Support Letter – s47F , CEO, Gagadju Association Inc



The Hon Linda Burney MP
Minister for Indigenous Australians

Reference: MS22-000532

Miss Louisa Bayne
 Secretary
 Djigardaba Enterprise Aboriginal Corporation
 s47F [REDACTED]@gmail.com

Dear Miss Bayne *Louisa*

I am writing to you in response to the Djigardaba Enterprise Aboriginal Corporation application for funding from the Aboriginals Benefit Account (ABA) under subsection 64(4) of the *Aboriginal Land Rights (Northern Territory) Act 1976*.

As the Minister for Indigenous Australians, I am the final decision maker in relation to any proposal funded from the ABA account for an ABA Beneficial Grant. In the instance of your application, I am pleased to inform you that I have directed the National Indigenous Australians Agency (NIAA) to negotiate funding conditions with Djigardaba Enterprise Aboriginal Corporation. In making my decision, I took into consideration the assessment undertaken by the NIAA and the advice provided by the Aboriginals Benefit Account Advisory Committee.

Please note that this is an in-principle agreement only and the project scope, budget and conditions remain to be agreed. Officials from the NIAA will contact you shortly to commence negotiations for your project:

- Acquisition of 48 % of the Gagadju Lodge Coinda Hotel and Yellow Waters Cruise business in Kakadu National Park

Once these negotiations have concluded, a delegate may consider entering into a Funding Agreement.

Should you require further information regarding your application or the funding negotiation process, please contact the ABA Section via email at aba@official.niaa.gov.au.

Yours sincerely

The Hon LINDA BURNEY MP
 Minister for Indigenous Australians

30 NOV 2022

s47F

From: s47F @official.niaa.gov.au>
Sent: Thursday, 25 May 2023 4:52 PM
To: s47F (Unclassified)
Cc: Arnhem Groote Agreements (Unclassified)
Subject: 13. RE: Potential out of scope ABA project - Djigardaba Enterprise Aboriginal Corporation [SEC=OFFICIAL]

OFFICIAL

Hi s47F,

Hope your meeting with LSB went well. Any chance of an update from your meeting? Is Djigardaba in scope of the GoGs?

Cheers,

s47F | Acting Director
Regional Strategies and Projects
Arnhem Land & Groote Eylandt Region | Central Group
National Indigenous Australians Agency
p. s47F m. s47F s47F @official.niaa.gov.au
Level 6 Jacana House, 39-41 Wood Street Darwin NT 0800 | PO Box 9932 DARWIN NT 0801
w. niaa.gov.au w. indigenous.gov.au





The National Indigenous Australians Agency acknowledges the traditional owners and custodians of country throughout Australia and acknowledges their continuing connection to land, waters and community. We pay our respects to the people, the cultures and the elders past, present and emerging.



From: s47F
Sent: Thursday, 18 May 2023 2:56 PM
To: s47F (Protected) s47F @niaa.gov.au; s47F @official.niaa.gov.au
Cc: Arnhem Groote Agreements <ArnhemGrooteAgreements@official.niaa.gov.au>
Subject: Potential out of scope ABA project - Djigardaba Enterprise Aboriginal Corporation [SEC=OFFICIAL]

OFFICIAL

Hi s47F and s47F,

Thanks to you both for your time yesterday.

I'm briefing my RM in preparation for a meeting with the GM.

s47F, after you have met with legals can you please give me an update on their advice re Djigardaba Enterprise Aboriginal Corporation and whether or not the approved project is in scope, and next steps?

Thanks in advance,

s47F | Assistant Director
Regional Strategies and Projects
Arnhem Land & Groote Eylandt Region | Central Group
National Indigenous Australians Agency
p. s47F m. s47F s47F @official.niaa.gov.au
Level 6 Jacana House, 39-41 Wood Street Darwin NT 0800 | PO Box 9932 DARWIN NT 0801
w. niaa.gov.au w. indigenous.gov.au





The National Indigenous Australians Agency acknowledges the traditional owners and custodians of country throughout Australia and acknowledges their continuing connection to land, waters and community. We pay our respects to the people, the cultures and the elders past, present and emerging.



NATIONAL INDIGENOUS AUSTRALIANS AGENCY

To: Regional Manager, Arnhem Land and Groote Eylandt

NIAA
Ms Bellenger
Mr
Wanganeen
Mr Dyer
Mr Hendry
Mr Maher

ABORIGINALS BENEFIT ACCOUNT (ABA) – APPROVAL TO COMMIT FUNDS AND AGREEMENT TO PROPOSED PROJECT SCHEDULE – DJIGARDABA ENTERPRISE ABORIGINAL CORPORATION FOR PART ACQUISITION OF KAKADU TOURISM (GLC) PTY LIMITED ACN 087 366 336 AND GAGUDJU LODGE COOINDA TRUST

Grants Policy
IASAMO

Recommendations - that you:

1. Sign the Approval for the Commitment of Relevant Money form at Attachment A to formally commit funding totalling \$1,500,000.00 (GST exclusive) for the ABA project Part Acquisition of Kakadu Tourism (GLC) Pty Limited (ACN 087 366 336) and Gagudju Lodge Coinda Trust to be delivered by Djigardaba Enterprise Aboriginal Corporation.

Signed / Not Signed

2. Agree to the proposed Project Schedule for this project at Attachment B, the Head Agreement at Attachment C, the Purposes Deed at Attachment D and the Specific Securities Deed at Attachment E.

Agreed / Not Agreed

3. Sign the letter at Attachment F to provide Djigardaba Enterprise Aboriginal Corporation with the Project Schedule for signature.

Signed / Not Signed

4. Note that, if you consider this matter should not proceed as proposed, on the basis that the grant proposal should not be approved, the matter must be referred to the Minister for determination, together with your reasons for proposing the grant be declined.

s47F

Noted

GERRIT WANGANEEN

Date: 11 December 2023

Comments:

Thank you.

