



Australian Government

**Department of Families, Housing,
Community Services and Indigenous Affairs**

MEMORANDUM OF UNDERSTANDING

For Memoranda of Understanding entered into from 1 June 2012

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MEMORANDUM OF UNDERSTANDING

DEFINITIONS AND DURATION

1 Definitions

- 1.1 In this Memorandum of Understanding, certain words and phrases have defined meanings. They are indicated by initial capital letters (e.g., Project and Project Period). However, "we" and "you" are not capitalised in this way.
- 1.2 Where a defined word or phrase is used in one clause only, it is usually defined in that clause. Otherwise, the defined terms are in clause 31.

2 Status and Duration

- 2.1 This Memorandum of Understanding is not intended to, and does not create legally binding obligations but reflects a serious intention by the parties to undertake their responsibilities and obligations under this Memorandum of Understanding.
- 2.2 This Memorandum of Understanding starts on the Commencement Date specified in the Schedule and ends on the Completion Date specified in the Schedule, unless terminated earlier.
- 2.3 The Project starts and ends on the dates specified in the Schedule, unless terminated earlier.

YOUR RESPONSIBILITIES

3 Your responsibilities in carrying out the Project

- 3.1 You are obliged to carry out the Project as required by this Memorandum of Understanding, including meeting all objectives, timeframes and milestones.
- 3.2 In carrying out the Project, you are obliged to:
 - (a) use all proper care; and
 - (b) comply with any codes of ethics, regulations or other industry standards relevant to the Project; and
 - (c) comply with any relevant policy notified to you by us in writing; and
 - (d) notify us immediately if a conflict of interest arises, or could reasonably be perceived by others to have arisen, that may restrict you undertaking the Project in a fair and independent way; and
 - (e) communicate with us, especially if there is an issue that may delay, stop or adversely affect the Project; and
 - (f) provide information we reasonably require.
- 3.3 You are obliged to comply with any Supplementary Provisions set out in Annexures to the Schedule.
- 3.4 You will establish and publicise the existence of a fair, accessible and responsive complaints process which you must use to deal with any complaints to you by clients of the Project.

PROVISIONS – MEMORANDUM OF UNDERSTANDING

4 Your responsibilities when a Funding Recipient carries out all or part of the Project

- 4.1 This clause only applies when the parties to this Memorandum of Understanding agree in writing that all or part of the Project will be carried out by a Funding Recipient.
- 4.2 You will enter into a legally binding Funding Agreement with the Funding Recipient for the delivery of the Project.
- 4.3 The Funding Agreement may be for the delivery of the entire Project, or the delivery of part of the Project, as mutually agreed in writing by you and us.
- 4.4 Through the Funding Agreement, you will manage the distribution of all or part of the Funding, as agreed in writing between you and us, to the Funding Recipient.
- 4.5 You will ensure that the Funding Agreement:
 - (a) sufficiently protects the accountability and reporting requirements of the Commonwealth; and
 - (b) reflects the purposes and objectives required under the Program; and
 - (c) accurately reflects the matters mutually determined under this Memorandum of Understanding.
- 4.6 You will provide us with a copy of the Funding Agreement.
- 4.7 Upon our request, you will provide us with copies of:
 - (a) any reports provided to you under the Funding Agreement;
 - (b) the Funding Recipient's financial acquittal report to you; and
 - (c) any other material produced under the Funding Agreement.
- 4.8 When a Funding Recipient carries out all or part of the Project under this clause, you are not relieved of any of your obligations under this Memorandum of Understanding.

5 Your obligation to acknowledge our support

- 5.1 In all Material you publish, you will acknowledge our financial and other support.
- 5.2 When doing so, you will use any form of acknowledgment we reasonably specify.

6 Your obligation to keep records

- 6.1 You will keep accurate records and accounts including:
 - a) receipts, proof of purchase and invoices, to show how you spend the Funding and carry out the Project, and
 - b) client records in accordance with this Memorandum of Understanding and any legislative requirements.

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- 6.2 You will keep these records and accounts in their original form for at least five (5) years after the Project Period or other period as required by legislation.

7 Your obligation to provide reports

- 7.1 You will prepare and give us the reports required and specified in the Schedule.
- 7.2 If we consider additional information to be necessary or if a report is not adequate for our purposes, we can request you to submit a revised report.
- 7.3 You will, at all reasonable times allow access to all records, accounts, documents and papers relating to this Memorandum of Understanding, including those relating to how you are carrying out the Project and receiving or spending the Funding and to allow copies of these materials to be taken by the following:
- (a) us, or persons authorised by us, or
 - (b) the Commonwealth Auditor-General, or
 - (c) the Commonwealth Privacy Commissioner, or
 - (d) the Commonwealth Director of Evaluation and Audit or person authorised by them.

For the purpose of clause 7.3 the parties agree that:

- a) 'access' includes access to your premises (which means premises occupied by you or where any obligation under this Memorandum of Understanding is undertaken and/or wherever any Assets may be located).
- b) you must provide such assistance as may be needed to allow access to all records, accounts, documents and papers relating to this Memorandum of Understanding.

