



AquaCarotene Limited

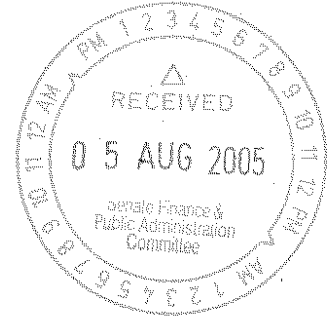
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5 August 2005



The Australian Senate
Finance and Public Administration Reference Committee
Parliament House
CANBERRA ACT 2600

**PROOF TRANSCRIPT OF EVIDENCE
INQUIRY INTO THE REGIONAL PARTNERSHIPS PROGRAM**

Your correspondence of 21 July 2005 is received by us on 5 August 2005.

We note that you have asked us to provide a copy of the Contract Agreement which is attached hereto for your attention.

We note the requirement to read the transcript and complete by 5 August. This is not possible within the timetable. We will do our best to review the document at the earliest time and make our comments in due course.

Yours faithfully

DONALD J SMITH



Australian Government
Department of Transport and Regional Services

REGIONAL PARTNERSHIPS

FUNDING AGREEMENT

BETWEEN

COMMONWEALTH OF AUSTRALIA

as represented by the

Department of Transport and Regional Services
ABN 86 267 354 017

AND

AQUACAROTENE LIMITED

ABN 18 074 969 056

in relation to funding for
AQL Stage 1 Project

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PARTIES

COMMONWEALTH OF AUSTRALIA ('Commonwealth'), represented by and acting through the Department of Transport and Regional Services, Level 15, 37 St Georges Terrace
PERTH Western Australia 6000 ABN 86 267 354 017
(Us' or 'We' or 'Our' as the case requires)

AND

AquaCarotene Limited, Suite 7, 95 Hay Street, SUBIACO, WA 6008 ABN 18 074 969 056
(You' or 'Your' as the case requires)

PURPOSE

A. We are committed to Regional Partnerships (RP). The Commonwealth Government's approach to regional development is to work in partnership with communities, government and the private sector to foster the development of self-reliant communities and regions. Regional Partnerships is a programme that delivers on the Commonwealth's approach to regional development and will partner Activities that focus on: strengthening growth and opportunities; improving access to services; supporting planning; and assisting structural adjustment for communities.

B. You are committed to helping achieve the Programme, through Your conduct of the Activity and the achievement of the Outcomes.

C. As a result of this commitment, We have agreed to support the Activity and the achieving of the Outcomes by providing Funding to You, subject to the terms and conditions of this Agreement.

D. We are required by law to ensure accountability for public money and to be accountable for all Funds provided by Us.

E. You agree to accept the Funding for the purposes, and subject to the terms and conditions, set out in this Agreement.

1. INTERPRETATION

1.1 In this Agreement, unless the contrary intention appears:

'ABN' has the same meaning as it has in section 40 of the *A New Tax System (Australian Business Number) Act 1999* (Cth);

'Activity' means the activity described in the Schedule and includes the provision of Activity Material;

'Activity Material' means all Material:

- (i) brought into existence for the purpose of performing the Activity;
- (ii) incorporated in, supplied or required to be supplied along with the

Material referred to in paragraph (i); or

(iii) copied or derived from Material referred to in paragraphs (i) or (ii);

'**Activity Milestone**' means a stage of completion of the Activity set out in the Schedule;

'**Activity Period**' means the period specified in the Schedule during which the Activity must be completed;

'**Adjustment Note**' has the same meaning as it has in section 195-1 of the GST Act;

'**Agreement**' means this document and includes any schedules and annexure;

'**Approved Auditor**' means a person who is:

- (a) registered as a company auditor under the *Corporations Act 2001*, or a member of the Institute of Chartered Accountants in Australia, or of CPA Australia or the National Institute of Accountants; and
- (b) not a principal, member, shareholder, officer or employee of Yours or of a Related Body Corporate.

'**Asset**' means any item of tangible property, purchased, leased, created or otherwise brought into existence either wholly or in part with use of the Funds, which has a value of over \$5,000 inclusive of GST, but does not include Activity Material;

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

'**Australian Accounting Standards**' refers to the standards of that name maintained by the Australian Accounting Standards Board created by section 226 of the *Australian Securities and Investments Commission Act 2001* (Cth);

'**Australian Auditing Standards**' refers to the standards set by the Auditor-General under section 24 of the *Auditor-General Act 1997* (Cth) and generally accepted audit practices to the extent they are not inconsistent with such standards;

'**Budget**' refers to a budget for expenditure of the Funding for the purposes of conducting the Activity or performing obligations under this Agreement, stipulated in the Schedule;

'**Business Day**' means in relation to the doing of any action in a place, any day other than a Saturday, Sunday, or public holiday in that place;

'**Commonwealth Material**' means any Material provided by Us to You for the purposes of this Agreement or which is copied or derived from Material so provided, except for Activity Material;

'**Completion Date**' means, unless a date is specified in the Schedule, the day after You have done all that You are required to do under this Agreement to Our satisfaction;

'**Conflict**' refers to a conflict of interest, or risk of a conflict of interest, or an apparent

conflict of interest arising through You engaging in any activity or obtaining any interest that is likely to conflict with or restrict You in providing the Activity to Us fairly and independently;

'**Constitution**' means (depending on the context):