Key Points:

1. On 30 November 2022, approval was given to negotiate funding conditions with Djigardaba Enterprise Aboriginal Corporation for a proposed grant from the ABA Special Account to the value of \$1,500,000.00 (GST exclusive) for the Acquisition of 48% of the Gagadju Lodge Coinda Hotel and Yellow Waters Cruise Business in Kakadu National Park (refer MS22-000532 at [Attachment G](#)).
2. The Agency has negotiated funding of \$1,500,000.00 with Djigardaba Enterprise Aboriginal Corporation and all specified conditions have been met.
3. The proposed Project Schedule at [Attachment B](#) has been developed reflecting the negotiated funding amount and conditions.
4. The Agency engaged an external lawyer to provide advice and assist in drafting the Project Schedule and Specific Security Deed. Their advice has been incorporated into the Project Schedule.
5. This legal advice included a requirement for Djigardaba Enterprise Aboriginal Corporation to provide signed but undated share and unit transfer forms prior to the Agency releasing funding for the acquisition. Promptly following completion of the acquisition, Djigardaba Enterprise Aboriginal Corporation must provide the Agency with:
 - a. The original share and unit certificates to be issued to Djigardaba Enterprise Aboriginal Corporation; and
 - b. Copies of the updated share and unit registers, showing Djigardaba Enterprise Aboriginal Corporation as the registered owner of the relevant securities.
6. The ARA rating determines the mandatory controls to be included in the grant agreement. The standard controls for a High risk activity include bi-annual payments tied to acceptable bi-annual performance reports, bi-annual site visits, a project budget incorporated into the grant agreement, and an annual audited grant expenditure report. These controls have been included in the Project Schedule.
7. The proposed Project Schedule provides for two payments;
 - a. The initial payment to be released within 20 days of all the following occurring:
 - i. Execution of the Project Agreement, Purposes Deed and Security Documentation; and
 - ii. Provision to the Agency of signed but undated share and unit transfer forms.
 - b. The final payment due to be released on the submission and acceptance of a satisfactory Performance Report by the Provider as per the Project Schedule.
8. This brief seeks your approval to formally commit the funds required for this project by signing the Approval to Commit Relevant Monies form provided at [Attachment A](#), your agreement to the proposed Project Schedule at [Attachment B](#), the proposed Head Agreement at [Attachment C](#), the Purposes Deed at [Attachment D](#), the Specific Securities Deed at [Attachment E](#), and your signature on the letter at [Attachment F](#) to provide these documents to Djigardaba Enterprise Aboriginal Corporation for signature.
9. You have authority under the NIAA Financial Delegations to approve the commitment of funds for the project and to execute the funding agreement when the documentation has been signed by Djigardaba Enterprise Aboriginal Corporation.

10. On return of the signed Project Schedule, Head Agreement, Purposes Deed and Security Deed, you will be approached to formally provide the grant funding approval for the project, and execute the funding agreement and Specific Security Deed. If Djigardaba Enterprise Aboriginal Corporation have provided the signed but undated share and unit transfer forms, you will also be approached to sign the first Direction to Debit the ABA for the project.

s47F
A/g ABA Surge Director
Central Group

Policy Officer: s47F
Phone no: s47F

08 December 2023

ATTACHMENTS

ATTACHMENT A APPROVAL TO COMMIT RELEVANT MONEY

ATTACHMENT B PROPOSED PROJECT SCHEDULE

ATTACHMENT C PROPOSED HEAD AGREEMENT

ATTACHMENT D PROPOSED PURPOSES DEED

ATTACHMENT E PROPOSED SECURITY DEED

ATTACHMENT F LETTER TO DJIGARDABA ENTERPRISE ABORIGINAL CORPORATION

ATTACHMENT G MS22-000532 - COPY OF APPROVAL TO NEGOTIATE BRIEF

NATIONAL INDIGENOUS AUSTRALIANS AGENCY

NIAA
Ms Bellenger
Mr Dyer
Mr King
Mr Hendry
Mr Qi

Grants Policy
IASAMO

To: A/g Regional Manager, Arnhem Land and Groote Eylandt Region

**ABORIGINALS BENEFIT ACCOUNT (ABA) FUNDING RECOMMENDATION:
DJIGARDABA ENTERPRISE ABORIGINAL CORPORATION FOR PART
ACQUISITION OF KAKADU TOURISM (GLC) PTY LIMITED ACN 087 366 366
AND GAGUDJU LODGE COOINDA TRUST**

Recommendations - that you:

1. Agree, as decision maker, you are aware of your obligations under the Commonwealth Grants Rules and Guidelines (CGRGs) and in the Obligations for Decision Makers under Relevant Legislation (ABA) document at Attachment A and are satisfied any agreed expenditure is a proper use of relevant money.

Agreed / ~~Not Agreed~~

2. Note the recommending officer has made reasonable enquiries and managed and/or disclosed any conflicts of interest in relation to this proposal and the applicant in accordance with relevant laws and policies.

Noted

3. Agree you have no conflicts of interest relating to the proposal and the applicant (or have declared any conflicts of interest in the box below).

Agreed / ~~Not Agreed~~

4. Approve funding Djigardaba Enterprise Aboriginal Corporation (ABN 46 184 296 702) for the total amount of \$1,500,000.00 (GST exclusive) from the ABA for 2023-24 and 2024-25 financial years for Part Acquisition of Kakadu Tourism (GLC) Pty Limited (ACN 087 366 366) and Gagudju Lodge Cooinda Trust as per the Project Schedule at Attachment B.

Approved / ~~Not Approved~~

5. Execute in wet ink the Provider wet ink executed copies of the Project Schedule, Head Agreement, Purposes Deed and the Specific Securities Deed. Scanned copies of these documents are at Attachment B, C, D and E.

Signed / ~~Not Signed~~

6. Note, Djigardaba Enterprise Aboriginal Corporation is not listed as ineligible to receive Australian Government grant funding in accordance with the *National Redress Scheme for Institutional Child Sexual Abuse Grant Connected Policy*.

Noted

7. Note that, if you consider this grant proposal should not be approved, the matter must be referred to the Minister for determination, together with your reasons for proposing the grant be declined.

