



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

[A_LegalName_L52] (ABN [A_OrgABN_L3]) and ACN/ICN [xx]

Grant System Agreement number (System ID)	[Agreement ID]
Provider reference number (System ID)	[Agreement Org ID]

© Commonwealth of Australia 2015

This work is licenced under a Creative Commons Attribution Non-commercial No Derivative Works licence (CC BY-NC-ND), the full terms of which are available at: <http://creativecommons.org/licenses/by-nc-nd/3.0/au/legalcode>.

Requests for other licence rights to this work should be directed to the National Indigenous Australians Agency.

Version: August 2020

TABLE OF CONTENTS

DETAILS AND AGREEMENT STRUCTURE	4
TERM OF HEAD AGREEMENT	4
PARTIES TO THE HEAD AGREEMENT	4
BACKGROUND	5
HOW THIS HEAD AGREEMENT AND THE PROJECT SCHEDULES WORK	5
THE GRANT	6
PAYMENT OF GRANT	6
USING THE GRANT	6
TAX AND INVOICES	6
DELIVERING THE PROJECT	6
PROJECT TO BE DELIVERED IN ACCORDANCE WITH PROJECT AGREEMENT	6
CONSULTATION, COOPERATION AND EVALUATION	6
CHANGE PROPOSALS AND DELIVERING ON COMMONWEALTH PRIORITIES.....	7
WORKING WITH VULNERABLE PERSONS AND POLICE AND CRIMINAL HISTORY CHECKS POLICY	8
SUBCONTRACTING AND ASSIGNMENT	9
TERMS AND CONDITIONS OF MATERIAL SUBCONTRACTS	10
REMOVAL OF A SUBCONTRACTOR (INCLUDING A MATERIAL SUBCONTRACTOR).....	11
RESTRUCTURING OF MATERIAL SUBCONTRACTING ARRANGEMENTS.....	11
KEY PERSONNEL	12
ASSETS	12
COMPLAINTS.....	13
REPORTING AND ACCESS.....	13
REPORTS	13
ACCESS TO PREMISES AND RECORDS	13
GOVERNANCE AND RISK MANAGEMENT	14
STRENGTHENING ORGANISATIONAL GOVERNANCE	14
REMOVING PERSONNEL	15
RISK MANAGEMENT AND PERFORMANCE	16
GRANT CONTROLLER.....	16
WITHHOLDING, INCORRECTLY PAID OR SPENT, UNSPENT AMOUNTS AND BREACHES	17
WITHHOLDING	17
PROVIDER NOT ENTITLED TO AMOUNT OR AMOUNT NOT SPENT IN ACCORDANCE WITH A PROJECT AGREEMENT	17
UNSPENT GRANT AMOUNTS.....	17
BREACH OF PROJECT AGREEMENT	17
TERMINATION	18
TERMINATION OR REDUCTION IN SCOPE - FOR DEFAULT	18
TERMINATION OR REDUCTION IN SCOPE – WITH COSTS	19
INSURANCE AND INDEMNITIES	20
INSURANCE.....	20
INDEMNITIES.....	20
OTHER MATTERS.....	20
INTELLECTUAL PROPERTY	20
MEDIA EVENTS AND ACKNOWLEDGEMENT OF COMMONWEALTH SUPPORT.....	20
PRIVACY.....	21
CONFIDENTIALITY.....	21

RECORD KEEPING	21
WORK HEALTH AND SAFETY.....	21
COMMONWEALTH POLICIES AND LAWS.....	21
COMPLIANCE WITH CRIMINAL CODE	23
DISPUTE RESOLUTION	23
DEBT AND INTEREST	23
TRANSITION	23
NOTICES.....	24
RELATIONSHIP BETWEEN THE PARTIES	24
CONFLICT OF INTEREST	24
VARIATION	24
SURVIVAL	24
LIMITATION OF RIGHTS	25
JURISDICTION	25
DEFINITIONS	26
EXECUTION PAGE.....	29

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	[Agreement_Managing Office -see mapping logic]
Contact officer for Head Agreement	[Agreement Relationship Manager – see mapping doc]
Telephone	[Agreement managing office -]
Email	[Agreement_Managing Office -see mapping logic]
Registered for GST?	Yes, and can provide recipient created tax invoices
The Provider	
Full legal name	[A_LegalName_L52]
Trading or business name	[A_TradingName_L53]
ABN	[A_Org ABN_L3_L53]
ACN or ICN	[insert]
Registered office (physical address)	[A_BusAdd_L15]
Address for service of notices (if different)	[A_MailAdd_L41]
Contact person for Head Agreement	[A_AddresseeFirst_L25] [A_AddresseeFirst_L26] [A_AddresseeRole_L31]]
Telephone	[A_FundingAgreementEmail_L27]
Fax	[A_FundingAgreementFax_L29]
Email of contact person	[A_FundingAgreementPhone_L28]

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.

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

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

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

Grant means:

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

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

Indigenous Grants means all funding and grants payable to the Provider and which are administered by the 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:

(Name of Commonwealth Representative)

(Signature of Commonwealth Representative)

(Position of Commonwealth Representative)

.../.../....

(Name of Witness in full)

(Signature of Witness)

Provider:

SIGNED, SEALED and DELIVERED for and on behalf of A_LegalName_L52, (A_OrgABN_L3 or ACN/ICN) in accordance with its rules:

(Name and position held by Signatory)

(Signature)

.../.../....

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

(Signature of second Signatory / Witness)

.../.../....

Notes about the signature block:

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