- 7.4 However, you do not have to allow access to, or copies to be made of Secret and Sacred Material.

ABOUT THE FUNDING

8 Paying the Funding

- 8.1 Subject to parliamentary appropriation we will pay you the Funding in accordance with the Schedule.
- 8.2 However, we will not be required to make payments if you have not complied with the terms of this Memorandum of Understanding.

9 When can we withhold payment?

- 9.1 We can withhold any or all of a Funding payment if we consider that you:
- (a) have not carried out the Project in accordance with this Memorandum of Understanding; or
 - (b) have not spent Funding in accordance with this Memorandum of Understanding; or
 - (c) have not complied with any other term of this Memorandum of Understanding.

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- 9.2 We will pay the withheld payment under clause 9.1(a) when you have carried out the Project to which the payment relates according to the requirements of the Memorandum of Understanding.

10 Spending the Funding

- 10.1 Unless we advise or we mutually agree, you will spend the Funding only on carrying out the Project in accordance with this Memorandum of Understanding.

11 Acquitting the Funding

- 11.1 You will provide the financial reports set out in the Schedule, in the format stipulated by us.
- 11.2 Your financial acquittal report will:
- (a) be in accordance with the Memorandum of Understanding, applicable Australian Accounting Standards¹ and based on proper accounts and records; and
 - (b) report income and expenditure relating to the Funding provided under this Memorandum of Understanding; and
 - (c) verify that you have spent the Funding provided on the Project and in accordance with this Memorandum of Understanding; and
 - (d) include any other matters (in addition to the matters set out in the Schedule) we require to allow us to meet Commonwealth financial management and accountability legislation.
- 11.3 Your financial acquittal report must be certified by a person or persons with the authority to do so on your behalf, verifying that you have spent the Funding on the Project in accordance with this Memorandum of Understanding.
- 11.4 At any time up to five (5) years after the end of the Project Period, we may ask you to send us:
- (a) original receipts or other documents which account for the expenditure of the Funding; and/or
 - (b) a statutory declaration made in accordance with the *Statutory Declarations Act 1959* (Cth) accounting for the expenditure of the Funding.

12 Repaying the Funding

- 12.1 You will repay the Funding (or the relevant part of it) to us in any of the circumstances set out below:
- (a) we overpay you; or
 - (b) we pay you an amount that you incorrectly claim; or
 - (c) an amount of the Funding is unspent at the Completion Date; or
 - (d) we pay you an amount that you are unable to spend in accordance with this Memorandum of Understanding; or

¹ Refer Australian Accounting Standards Board <http://www.aasb.gov.au>

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(e) you spend an amount other than in accordance with this Memorandum of Understanding.

12.2 If you are to repay an amount under clause 12.1 you will do so within twenty (20) Business Days after we give you a notice in writing.

12.3 We can recover all or any of the amount by deducting it from subsequent amounts we pay you under this Memorandum of Understanding.

13 GST – Goods and Services Tax

13.1 The Funding under this Memorandum of Understanding is considered not to be subject to GST as it is:

- (a) for non-commercial purposes;
- (b) provided to a Government entity;
- (c) provided pursuant to an appropriation under Australian law.

13.2 If there are circumstances where the Funding is subject to GST, the parties to this Memorandum of Understanding will comply with their respective obligations under *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

ASSETS

14 Assets

14.1 This clause only applies if Assets are purchased with the Funding.

14.2 You will only use the Funding to purchase the Assets mutually agreed to and recorded in Item H of the Schedule.

14.3 You will obtain our prior approval in writing if you want to use the Funding to purchase Assets not specified in Item H of the Schedule.

14.4 You own the Assets purchased from the Funding unless Item H of the Schedule states otherwise.

MATERIAL AND INFORMATION

15 Intellectual Property Rights

15.1 You own the Intellectual Property Rights in all Project Material subject to clause 15.2.

15.2 We own all of Our Material, including Intellectual Property Rights in that Project Material.

15.3 You grant us a licence to use, reproduce, publish, adapt and exploit the Intellectual Property Rights in Project Material and Existing Material, excluding Secret and Sacred Material for any Commonwealth purpose. This licence is permanent, irrevocable, free, worldwide, non-exclusive and includes a right of sublicense.

15.4 We license you to use Our Material (including copying it and supplying it to others), but only for the purposes of this Memorandum of Understanding.

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- 15.5 You must ensure that you have the right, or will have the right at the relevant time, to deal with the Intellectual Property Rights in the Project Material and any Existing Material under this clause 15.
- 15.6 If we require, you must bring into existence, sign or otherwise deal with any document which we consider is necessary or desirable to give effect to this clause 15.
- 15.7 You will obtain, from each author of any Project Material or Existing Material, a written consent to the Specified Acts. The consent must cover Specified Acts done before or after the date of the consent, and whether done by us or by someone claiming under or through us. If we ask, you must give us the original of the consent.