Noted

s47F

DAVID KING

Date: 21 December 2023

Comments:

Key Points:

1. This brief seeks approval of funding from the ABA for Part Acquisition of Kakadu Tourism (GLC) Pty Limited (ACN 087 366 366) and Gagudju Lodge Cooinda Trust, which is an individual activity valued at \$1,500,000.00 (GST exclusive) with an Activity Risk Rating (ARA) of high. Under the [NIAA Decision Making Policy for Administered Funding \(Grants\) Operational Guidance](#) document you are authorised to approve ABA grant funding of up to \$2 million for an activity with a risk rating of up to high.
2. In the October 2022 ABA funding round, Djigardaba Enterprise Aboriginal Corporation applied for \$1,500,000.00 (GST exclusive) to acquire 48% of the Gagudju Lodge Cooinda Hotel and Yellow Waters Cruise Business in Kakadu National Park. The application was assessed against the ABA selection criteria under the [ABA Section 64\(4\) Beneficial Grant Guidelines](#) and recommended for funding by the ABA Advisory Committee.
3. On 30 November 2022, the Minister approved funding of \$1,500,000.00 (GST exclusive) and for the Agency to enter into negotiations with Djigardaba Enterprise Aboriginal Corporation (refer MS22-000532 at [Attachment F](#)).
4. The proposal represents value with relevant money because activity is achievable, viable, costed and well planned to deliver within the funding sought.
5. The Agency has negotiated funding of \$1,500,000.00 (GST exclusive) with Djigardaba Enterprise Aboriginal Corporation and all specified conditions have been met.
6. On 11 December 2023, Gerrit Wanganeen, Regional Manager, Arnhem Land and Groote Eylandt, approved the commitment of funding and agreed to the proposed Project Schedule for this project (refer EC23-001886 at [Attachment G](#)).
7. The scanned version of the Project Schedule, Head Agreement, Purposes Deed and the Specific Securities Deed have now been signed by Djigardaba Enterprise Aboriginal Corporation and returned and are provided at [Attachment B, C, D and E](#). Djigardaba Enterprise Aboriginal Corporation have requested to execute the original copies of the Project Schedule, Head Agreement, Purposes Deed and the Specific Security Deed which have been supplied to your office for wet ink signature. You have authority to do so under Item 8 of the *NIAA Financial Delegations*.
 - The Project Schedule provides for two milestone payments and a separate direction to debit will required for each one.
 - In addition to the signed Project Schedule, Head Agreement, Purposes Deed and Specific Securities Deed, the first payment is linked to provision to the Agency of a

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signed but undated share and unit transfer forms. Once the share and unit transfer forms are received, the delegate will be briefed to approve the Direction to Debit the ABA for the initial payment under the Project Schedule.

8. The legislative authority for this spending is section 64(4) of the *Aboriginal Land Rights (Northern Territory) Act 1976*. Further information, including Decision Makers' obligations under relevant legislation, can be found at Attachment A.
9. The proposal is a grant as defined by the Commonwealth Grant Rules and Guidelines (CGRGs) because it will assist the organisation to benefit Aboriginal people in the Northern Territory, which aligns with the objectives of the ABA.
10. As at 30 November 2023, there are funds available in the Aboriginals Benefit Account.
11. There is an opportunity for the Minister to announce this grant by means of a media release. Once acquisition is complete, there will be an opportunity to liaise with the Provider and NIAA Media to finalise a media release.

s47F
A/g Director
ABA Surge Team, Central Group

20 December 2023

Policy Officer: s47F
Phone no: s47F
Consultation: Grants Policy, Regional
Offices, ABA, Deed Room, Legal Services
Branch.

ATTACHMENTS

ATTACHMENT A OBLIGATIONS FOR DECISION MAKERS UNDER RELEVANT LEGISLATION (ABA)

ATTACHMENT B PROJECT SCHEDULE

ATTACHMENT C HEAD AGREEMENT

ATTACHMENT D PURPOSES DEED

ATTACHMENT E SPECIFIC SECURITIES DEED

ATTACHMENT F MS22-000532 APPROVAL TO NEGOTIATE BRIEF

ATTACHMENT G EC23-001886 DRAFT PROJECT SCHEDULE AND ATC BRIEF



Australian Government

National Indigenous Australians Agency

HEAD AGREEMENT FOR INDIGENOUS GRANTS

between

the Commonwealth of Australia as represented by the National Indigenous Australians Agency (ABN 30 429 895 164)

AND

Djigardaba Enterprise Aboriginal Corporation (ABN 46 184 296 702) and ICN 4023

Grant System Agreement number (System ID)	4-IZ4G8C4
Provider reference number (System ID)	4-HONN5AI

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Version 4: November 2021

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DETAILS AND AGREEMENT STRUCTURE**Term of Head Agreement**

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

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

Parties to the Head Agreement

Commonwealth	The Commonwealth of Australia as represented by the National Indigenous Australians Agency
ABN	ABN 30 429 895 164
Registered office	Charles Perkins House, 16 Bowes Place, Woden ACT 2606
Address for service of notices	39-41 Woods Street, Darwin NT 0800
Contact officer for Head Agreement	s47F Engagement Director
Telephone	s47F
Email	ArnhemGrooteAgreements@official.niaa.gov.au
Registered for GST?	Yes, and can provide recipient created tax invoices
The Provider	
Full legal name	Djigardaba Enterprise Aboriginal Corporation
Trading or business name	N/A
ABN	46 184 296 702
ACN or ICN	4023
Registered office (physical address)	Red Lily Outstation, Kakadu, JABIRU NT 0886
Address for service of notices (if different)	N/A
Contact person for Head Agreement	Louisa Bayne
Telephone	s47F
Email of contact person	deac.kakadu@gmail.com

Background

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

How this Head Agreement and the Project Schedules work

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

THE GRANT

Payment of Grant

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

Using the Grant

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

Tax and Invoices

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

DELIVERING THE PROJECT

Project to be delivered in accordance with Project Agreement

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

Consultation, cooperation and evaluation

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

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

Change proposals and delivering on Commonwealth priorities

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

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

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

25. If, at any time, the Provider:

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

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

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

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

Working with Vulnerable Persons and police and criminal history checks policy

29. Before engaging or deploying any person (whether an officer, employee, contractor, subcontractor, volunteer or in any other capacity) in relation to any part of a Project that may involve contact with a Vulnerable Person, the Provider must:
- a) confirm that no Commonwealth, State or Territory law prohibits the person from being engaged in a capacity where they may have contact with a Vulnerable Person;
 - b) conduct police checks for Personnel engaging in the Project, that involve Vulnerable People in the State and/or Territory where the Projects are being conducted; and
 - c) comply with all other legal requirements of the place where the Project, or part of the Project, is being conducted in relation to engaging or deploying persons in a capacity where they may have contact with Vulnerable Persons, including all necessary Working with Children Checks.
- 29A. If a police check or any other check conducted pursuant to clause 29 establishes that Personnel engaging in the Project has:
- (a) a Serious Offence record;
 - (b) pending charges for a Serious Offence; or
 - (c) is convicted of a Serious Offence during the Term,
- the Provider must not involve, or must cease involving, that person in activities which form part of the Project which involve contact with Vulnerable Persons, unless otherwise directed by the Commonwealth and must use its best endeavours to involve the relevant Personnel in suitable alternative aspects of the Project.
30. The Provider must in relation to a Project:
- (a) ensure compliance with all legal requirements in accordance with clause 29.b) remains current;
 - (b) immediately notify the Commonwealth if any person engaged or deployed that has or may have contact with a Vulnerable Person is prohibited from having contact with a Vulnerable Person and immediately ensure the person is no longer so engaged or deployed in accordance with clause 29A;
 - (c) complete a risk assessment to identify the level of contact with Vulnerable Persons and the level of risk of harm or abuse to Vulnerable Persons;
 - (d) develop and apply an appropriate risk management strategy in relation to working with Vulnerable People;
 - (e) deliver training and establish a compliance regime in relation to working with Vulnerable People; and
 - (f) comply with any additional policies or requirements relating to contact with Vulnerable Persons, police checks and criminal history checks, which the Commonwealth notifies to it from time to time.
31. The Provider must report to the Commonwealth:
- (a) on the Provider's compliance with clauses 29 and 30 annually by a date, and in such form as will be specified by the Commonwealth; and

(b) on any other matter relating to the Provider's work with Vulnerable People upon request by the Commonwealth.

31A. If the Provider does not comply with clauses 29 to 30, the Commonwealth may immediately terminate the Head Agreement and/or any Project Agreement under clauses 88 to 91 (**Termination or reduction in scope – for default**).

Subcontracting and assignment

32. The Provider is responsible for ensuring each Project is conducted in accordance with the relevant Project Agreement, including any tasks undertaken by subcontractors.
33. The Provider must not sell, transfer, assign or otherwise dispose of any of its rights or obligations under the Head Agreement or Project Agreement in whole or in part without prior written approval from the Commonwealth, and any approval will not relieve the Provider of its obligations and responsibilities of its obligations under the Head Agreement or Project Agreement.
- 33A. The Provider must not subcontract any aspect of a Project, including any Material Subcontractor, without the Commonwealth's prior written approval. The approval may be subject to conditions. Any subcontracting arrangements specified in a Project Schedule are approved for the purpose of this clause (subject to any conditions also set out in the Project Schedule).
34. The Provider acknowledges that the Commonwealth may publicly disclose the names of any subcontractors engaged for a Project, and the Provider agrees to inform all subcontractors of this and obtain the subcontractors' consent.
35. The Provider agrees to ensure that any subcontract entered into for the purpose of a Project Agreement is consistent with its obligations and the Commonwealth's rights under the Project Agreement. In particular, any subcontract must include clauses equivalent to clauses 29 to 31 (Vulnerable Persons), clauses 59 to 63 (access), clause 69 (removing Personnel), clauses 88 to 97 (termination), clauses 98 to 101 (insurance), clauses 102 to 103 (indemnities) and clauses (118 to 119C) (**Work health and safety**).
36. The Commonwealth may, on any reasonable ground, direct the Provider to remove a subcontractor or subcontractor Personnel from a Project. The Commonwealth will give written reasons for the removal. The Provider must, at its own cost, ensure the subcontractor or subcontractor Personnel cease all further involvement in the Project and arrange a replacement that is acceptable to the Commonwealth.
- 36A. The Commonwealth may approve any aspect of a Project under a Project Agreement being provided by one or more Material Subcontractors.
- 36B. A subcontractor will be a Material Subcontractor if, in the Commonwealth's reasonable opinion, the subcontractor:
- (a) performs a significant role in relation to the Project;
 - (b) performs any aspect of a Project that the Commonwealth considers to be material in nature;
 - (c) undertakes a significant proportion of a Project (including a significant proportion of a provider service area); or
 - (d) is essential to the Provider being able to provide the Project so as to meet the requirements of the Project Agreement.
- 36C. Before any aspect of a Project is performed by a Material Subcontractor, the Provider must:
- (a) provide the Commonwealth with the following information regarding each proposed Material Subcontractor;

- i) legal name, registration number and registration status;
 - ii) address and contact details;
 - iii) the scope of the proposed Project to be performed;
 - iv) the geographical location in which the proposed Project will be performed; and
 - v) any other information requested by the Commonwealth.
- (b) provide the Commonwealth with a Deed Poll, in the form set out in ANNEXURE 1 – FORM OF MATERIAL SUBCONTRACTOR DEED POLL or as otherwise agreed by the Commonwealth, which has been signed by the Material Subcontractor; and
- (c) obtain the Commonwealth's prior written approval for the use of the Material Subcontractor. Any entities described as Material Subcontractors in a Project Schedule have been approved by the Commonwealth.

36D. Where a Project Agreement requires the Provider to take an action or refrain from taking an action in relation to a Project, the Provider must ensure that a Material Subcontractor takes that action, or refrains from taking that action, so that it at all times complies with the Project Agreement when performing the Project.