16 Safekeeping and return of Our Material

- 16.1 You will keep safe and maintain all Our Material. You accept all risk relating to that Material.
- 16.2 Unless we otherwise direct, you will promptly return all Our Material when this Memorandum of Understanding ends or is terminated.

17 Privacy issues

- 17.1 In this clause 17, 'Information Privacy Principle' and 'Personal Information' have the same meaning as in the *Privacy Act 1988* (Cth).
- 17.2 You agree:
- (a) not to do anything which, if done by us, would breach an Information Privacy Principle; and
 - (b) to comply with any directions from us, to the extent that they are consistent with the Information Privacy Principles or a Commonwealth, State or Territory public interest determination or privacy determination.
- 17.3 If you become aware of any breach or possible breach of this clause 17, you must notify us immediately.
- 17.4 You acknowledge that we may disclose or publish details about this Memorandum of Understanding or the Project. The details may include (but are not limited to) your name, the value of the Funding, and the location of where the Project is being delivered or performed.
- 17.5 You must obtain any Subcontractor or Funding Recipient's express consent for the disclosure to us of the Subcontractor or Funding Recipient's identity (and their Personal Information if the Subcontractor or Funding Recipient is an individual) to us. The consent obtained must extend to allowing us to disclose for reporting purposes the Subcontractor or Funding Recipient's identity, and the existence and nature of the subcontract or funding arrangement.

18 Confidential Information

- 18.1 In this clause 18, "Confidential Information" means information that:
- (a) the parties know, or ought to know is confidential; or
 - (b) is described in the Schedule; or

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- (c) information that the parties agree in writing after the date of this Memorandum of Understanding is confidential information for the purposes of this Memorandum of Understanding; or
 - (d) Secret and Sacred Material.
- 18.2 Subject to clause 18.3, a party must not disclose Confidential Information to anyone, without the prior written consent of the other party.
- 18.3 A party can disclose Confidential Information to the extent that it:
- (a) is disclosed to its internal management personnel, solely to enable effective management or auditing of Memorandum of Understanding related activities;
 - (b) is disclosed by us to the responsible Minister;
 - (c) is disclosed by us, in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia;
 - (d) is shared within a party, or with another agency, where this serves the Commonwealth's legitimate interests;
 - (e) is authorised or required by law to be disclosed; or
 - (f) is in the public domain otherwise than due to a breach of this clause 18.
- 18.4 Where a party discloses Confidential Information to another person under clause 18.3 they must:
- (a) notify the receiving party that the information is confidential; and
 - (b) not provide the information unless the receiving person agrees to keep the information confidential.
- 18.5 You agree to secure all of our Confidential Information against loss and unauthorised access, use, modification or disclosure.
- 18.6 Where it is mutually decided that you will manage the distribution of all (or a portion) of the Funding under this Memorandum of Understanding to a Funding Recipient, if we ask, you will promptly arrange for your Funding Recipient/s to promptly give us a signed confidentiality deed relating to the use and non-disclosure of our Confidential Information and they will use the form of confidentiality deed we provide.

WORKING WITH VULNERABLE PERSONS

19 Vulnerable Persons, police checks and criminal offences

- 19.1 This clause only applies if the Project involves you working with Vulnerable Persons.
- 19.2 Any directions with regards to you working with Vulnerable Persons will be recorded in the Schedule and contained in the Supplementary Provisions at Annexure A; you agree to comply with these directions.

DEALING WITH RISK

20 Reimbursement

- 20.1 You will reimburse us for the following:

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- (a) all liability; and
- (b) all losses, costs, and expenses
(including those set out in clause 20.2 if caused by the circumstances set out in clause 20.3.)

20.2 The losses, costs, and expenses for which you will reimburse us include:

- (a) loss of or damage to our property; and
- (b) loss or expense in dealing with any claim against us (including legal costs on a solicitor/own client basis, the cost of time spent, resources used and disbursements paid).

20.3 For the purposes of clause 20.1, you will reimburse us in circumstances where our liability, loss, cost or expense was caused by:

- (a) your act or omission in carrying out this Memorandum of Understanding, but only where you were at fault; or
- (b) your non-compliance with this Memorandum of Understanding; or
- (c) our use of the Project Material or Existing Material (including where third parties make claims against us over the ownership of or right to use Intellectual Property Rights or Moral Rights in the Project Material or Existing Material).

20.4 Your liability to reimburse us under this clause 20 is reduced proportionately to the extent that our own fault caused our loss.

20.5 We are only entitled to be compensated for an amount equal to our actual loss.

21 Insurance

21.1 You agree to have current and adequate insurance appropriate to the Project. Any additional insurance requirements are specified in the Schedule.

21.2 If you enter into a Funding Agreement with a Funding Recipient for the delivery of the Project under clause 4, you will ensure under the Funding Agreement that the Funding Recipient has current and adequate insurance appropriate to the Project and in accordance with any additional insurance requirements specified in the Schedule.

21.3 If we ask, you will provide certificates of currency for the insurance and/or a warranty from your insurer that the policy extends to and will cover potential liability arising under this Memorandum of Understanding.

21.4 This clause 21 continues to operate for as long as any obligations remain in connection with this Memorandum of Understanding.

ENDING OR AMENDING THE MEMORANDUM OF UNDERSTANDING

22 Ending the Memorandum of Understanding

22.1 This Memorandum of Understanding can be ended at any time by us following written notice to you.

22.2 If we end the Memorandum of Understanding under clause 22.1, we will provide to you:

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- (a) all payments that were due to you before the date of the ending of the Memorandum of Understanding; and
 - (b) on production of written evidence of amounts to be claimed, any reasonable costs you incur as a direct result of ending the Memorandum of Understanding.
- 22.3 If you fail to perform your obligations under this Memorandum of Understanding or do not comply with this Memorandum of Understanding, and you do not rectify the omission, under-performance, or non-compliance within twenty (20) Business Days of receiving our written notice to rectify, we may end the Memorandum of Understanding immediately by written notice to you.
- 22.4 If we end the Memorandum of Understanding under clause 22.3 you will:
- (a) immediately stop carrying out your obligations under this Memorandum of Understanding; and
 - (b) immediately do everything you can to lessen all losses, costs and expenses that you may suffer from ending of the Memorandum of Understanding; and
 - (c) repay the Funding or the relevant part of it as if we had given you a notice to repay under clause 12.2.

23 Amending the Memorandum of Understanding

- 23.1 The scope of this Memorandum of Understanding can be amended (within the original intent of the Memorandum of Understanding) at any time, in writing, signed by both parties.
- 23.2 If the scope of the Memorandum of Understanding is reduced under clause 23.1, we are not liable to pay you compensation for any loss of benefits that you would have received if the reduction had not occurred but we will pay you any:
- (a) Funding which was due before the effective date of the reduction;
 - (b) reasonable costs incurred as a reduction of the scope.

24 Dispute Resolution

- 24.1 If a dispute or difference (called collectively a "dispute" in this clause 24) arises between you and us, both parties agree to deal with the dispute in the following way:
- (a) the party who claims that a dispute exists will give the other party a notice setting out the nature of the dispute;
 - (b) the parties will then try to resolve the dispute by negotiation, within twenty (20) Business Days from when the notice is given, and for that purpose may authorise persons to act for them.
- 24.2 If the dispute is not resolved within twenty (20) Business Days from when the notice is given, a party may submit the dispute to a form of alternative dispute resolution (including mediation).
- 24.3 Whether or not a dispute exists, each party must continue to perform its obligations under this Memorandum of Understanding.

OTHER MATTERS

25 Subcontractors

- 25.1 All subcontracting arrangements relating to this Memorandum of Understanding will be specified in the Schedule.
- 25.2 You will seek our written agreement to any other subcontracts you enter into relating to your obligations under this Memorandum of Understanding.
- 25.3 You agree to ensure that all subcontracts entered into by you in relation to this Memorandum of Understanding are consistent with the obligations binding on you under this Memorandum of Understanding.
- 25.4 You are not relieved of your obligation to carry out the Project as required by this Memorandum of Understanding merely because you subcontract any part of the obligations.
- 25.5 If we terminate or reduce the scope of this Memorandum of Understanding under either clause 22 or 23, you must exercise any right of termination or reduction you have against any of your subcontractors.

26 Variation of this Memorandum of Understanding

- 26.1 This Memorandum of Understanding may only be varied in writing, signed by both parties.

27 You must not assign your rights

- 27.1 You will not assign your rights under this Memorandum of Understanding without first getting our written consent.
- 27.2 In this clause 27, “assign” includes novate or transfer, in whole or in part.

28 Priority of documents

- 28.1 If there is any conflict or inconsistency, the provisions in documents forming part of this Memorandum of Understanding take priority in the following order:
 - (a) the Supplementary Provisions (if any);
 - (b) the Provisions;
 - (c) the Schedule.

29 Notices

- 29.1 A notice under this Memorandum of Understanding is ineffective unless it is in writing.
- 29.2 Also, a notice under this Memorandum of Understanding is ineffective unless it meets the following requirements:
 - (a) where you give it to us—you address it, and forward it, to the address specified in the Schedule, or as we otherwise direct;
 - (b) where we give it to you—we address it, and forward it, as specified in the Schedule, or as you otherwise direct; and
 - (c) in either case, it is signed by or on behalf of the person giving it.

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29.3 A notice may be given:

- (a) by hand delivery; or
- (b) by prepaid post; or
- (c) by electronic transmission, including by email or by facsimile.

29.4 A notice is treated as having been given:

- (a) if delivered by hand—on delivery to the relevant address;
- (b) if sent by post—on delivery to the relevant address, or five (5) Business Days after it was posted, whichever is earlier;
- (c) if transmitted electronically—when received by the addressee.