Terms and conditions of Material Subcontracts

- 36E The Provider must enter into a Material Subcontract with each Material Subcontractor which contains terms acceptable to the Commonwealth. Every Material Subcontract must:
- (a) be in writing and validly executed by both parties;
 - (b) place obligations on the Material Subcontractor in respect of the Project to be provided by it that are equivalent to the Provider's obligations under the Project Agreement, and consistent with the Commonwealth's rights under the Project Agreement;
 - (c) include a right for the Provider to provide a copy of the Material Subcontract to the Commonwealth, if requested; and
 - (d) without limiting clause 36E(b), include the following contractual terms:
 - (i) the right for the Provider to terminate the Material Subcontract with immediate effect, and without penalty (to reflect the Commonwealth's ability to revoke approval of the Material Subcontractor under clause 36 (Removal of a subcontractor (including a Material Subcontractor)));
 - (ii) an agreement to comply with the requirements of the Head Agreement in relation to the provision of the Project which are the subject of the Material Subcontract;
 - (iii) an acknowledgement that the services provided under the Material Subcontract are ultimately being performed for the benefit of the Commonwealth;
 - (iv) an obligation for the Material Subcontractor to notify both the Commonwealth and the Provider within 7 days of the following occurring:
 - (A) the Material Subcontractor commits a material breach of any law of the Commonwealth, State or Territory or local government;
 - (B) the Material Subcontractor becomes aware that an act or omission of the Material Subcontractor is being investigated by any Commonwealth, State or Territory or local government body; or
 - (C) the Material Subcontractor is unable to pay all its debts as and when they become due and payable.

- 36F. The Provider must also notify the relevant law enforcement authorities where clause 36E(d)(iv)(A) applies.
- 36G. The Provider:
- (a) must promptly provide a copy of the Material Subcontract, and other relevant information about a Material Subcontractor, to the Commonwealth upon request;
 - (b) warrants that it has received express permission from the Material Subcontractor to disclose the Material Subcontract to the Commonwealth;
 - (c) must ensure the Material Subcontractor is financially viable, and has the necessary skills and appropriate insurance to perform the subcontracted Project;
 - (d) ensure that the Material Subcontractor is informed about all changes, and proposed changes, to the Head Agreement or Project Agreement which may affect the Material Subcontractor's obligations under its Material Subcontract or the Deed Poll;
 - (e) must not, without the Commonwealth's prior written approval:
 - i. cease using an approved Material Subcontractor to provide the Project or terminate any Material Subcontract with an approved Material Subcontractor in connection with a Project Agreement; or
 - ii. change the scope of the Project provided by a Material Subcontractor, or the geographical location for performance of those Project, which have been approved by the Commonwealth in relation to an approved Material Subcontractor.

Removal of a subcontractor (including a Material Subcontractor)

- 36H. The Commonwealth may, on any reasonable ground, revoke approval of a subcontractor (including a Material Subcontractor), at any time by giving written Notice to the Provider. The Commonwealth will give written reasons for the revocation. The Provider must, at its own cost, ensure the subcontractor and subcontractor Personnel cease all further involvement in the delivery of Project and arrange a replacement that is acceptable to the Commonwealth within the timeframes reasonably required by the Commonwealth.
- 36I. A failure to comply with the requirements of clause 36H in relation to a Material Subcontractor or Material Subcontract constitutes an event of default under the relevant Project Agreement, and constitutes an event or circumstance identified for the purposes of clause 89 (**Termination or reduction in scope – for default**).
- 36J. The rights and remedies of the Commonwealth under any Project Agreement against the Provider for any default in the Provider's obligations under the Project Agreement are not affected or in any way diminished by any legal relationship between the Commonwealth and any Material Subcontractor, including any legal relationship established by the execution and delivery of the Deed Poll referred to in clause 36C(b) (**Material Subcontractors**).

Restructuring of Material Subcontracting arrangements

- 36K. If at any time the Commonwealth or the Provider considers that it would be more desirable for the provision of the Project to be restructured, so that this Head Agreement and/or a Project Agreement is novated to a Material Subcontractor, and the Provider becomes a Material Subcontractor under that novated Head Agreement and/or Project Agreement, then:
- (a) that party must notify the other party;
 - (b) as soon as practical, the parties must meet and consider the proposed arrangements for such a novation and subcontracting arrangement;

- (c) the Provider must do all things necessary to facilitate the Material Subcontractor (and any other relevant subcontractors) being a part of those meetings and consideration; and
- (d) the parties must endeavour to reach agreement on any restructuring, and then promptly document and implement that agreement.

36L. For clarity, the parties undertaking (or failing to undertake) the process in clause 36K does not affect any other rights of a party under the Head Agreement or Project Agreement.

Key Personnel

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

Assets

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

47. On request, the Provider must give the Commonwealth evidence showing that it has complied with the requirements set out in clauses 40 to 46.

Complaints

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

REPORTING AND ACCESS

Reports

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

Access to premises and records

59. Subject to clause 60 and on written request, the Provider agrees to give the Commonwealth and/or its authorised representatives access to:

- (a) all premises being used to administer a Grant, or to deliver a Project; and
 - (b) all Material relating to the Head Agreement or a Project Agreement, including allowing copies of these items.
60. The access must be provided within 48 hours of the Provider receiving the request, or any shorter time set out in the request.
61. The Commonwealth may require immediate access where there are public health or safety concerns or in the circumstances listed in clause 62.
62. The Commonwealth and/or its authorised representatives may remove and retain any Material relevant to an investigation involving:
- (a) an actual or apprehended breach of the law;
 - (b) a breach of a Project Agreement; or
 - (c) fraud.
- This includes removing and retaining Material not related to a Project. The Commonwealth will return a copy of the Material within a reasonable period of time.
63. The Provider must also provide assistance and Material required by the Commonwealth to comply with any requests received by the Commonwealth under the Freedom of Information Act 1982 (Cth).

GOVERNANCE AND RISK MANAGEMENT

Strengthening Organisational Governance

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

Incorporation

- 68A. If the Provider is a body corporate it warrants that its constitution is not inconsistent with this Head Agreement or any Project Agreement and must provide a copy of its constitution to the Commonwealth upon request.
- 68B. If the Provider intends to amend its constitution or change its structure, management or operations in a way that could reasonably be expected to have an adverse effect on its ability to comply with the Project Agreement, the Provider must notify the Commonwealth as soon as possible.

68C. If the Provider alters its constitution, structure, management or operations in a way that the Commonwealth considers will affect the Provider's ability to comply with the Project Agreement, the Commonwealth may terminate the Head Agreement and/or any Project Agreement immediately under clause 88 (**Termination or reduction in scope – for default**).