30 Defined terms

30.1 In this Memorandum of Understanding, unless the contrary appears:

- (a) we or us (and grammatical variations such as ours) means the Commonwealth of Australia represented by the Department of Families, Housing, Community Services and Indigenous Affairs and includes our officers, delegates, employees, other contractors and agents;
- (b) you (and grammatical variations such as your) means the legal entity set out in the Schedule, and includes your officers, employees, agents, volunteers, subcontractors, and successors.

30.2 Also in this Memorandum of Understanding, unless the contrary appears:

Asset means any item of personal, real or intangible⁴ property, with a price or value of \$10,000 or more, inclusive of GST, and which has been created, acquired or leased wholly or in part with the Funding, except Intellectual Property Rights and licences provided for in clause 15.

Business Day means any day other than a Saturday, Sunday, public or bank holiday in the place where the relevant act is to be done.

Commonwealth Auditor-General means the holder of the position including members of staff of the Auditor General's office.

Commonwealth Director of Evaluation and Audit means the holder of the position Director of Evaluation and Audit with the Commonwealth Department of Finance and Administration including members of staff of the Office of Evaluation and Audit.

Commonwealth Privacy Commissioner means the holder of the position including members of staff of the Privacy Commissioner's office.

Commencement Date means the date on which the Memorandum of Understanding was signed by the last party to do so.

Completion Date means the completion date specified in the Schedule, or the day after you have done, to our satisfaction, all that you are required to do under this Memorandum of Understanding, whichever is the later.

⁴ Intangible assets are those assets that lack a physical presence, but are constituted by a right enforceable in a court of law or equity. Intellectual property is an example of intangible property.

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Existing Material means all Material in existence before the execution of this Memorandum of Understanding or developed independently of this Memorandum of Understanding that is:

- (a) incorporated in the Project Material; or
- (b) supplied with, or as part of, the Project Material; or
- (c) required to be supplied with, or as part of, the Project Material.

Funding means the money, or any part of it, paid to you as set out in the Schedule.

Funding Agreement means a legally binding agreement you enter into with a Funding Recipient for the delivery of the Project.

Funding Recipient means a third party engaged by you under a Funding Agreement to carry out the Project on behalf of the parties.

GST and related terms: in clause 13, GST has the meaning used in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth), or any other relevant legislation, regulations, or rulings by the Australian Taxation Office.

Intellectual Property Rights means all copyright, rights in relation to inventions (including patent rights), registered and unregistered trademarks (including service marks), registered designs, and other rights resulting from intellectual activity in industrial, scientific, literary or artistic fields, but does not include Moral Rights.

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.

Memorandum of Understanding means the Provisions, including the Supplementary Provisions, the Schedule, and any documents incorporated by reference into this document or the Schedule.

Moral Rights includes the following rights of an author of copyright Material:

- (a) the right of attribution of authorship; and
- (b) the right of integrity of authorship; and
- (c) the right not to have authorship falsely attributed

Our Material means any Material provided by us to you for the purposes of this Memorandum of Understanding.

Program means the program referred to in the Schedule.

Project means any tasks, activities, services or other purposes for which the Funding is provided. The Project is described in the Schedule. The Project may be carried out by you or, where it is mutually decided between us and you, by a third party (Funding Recipient) with you managing the distribution of all (or a portion) of the Funding under this Memorandum of Understanding.

Project Material means all Material:

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- (a) which you bring into existence in performing this Memorandum of Understanding; and
- (b) copied or derived from Material referred to in paragraph (a).

Project Period means the period specified in the Schedule during which the Project must be completed.

Provisions means all clauses of this document.

Schedule means the Schedule to this Memorandum of Understanding. It may include annexures and incorporate other documents by reference.

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).

Specified Acts means any of the following acts or omissions by or on behalf of the Commonwealth:

- (a) using, reproducing, adapting or exploiting all or any part of the Project Material, with or without attribution or authorship;
- (b) supplementing Project Material with any other Material;
- (c) using the Project Material in a different context to that originally envisaged,

but does not include false attribution of authorship.

Subcontractor means any contractor, person or organisation who is engaged by you to undertake any or all of your obligations under this Memorandum of Understanding (and any of that contractor's, person's or organisation's employees, agents and subcontractors). '**Subcontracts**' has a corresponding meaning.

Supplementary Provisions means provisions in annexures to the Schedule.