Limits on employing certain persons

68D. Unless the Commonwealth has provided its prior written consent, the Provider must not employ, engage or elect any person to a role in its management, or financial administration, or to conduct the Project, if:

- (a) the person is an undischarged bankrupt;
- (b) there is in operation a composition, deed of arrangement or deed of assignment with the person's creditors under the law relating to bankruptcy;
- (c) the person has suffered final judgment for a debt and the judgment has not been satisfied;
- (d) subject to Part VIIC of the *Crimes Act 1914* (Cth), the person has been convicted of an offence within the meaning of section 85ZM(1) of the Act unless:
 - (i) that conviction is regarded as spent under section 85ZM(2) (taking into consideration the application of Division 4 of Part VIIC);
 - (ii) the person was granted a free and absolute pardon because the person was wrongly convicted of the offence; or
 - (iii) the person's conviction for the offence has been quashed;
- (e) the person is or was a director or a person who occupied an influential position in the management or financial administration of an organisation that had failed to comply with the terms of any agreement with the Commonwealth and where the failure gave the Commonwealth the right to terminate the agreement; or
- (f) the person is otherwise prohibited from being a member, director, employee or responsible officer of the Provider's organisation.

68E. The Provider must take reasonable steps to satisfy itself that clauses 68D(a) to 68D(f) do not apply to anyone it has employed, engaged or elected (or to anyone it intends to employ, engage or elect) to a role in its management, or financial administration, or to conduct the Project. The Provider must provide information to the Commonwealth about those steps upon request, together with evidence that those steps have been taken.

68F. Where a person who fails, or is discovered as failing, within clause 68D is employed, engaged or elected by the Provider in a role in management or financial administration, or to conduct the Project, the Provider must:

- (a) transfer the person to a position that does not have a role in management or financial administration; or
- (b) terminate the employment or engagement of the person or remove the person from office; and
- (c) immediately notify the Commonwealth of the action taken.

Removing Personnel

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

Risk management and performance

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

Grant controller

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

77. The Provider acknowledges that it remains fully responsible for delivering all Projects and performing its obligations under all Project Agreements, despite the appointment of a grant controller.
78. The Provider agrees that costs incurred by the Commonwealth in relation to a grant controller may be deducted from future payments under any Project Agreement, or must be borne by the Provider if the Commonwealth gives notice to that effect. The Provider acknowledges that the Commonwealth is not liable for any costs incurred by the Provider in relation to a grant controller.

WITHHOLDING, INCORRECTLY PAID OR SPENT, UNSPENT AMOUNTS AND BREACHES

Withholding

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

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

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

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

Unspent Grant amounts

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

Breach of Project Agreement

82. If the Provider breaches a term or condition of a Project Agreement, and the breach is capable of being remedied, the Commonwealth may give the Provider a notice requiring it to remedy the breach or to provide a remediation plan that is acceptable to the Commonwealth.
83. The Provider must comply with the notice and any accepted remediation plan, in the required timeframes and to the Commonwealth's reasonable satisfaction.
84. If the Provider does not comply with clause 83, or breaches a term or condition of a Project Agreement and the breach is incapable of being remedied, the Commonwealth may:

- (a) reduce or withhold one or all of the Grant payments for any Projects under the Project Agreement;
 - (b) reduce the total amount of any Grant payments for any Projects under the Project Agreement;
 - (c) impose additional conditions for any Projects under the Project Agreement, such as additional reporting requirements;
 - (d) reduce the scope of, or terminate, any Projects under the Project Agreement;
 - (e) either itself, or through a third party, take control or management of all or part of any Projects under the Project Agreement; and/or
 - (f) exercise termination rights under clauses 88 to 91.
85. The Commonwealth will exercise any rights under clause 84 reasonably taking into account the relevant breach.
86. The Provider must continue to deliver all Projects not affected by the exercise of a right under clause 84.
87. Where the Commonwealth takes action under clauses 71(d) or 84(e), the Provider agrees to provide sufficient assistance and cooperation to enable the relevant Projects to continue. This includes complying with any Commonwealth directions such as the novation of relevant third party contracts, assignment of leases, licences and consents, and transferring Agreement Material, to the Commonwealth or its nominee.

TERMINATION

Termination or reduction in scope - for default

88. In certain circumstances, the Commonwealth can immediately, by giving notice, do any one or more of the following:
- (a) terminate the Head Agreement;
 - (b) terminate a Project Agreement;
 - (c) reduce the scope of a Project Agreement;
 - (d) terminate a Project;
 - (e) reduce the scope of a Project,
- with effect on and from the date specified in the notice.
89. The circumstances that allow action under clause 88 are where the Commonwealth reasonably believes that the Provider has:
- (a) breached a term or condition of a Project Agreement and failed to remedy the breach in accordance with clauses 82 and 83;
 - (b) breached a term or condition of a Project Agreement and the breach is not capable of being remedied;
 - (c) failed to comply with clause 22 (consultation, cooperation and evaluation), clause 24 (change proposal and delivering on Commonwealth priorities), or clause 27 (good faith negotiation and implementing approved proposals), clauses 29 to 31 (Working with Vulnerable Persons and policy and criminal history checks policy), or clauses 68A to 68C (Incorporation);
 - (d) breached any law;

- (e) become bankrupt or insolvent, entered into a creditors scheme of arrangement, or come under any form of external administration;
- (f) become unable to pay its debts as and when they fall due;
- (g) had a change in any person/s who directly exercise effective control over the Provider or are involved in the management of the Provider, which the Commonwealth reasonably believes will negatively affect the Provider's ability to comply with one or more Project Agreements;
- (h) provided false or misleading statements, or incorrect information; or
- (i) any other circumstances identified in a Project Agreement for the purpose of this clause.

90. Where the Commonwealth takes action under clause 88 to terminate or reduce scope:

- (a) it is not liable to make any further Grant payments in relation to any terminated Projects, Project Agreements or reduced scope;
- (b) it can take action under clause 91 in relation to any amount that was not spent in accordance with the relevant Project Agreement, or has not been spent or legally committed as a current liability as at the date the Provider receives the notice under clause 88; and
- (c) the Provider must continue to deliver all Projects not affected by the termination or reduction in scope.