Vulnerable Person means:

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

SCHEDULE – MEMORANDUM OF UNDERSTANDING

MOU id:

Schedule Id:

SCHEDULE: 7.2 Indigenous Housing and Infrastructure

MOU commencement date: 19 June 2012

MOU completion date: 30 November 2013

Item A	OUR PROGRAM INFORMATION	
A.1	Program Name	Indigenous Housing and Infrastructure
A.2	<p>Program Objectives To improve the quality and supply of Indigenous housing and infrastructure in remote communities</p> <p>Program component objectives</p> <p><i>Remote Indigenous Housing</i></p> <p>To deliver programs and projects that are supplementary to the National Partnership Agreement on Remote Indigenous Housing, including the Army Aboriginal Community Assistance Program, Indigenous Mothers' Accommodation Fund, remote Indigenous housing- and infrastructure-related research and other infrastructure projects. In addition, funding is provided for delivery of some municipal and essential services to Indigenous communities under existing arrangements pending the implementation of revised arrangements for roles, responsibilities and funding across governments as agreed under the National Partnership Agreement on Remote Indigenous Housing.</p>	

Item B	YOUR ACTIVITY/PROJECT INFORMATION	
B.1	Name of MOU organisation	Torres Strait Regional Authority (TSRA)
B.2	ABN	57 155 285 807
B.3	Activity/Project Name	Torres Strait Coastal Protection Works Project (GMS Activity No: 76866)
	Activity/Project Start Date	23 June 2012
	Activity/Project End Date	30 June 2013
<p>Activity/Project Details</p> <p>This Schedule must be read and interpreted in conjunction with the 'MOU Provisions' for MOUs entered into from 1 June 2012. The Schedule and the Provisions should not be read separately from each other.</p> <p>This funding forms part of the Australian Government's \$12 million contribution to help support coastal protection works, including but not limited to the construction of new, or replacement of old sea walls and wave return walls in the Torres Strait.</p> <p>You must conduct works associated with the Australian Government's contribution to the Torres Strait Coastal Program and any work must be agreed with FaHCSIA.</p>		

Words or phrases defined in the Provisions carry the same meaning in this Schedule

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<p>You must work in partnership with the Torres Strait Island Regional Council towards repairing and constructing sea walls and wave return walls in six island communities in accordance with current standards and guidelines.</p> <p>In line with Australian Government commitments, the potential for funding contributions from other parties, and to ensure effective works scheduling and coordination, FAHCSIA acknowledges that this contribution of funds will be expensed by the TSRA to the Major Infrastructure Program (MIP) Trust in the 2011/12 financial year.</p> <p>You must provide an Activity Work Plan that provides costings, timelines and project details for the repair and construction of sea walls and wave return walls in the six island communities. This Activity Work Plan will align with a plan to undertake a suite of critical coastal protection works in the region currently estimated at \$22.4 million.</p> <p>Should circumstances change, the parties to this MOU may mutually agree to redirect the Funding associated with this MOU to other priority housing or infrastructure needs.</p>			
Activity/Project Performance Indicators			
	Performance Indicator Description	Target	
1	Completion of repair and construction of seawalls and wave return walls in six island communities.	Achieved/Not Achieved	
<p><u>Additional information</u> The locational and service area information listed on the next page (and the attributed FAHCSIA grant funding amounts), provided by you, will be used by us to provide reports by region on FAHCSIA's grant funding.</p> <p>This information will be published on a Commonwealth web site.</p>			
<p>Locational Information: You have advised that all or part of the Activity/Project will be delivered from the location(s) specified below.</p>			
	Location Type	Name	Address
1	Torres Strait Islands	Torres Strait Regional Authority	Level 1, Torres Strait Haus, 46 Victoria Parade, Thursday Island, QLD.
<p>Service Area: You have advised that the Activity/Project will service the Service Area(s) specified below.</p>			
	Type	Service Area	
1	Works related to repair and construction of seawalls	Saibal, Boigu, Warraber, Masig, Iama and Poruma.	
<p>You will inform us in writing within 30 Business Days if there are any changes to the Location or Service Area information listed above.</p>			

Item C	FUNDING AND PAYMENT		
C.1	Financial Year		Amount Payable

Words or phrases defined in the Provisions carry the same meaning in this Schedule

SCHEDULE – MEMORANDUM OF UNDERSTANDING

	2011-2012	\$1,000,000.00
	2012-2013	Nil
	2013-2014	Nil
	Total	\$1,000,000.00
Bank Account Information:		
You must notify us in writing of any changes to these account details		
BSB Number		084-951
Financial Institution		National Australia Bank
Account Number		62-580-8069
Account name		Torres Strait Regional Authority General Fund

Item D	Budget
	Not applicable

Item E	REPORTS
NOTE	
All reports and the information for inclusion is specified below Please ensure that all reports are provided within the timelines set out at Item F	
E.1	Performance Reports (against Performance Indicators listed at Item B) You must provide us with 2 x 6 monthly reports against Activity Work Plan until completion of agreed works.
E.2	Activity/Project Work Plan You must provide an Activity Work Plan that provides costings, timelines and project details. Once the Activity Work Plan has been agreed by both parties it will form part of the Memorandum of Understanding.
E.3	Annual Report Your Annual Report is available at the web address listed below: www.tsra.gov.au/publications/e-publications/annual-reports.aspx

Words or phrases defined in the Provisions carry the same meaning in this Schedule

SCHEDULE – MEMORANDUM OF UNDERSTANDING

Item E	REPORTS
E.4	Financial Acquittal Reports You must provide us with non-audited financial acquittal reports.
E.5	Other Reports Not Applicable