91. Where the circumstances set out in clause 90(b) apply, the Commonwealth may by notice:

- (a) direct the Provider to spend the relevant amount for a purpose specified by the Commonwealth;
- (b) reduce a Grant payment under that or any other Project Agreement, up to the relevant amount; or
- (c) require the Provider to repay an amount up to the relevant amount, by the date specified in the notice.

Termination or reduction in scope – with costs

92. Even though the Provider is not in default, the Commonwealth may terminate or reduce the scope of this Head Agreement, or one or more Projects or Project Agreements, at any time by notice.

93. The Commonwealth may also reduce Grant amounts payable under the relevant Project Agreement, proportionate to any reduction in scope.

94. On receipt of a notice under clause 92, the Provider will:

- (a) stop performing obligations in accordance with the notice and comply with any other reasonable directions in the notice; and
- (b) take all reasonable steps to minimise loss resulting from the termination or reduction in scope.

95. If the Commonwealth terminates or reduces scope under clause 92, it will only be liable for:

- (a) Grant amounts due to the Provider for the affected Projects at the date of the notice; and
- (b) reimbursement of the Provider's reasonable unavoidable costs incurred as a direct result of the termination or reduction and which are not covered by (a).

96. The Commonwealth's liability to pay under clause 95 is capped to the amount which, when added to Grant payments already made to the Provider for the affected Projects, equals the total amount payable for the affected Projects (taking into account any reduction under clause 93).

97. The Commonwealth is not liable for any other amount, including compensation for lost prospective profits or benefits to the Provider.

INSURANCE AND INDEMNITIES

Insurance

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

Indemnities

102. The Provider indemnifies the Commonwealth against any claim, loss or damage arising in connection with:
- (a) its delivery of a Project or the performance of its obligations under a Project Agreement; and
 - (b) the Commonwealth's permitted use of Agreement Material and Existing Material.
103. The Provider's obligation to indemnify the Commonwealth will reduce proportionally to the extent any act or omission involving fault on the part of the Commonwealth contributed to the claim, loss or damage.

OTHER MATTERS

Intellectual property

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

Media events and acknowledgement of Commonwealth support

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

Privacy

111. When dealing with Personal Information in carrying out a Project, the Provider agrees:

- (a) not to do anything which, if done by the Commonwealth, would be a breach of the requirements of Division 2 of Part III of the Privacy Act 1988 (Cth); and
- (b) to comply with any relevant Commonwealth policies issued from time to time.

Confidentiality

112. The parties will not disclose each other's Confidential Information without prior written consent of the party whose information is to be disclosed.

113. A party will not breach clause 112 to the extent that the Confidential Information is:

- (a) disclosed by a party to its Personnel solely for the purpose of this Head Agreement or a Project Agreement, or to manage, evaluate, or audit a Project or Project Agreement;
- (b) disclosed by the Commonwealth to another Commonwealth agency, the responsible Minister or in response to a request by a House or Committee of the Parliament of the Commonwealth of Australia;
- (c) authorised or required to be disclosed by law or, in the case of the Commonwealth, Commonwealth policy;
- (d) in the public domain otherwise than due to a breach of clause 112.

114. The Commonwealth confirms that, subject to clause 115:

- (a) nothing in this Head Agreement is intended to restrict or prevent the Provider from engaging in public debate on any Commonwealth law, practice or policy;
- (b) the Provider does not need the Commonwealth's prior approval to be involved in the action referred to in (a).

115. Despite clause 114, the Provider must comply at all times with its obligations under this Head Agreement or a Project Agreement to not disclose Personal Information or confidential information as defined in the Not-for-Profit Sector Freedom to Advocate Act 2013 (Cth).

Record keeping

116. The Provider must keep full and accurate records relating to the Head Agreement and all Project Agreements, including records relating to Project delivery and Grant expenditure.

117. The Provider must maintain those records for each Project Agreement for 12 years after the Project Agreement End Date or longer period required by legislation. For the avoidance of doubt, such records may be kept in electronic form, provided that such documents are:

- (a) securely stored in accordance with best industry practice and in a manner that ensures safety from destruction or loss, and retains confidentiality;
- (b) immediately accessible or retrievable on request or as required by the Commonwealth; and
- (c) backed up and copied in accordance with best industry practice.

Work health and safety

118. The Provider must:

- (a) ensure that appropriate work health and safety policies and procedures are in place at any premises, facilities or other locations that it is using to deliver a Project; and
- (b) provide any information about the Project requested by the Commonwealth in relation to work health and safety.

118A. Before commencing each Project activity, the Provider must prepare a specific work health and safety plan for the activity, which at a minimum identifies risks associated with the activity, assesses

those risks, and includes detail on how those risks are to be managed. All work health and safety plans must be consistent with applicable Commonwealth, State or Territory work health and safety laws, and any work health and safety requirements of the Commonwealth, a State, Territory or a local government.

118B. The Provider must make available to Personnel the equipment necessary to perform the Project activities.

118C. Where particular training or qualifications are required to perform a Project activity, the Provider must ensure that the Personnel who are to perform the activity have undertaken the training or have the qualifications.

119. If the Provider is using premises or facilities that are owned or controlled by the Commonwealth, it agrees to:

- (a) communicate, consult and coordinate with the Commonwealth in relation to health and safety matters arising from that use, in accordance with the WHS Act; and
- (b) comply with all reasonable directions and procedures issued by the Commonwealth about work health and safety, and all security procedures for the premises or facility, which are notified by the Commonwealth from time to time, or that can be reasonably inferred from the Provider's use of the premises or facilities.

119A. Where a Notifiable Incident arises in connection with the Project, the Provider must give to the Commonwealth:

- (a) notice of such incident and a copy of any written notice provided to the Regulator, as soon as possible but not later than 2 days after the Notifiable Incident has occurred; and
- (b) a report detailing the circumstances of the incident, the results of investigations into its cause, and any recommendations or strategies for prevention in the future, within 10 days.

119B. The Provider must cooperate with any investigation undertaken by the Commonwealth concerning any Notifiable Incident, or breach or alleged breach of the WHS Laws, or any audit of work health and safety performance, arising in respect of the Project.

119C. In carrying out its obligations under a Project Agreement, the Provider must:

- (a) for the purposes of clause 120(a), comply with any applicable Commonwealth, State or Territory work health and safety laws, and any work health and safety requirements of the Commonwealth, a State, a Territory or a local government; and
- (b) for the purposes of clause 120(b), comply with any Commonwealth work health and safety policies and guidelines notified to it by the Commonwealth from time to time in relation to the Provider's use of Commonwealth owned or controlled premises or facilities.

119D. The Provider must report to the Commonwealth on the Provider's compliance with clauses 118 to 119C annually by a date, and in such form, as will be specified by the Commonwealth.

119E. If the Provider does not comply with clauses 118 to 119D, the Commonwealth may immediately terminate the Head Agreement and/or any Project Agreement under clauses 82 to 91 (**Breach of Project Agreement and Termination or reduction in scope – for default**).

119F. To the extent permitted by law, the Commonwealth is not liable to the Provider for any loss or damage suffered in connection with the work health and safety of its Personnel.

Commonwealth policies and laws

120. In carrying out its obligations under a Project Agreement, the Provider agrees to comply with:

- (a) any applicable laws and requirements of the Commonwealth, or a State, Territory or local government, including maintaining all qualifications, permits, registrations and licences required for the lawful delivery of the Project; and
- (b) any relevant Commonwealth policies and guidelines notified to it by the Commonwealth from time to time.

Compliance with Criminal Code

121. The Provider will advise its Personnel that they may be Commonwealth public officials for the purpose of Division 142 of the Criminal Code and that Chapter 7 of the Criminal Code provides offences which attract substantial penalties, including for theft of Commonwealth property and other property offences, obtaining property or financial advantage by deception, offences involving fraudulent conduct, bribery, forgery and falsification of documents and acting with the intention to dishonestly obtain a benefit for any person is punishable by penalties including imprisonment.
122. The Provider also acknowledges that giving false or misleading information to the Commonwealth is an offence punishable by imprisonment under section 137.1 of the Criminal Code.

Dispute resolution

123. A party will not initiate legal proceedings against the other in relation to a dispute unless they have:
- (a) used reasonable endeavours to resolve the dispute by negotiation, and failed; and
 - (b) given the other party 20 business days notice of their intention to initiate legal proceedings.
124. The Provider must continue to perform its obligations under all Project Agreements despite any dispute.
125. The procedure for dispute resolution does not apply to action relating to termination, reduction in scope or urgent litigation.

Debt and interest

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

Transition

131. The parties acknowledge that a smooth transition from one project or provider to another is essential to achieving real outcomes for the relevant Indigenous community.
132. The Provider agrees to give reasonable assistance and cooperation to other providers or other interested parties to ensure a smooth transition at the beginning and end of each Project, and upon expiry or termination of a Project Agreement.

133. The Provider agrees to comply with all reasonable directions issued by the Commonwealth relating to transition (including requiring the Provider to transfer equipment or Assets to another provider).

Notices

134. A party giving notice under this Head Agreement or a Project Agreement must do so in writing. A notice is taken to have been received:

- (a) if delivered by hand – upon delivery to the relevant address;
- (b) if sent by pre-paid post – 5 business days after the date of posting to the relevant address;
- (c) if sent by facsimile transmission – upon receipt by the sender of a facsimile confirmation receipt; and
- (d) if sent by email – at the time of receipt under section 14A of the Electronic Transactions Act 1999 (Cth) as if the notice was being given under a law of the Commonwealth.

135. Notices under this Head Agreement (only) should be given using the contact details at the front of this Head Agreement. Notices under a Project Agreement should be given using the contact details for the relevant Project set out in the Project Schedule. The parties must inform each other as soon as practicable if the contact details change.

Relationship between the Parties

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

Conflict of interest

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

138. The Provider must keep a conflict of interest register that includes the action taken to resolve the conflict and the outcome of that action.

Variation

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

Survival

140. The following clauses survive termination or expiry:

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

Limitation of rights

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

Jurisdiction

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

DEFINITIONS

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

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

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

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

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

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

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

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

Confidential Information means:

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

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

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

Grant means:

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

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

Indigenous Grants means all funding and grants payable to the Provider and which are administered by the National Indigenous Australians Agency.

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

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

Intellectual Property Rights means all copyright, patents, registered and unregistered trademarks (including service marks), registered designs, and other rights resulting from intellectual activity (other than moral rights under the *Copyright Act 1968 (Cth)*).

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

Material includes documents, equipment, software (including source code and object code versions), goods, information and data stored by any means including all copies and extracts of them, but does not include Secret and Sacred Material.

Material Subcontractor means a subcontractor approved by the Commonwealth in accordance with clause 36A of the Head Agreement.

Notifiable Incident has the meaning given in the WHS Act.

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

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

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

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

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

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

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

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

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

Provider includes, where relevant, its Personnel.

Regulator means the person who is the regulator or corresponding regulator within the meaning of the WHS Act.

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

Serious Offence means a serious offence against a law of the Commonwealth, a State or a Territory as defined in the *Criminal Code Act 1995 (Cth)*.

Vulnerable Person means:

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

WHS Act means the *Work Health and Safety Act 2011* (Cth) any corresponding WHS Law within the meaning of section 4 of that Act.

WHS Laws means the WHS Act and WHS Regulations .

WHS Regulations means regulations made under a WHS Act.

Working with Children Check means the process in place pursuant to legislation relating to screening a person for their fitness to work with Children.

EXECUTION PAGE

Executed as a Deed

Commonwealth:

SIGNED, SEALED and DELIVERED for and on behalf of the Commonwealth of Australia as represented by the National Indigenous Australians Agency by:

s47F

(Name of Commonwealth Representative)

Acting Regional Manager
(Position of Commonwealth Representative)

s47F

(Signature of Commonwealth Representative)

21.11.2023

s47F

(Name of Witness in full)

s47F

(Signature of Witness)

21.11.2023

Provider:

EXECUTED and DELIVERED BY Djigardaba Enterprise Aboriginal Corporation in accordance with section 99.5 of the Corporations (Aboriginal And Torres Strait Islander) Act 2006:

Louisa Bayne
Print Name of Director

s47F

Signature of Director

18.12.23

Aysha Alderson
Print Name of Director

s47F

Signature of Director

18.12.23

Notes about the signature block:

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