Words or phrases defined in the Provisions carry the same meaning in this Schedule

SCHEDULE – MEMORANDUM OF UNDERSTANDING

MILESTONES / REPORTING REQUIREMENTS / PAYMENT SCHEDULE					
Item F					
The following table combines all of your reporting requirements. Following compliance with the Provisions of this MOU, we will make payments to you on the first available Business Day on or after the due date as set out below or, where no date is specified, then by mutual agreement as and when required					
Milestones and Reports	Activity/Project (if Applicable)	Information to be included	Due Date	Payment Amount	
F.1	MOU Executed	NOT APPLICABLE	19 JUNE 2012	\$1,000,000.00	
F.2	Activity Work Plan	As per Item E.2	30 JULY 2012		
F.3	Report	Financial acquittal report in accordance with Item E.4	31 OCTOBER 2012		
F.4	Report	6 Month Activity Report as per Item E.1	23 DECEMBER 2012		
F.5	Report	6 Month Activity Report as per Item E.1	23 JUNE 2013		
F.6	Report	Financial acquittal report in accordance with Item E.4	31 OCTOBER 2013		

Words or phrases defined in the Provisions carry the same meaning in this Schedule

SCHEDULE – MEMORANDUM OF UNDERSTANDING

Item G	INSURANCE REQUIREMENTS
	You must have the following additional Activity/Project specific insurance/s: None specified

Item H	ASSETS
	List of Assets that may be acquired with the funding: Not Applicable

Item I	SUBCONTRACTORS
	The following Subcontractors are required to undertake the Activity/Project as indicated: Not Applicable

Item J	SPECIFIED PERSONNEL
	Not Applicable

Item K	CONFIDENTIAL INFORMATION
	Our confidential information is: None Specified Your confidential information is: None Specified

Item L	NOTICES
Our contact details and address for notices	

Words or phrases defined in the Provisions carry the same meaning in this Schedule

SCHEDULE – MEMORANDUM OF UNDERSTANDING

Name or Position	Gavin Matthews Branch Manager, Indigenous Housing Programs Branch
Phone	02 614 60108
Email	gavin.matthews@fahcsia.gov.au
Postal Address	FaHCSIA, Mail Box 7576, Canberra Mail Centre Canberra, 2610 ACT
Facsimile	<u>02 6204 5406</u> (Electronic Fax Number)
Your contact details and address for notices	
Name or Position	Brian Riley Program Manager, Healthy and Safe Communities Torres Strait Regional Authority
Phone	(07) 4069 0700
Email	Brian.Riley@tsra.gov.au
Postal Address	PO Box 261, Thursday Island QLD 4875 TSRA Office: Level 1, Torres Strait Haus, 46 Victoria Parade, Thursday Island QLD
Facsimile	07 4069 1879
Item M	VULNERABLE PERSONS, POLICE CHECKS AND CRIMINAL RECORDS (see also Clause 19 of the Provisions)
	Not Applicable

ANNEXURE A - Supplementary Provisions

Attached

Words or phrases defined in the Provisions carry the same meaning in this Schedule

SCHEDULE – MEMORANDUM OF UNDERSTANDING

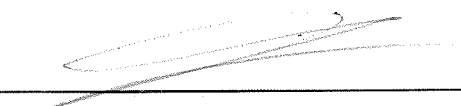
Signatories to this Memorandum of Understanding

Parties **Commonwealth of Australia**, as represented by and acting through **The Department of Families, Housing, Community Services and Indigenous Affairs ABN 36 342 015 855**, Tuggeranong Office Park, Soward Way (Cnr Athllon Drive), Greenway ACT 2900 ("**us**", "**we**" or "**our**")

Torres Strait Regional Authority ABN 57 155 285 807 of Level 1 Torres Strait Haus, 46 Victoria Parade, Thursday Island Queensland. ("**you**" or "**your**")

Executed by the Parties on the 20 Day of June Year 12


Signed for and on behalf of the **Commonwealth of Australia** by the relevant Delegate, represented by and acting through **The Department of Families, Housing, Community Services and Indigenous Affairs ABN 36 342 015 855** in the presence of:



(Signature of Departmental Representative) 20.16.12

Colin Matthews

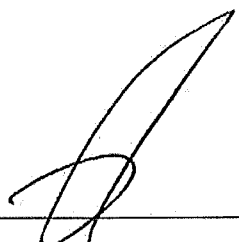
(Name of Departmental Representative)



(Signature of Witness) 20.16.12

BERNASSETT SCARVILLE

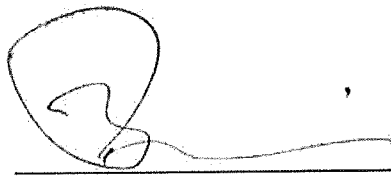
(Name of Witness in full)



(Signature of other MOU party representative) 19.16.12

WAYNE STEELES

(Name of other MOU party representative)



(Signature of Witness) 19.16.12

Brian Raymond Rice

(Name of Witness in full)

Words or phrases defined in the Provisions carry the same meaning in this Schedule

Mandatory Capital Specific Supplementary Conditions

- CA – Loss, Damage and Reinstatement
- CE – Environmental Obligations
- CH – Latent Site Conditions

CA. LOSS, DAMAGE AND REINSTATEMENT

CA.1 You must promptly replace or otherwise make good any loss of, or repair damage to:

- (a) any plant, equipment and work for the Activity; and
- (b) any unfixed goods and materials used or to be used in carrying out the Activity.

CA.2 You must bear the cost of the replacement, making good or repair.

CA.3 In addition to Item CA.1, if loss or damage occurs to any part of the Activity you must:

- (c) make the area where the Activity is being undertaken safe and secure; and
- (d) notify the relevant insurers and comply with their instructions; and
- (e) promptly consult with us to discuss the steps to be taken to:
 - (i) comply with your obligations under this Supplementary Condition; and
 - (ii) ensure, to the greatest extent possible, that you continue to comply with your other obligations under this Agreement

CE. ENVIRONMENTAL OBLIGATIONS

CE.1 In this Supplementary Condition:

- (a) **Contamination** means the presence in, on or under the land, air or water of a substance (whether solid, liquid, gas, odour, heat, sound, vibration or radiation) at a concentration above the concentration at which the substance is normally present in, on or under (respectively) land, air or water in the same locality, being a presence that presents a risk of harm to human health or any other aspect of the Environment, or could otherwise give rise to a risk of non-compliance or breach of any statutory requirements relating to the Environment; and
- (b) **Environment** means components of the earth, including:
 - (i) land, air and water; and
 - (ii) any layer of the atmosphere; and
 - (iii) any organic or inorganic matter and living organism; and
 - (iv) human-made or modified structures and areas, and includes interacting natural ecosystems that include components referred to in paragraphs (i) to (iv).

CE.2 In carrying out the Activity, you must ensure that:

- (a) you comply with all applicable Commonwealth and State/Territory legislative and regulatory requirements, and all requirements of the Agreement, for the protection of the Environment; and
- (b) you do not contaminate or otherwise damage the Environment; and
- (c) your subcontractors comply with the requirements set out in this Supplementary Condition.

CE.3 You must make good any Contamination or damage to the Environment arising out of or in connection with the Activity, regardless of whether you have complied with all statutory requirements and other requirements of the Agreement for the protection of the Environment.

CE.4 We may take any action necessary to protect:

- (a) the Activity; or
- (b) other property; or
- (c) the Environment; or
- (d) third parties.

CE.5 We may recover as debt due from you all costs, expenses and liabilities that we incur as a result of taking action under item CE.4.

CH. LATENT SITE CONDITIONS

CH.1 For the purposes of this Supplementary Condition, "**Latent Condition**" means any ground conditions at the site where the Activity is to take place, excluding ground conditions resulting from inclement weather, which differ materially from those which should have been anticipated by a prudent, competent and experienced contractor.

CH.2 You are solely responsible for ensuring that:

- (a) the site is suitable for carrying out the Activity; and
- (b) there are no Latent Conditions existing at the site that may affect your ability to complete the Activity in accordance with your obligations under this Agreement.

Annexure A

CH.3 Without limiting Item CH.1, if, at any time during the performance of the Activity, a condition that may affect your ability to complete the Activity (whether a Latent Condition or otherwise) is discovered at the site, you must:

- (a) immediately notify us; and
- (b) provide us with any details we reasonably require of the condition, its causes, and its effect on the Activity; and
- (c) allow us, and any person we authorise, access to the site at all reasonable times to inspect and investigate the condition; and
- (d) take all steps necessary to avoid (or, if you are unable to avoid, to mitigate) the impacts of the condition on the performance of the Activity.

CH.4 If we wish, we may direct you to vary the Activity to overcome the impacts of any condition at the site that would or may adversely affect your ability to complete the Activity in accordance with the Agreement, or otherwise comply with your obligations under the Agreement. Any such direction does not limit our rights under item CH.5 below.

CH.5 If, in our reasonable opinion, a condition referred to in item CH.3 is a Latent Condition:

- (a) then all steps you take (and that any third party takes on your behalf) to avoid or mitigate the impacts of the Latent Condition in accordance with item CH.3(d) are entirely at your own risk and expense and must not be paid for using any of the Funding; and
- (b) we may at any time following the identification of the Latent Condition terminate this Agreement under clause 23, if we consider that:
 - (i) the impacts of the Latent Condition are unable to be avoided or mitigated so as to achieve the milestones or stages of the Activity; or
 - (ii) you have failed to avoid or mitigate the impacts of the Latent Condition in accordance with item CH.3(d) within a reasonable time.

CH.6 Our termination of the Agreement under item CH.5(b) does not limit your obligations under item CH.3.