- (a) a company's constitution, which (where relevant) includes rules and any amendments that are part of the company's constitution; or
- (b) in relation to any other kind of body:
 - (i) the body's charter, rules or memorandum; or
 - (ii) any instrument or law constituting or defining the constitution of the body or governing the activities of the body or its members;

'**Date of this Agreement**' means the date written on the execution page of this Agreement, and if no date or more than one date is written there, then the date on which this Agreement is signed by the last Party to do so;

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

'**Electronic Communication**' has the same meaning as in the *Electronic Transactions Act 1999* (Cth);

'**Existing Material**' means all Material in existence prior to the Date of the Agreement:

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

the Activity Material;

'**Financial Year**' means each period from 1 July to the following 30 June (or other period You use for regular formal financial reporting) occurring during the Activity Period, or any part of such a period occurring at the beginning or end of the Activity Period;

'**Funding**' or '**Funds**' means the amount or amounts (in cash or kind) payable under this Agreement by Us as specified in the Schedule, including interest earned on that amount;

'**GST**' has the meaning as given in section 195-1 of the GST Act;

'**GST Act**' means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

'**Guidelines**' refers to the guidelines for the Programme, if any, as described in the Schedule;

'**Implementation Guidelines**' refers to the document contained in Annexure C.

'**Industry Guidelines**' refers to the document contained in Annexure D.

'**Information System**' has the same meaning as in the *Electronic Transactions Act 1999* (Cth);

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

'**Interest**' means interest calculated at an interest rate equal to the general interest charge rate for a day pursuant to section 8AAD of the *Tax Administration Act 1953* (Cth), plus 1%, on a daily compounding basis;

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

'**Milestone**' means a stage of completion of the Activity set out in the Schedule;

'**National Code of Practice for the Construction Industry**' refers to the document contained in Annexure B.

'**Other Contributions**' means financial or in-kind resources (with in-kind resources valued at market rates) used by You for the Activity, other than the Funding;

'**Outcomes**' means the outcomes described in the Schedule, which are the agreed results You must achieve to contribute to the Regional Partnerships focus on: strengthening growth and opportunities; improving access to services; supporting planning; and assisting structural adjustment for communities;

'**Party**' means a party to this Agreement;

'**Personal Information**' has the same meaning as under the *Privacy Act 1988* (Cth), which currently is information or an opinion (including information or an opinion forming part of a data base), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion;

'**Principles**' refers to the principles of the Programme, if any, as described in the Schedule;

'**Privacy Commissioner**' means the Office of the Privacy Commissioner established under the *Privacy Act 1988* (Cth) and includes any other entity that may, from time to time, perform the functions of that Office;

'**Programme**' means the part of Our operations specified in the Schedule under which We are able to give the Funding to You;

'**Project**' means the project identified in the Schedule, which aims to fulfil one or more of the goals of the Programme, for which We are providing funding to assist you to complete.

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

'Related Body Corporate' has the meaning given in section 9 of the *Corporations Act 2001* (Cth);

'Report' means Activity Material that is provided to Us for reporting purposes on matters including the use of the Funding, whether or not Milestones have been achieved, progress reports and evaluations of the Activity or obligations of this Agreement, as stipulated in the Schedule;

'Schedule' refers to the schedule to this Agreement;

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

'Taxable Supply' has the same meaning as it has in the GST Act;

'Term of this Agreement' refers to the period described in subclause 2.1;

'Undepreciated' in relation to the value of an Asset, means the value of the Asset, which has not been Depreciated;

'Us', 'We' and 'Our' includes Our officers, delegates, employees and agents, and Our successors;

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

1.2 In this Agreement, unless the contrary intention appears:

- (a) words in the singular number include the plural and words in the plural number include the singular;
- (b) words importing a gender include any other gender;
- (c) words importing persons include a partnership and a body whether corporate or otherwise;
- (d) all references to clauses are clauses in this Agreement;
- (e) all references to dollars are to Australian dollars and this Agreement uses Australian currency;
- (f) reference to any statute or other legislation (whether primary or subordinate) is to a statute or other legislation of the Commonwealth and, if it has been or is amended, is a reference to that statute or other legislation as amended;
- (g) an uncertainty or ambiguity in the meaning of a provision of this Agreement will not be interpreted against a Party just because that Party prepared the provision; and

- (h) where any word or phrase is given a defined meaning, any other part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.

1.3 The Schedule (and annexure and documents incorporated by reference, if any) form part of this Agreement. In the event of any conflict or inconsistency between any part of:

- (a) the terms and conditions contained in the clauses of this Agreement;
- (b) the Schedule;
- (c) the annexure, if any;
- (d) documents incorporated by reference, if any;

then the material mentioned in any one of paragraph (a) to (d) of this subclause 1.3 has precedence over material mentioned in a subsequent paragraph, to the extent of any conflict or inconsistency.

2. TERM OF THIS AGREEMENT

2.1 The Term of this Agreement commences on the Date of this Agreement and, unless terminated earlier, it expires on the Completion Date.

3. INTENTIONALLY DELETED

4. PAYMENT

4.1 Subject to sufficient funds being available for the Programme, and compliance by You with this Agreement (including the invoicing requirements, if any, specified in the Schedule) We will provide You with the Funding at the times and in the manner specified in the Schedule.

4.2 Without limiting Our rights, We may withhold or suspend any payment in whole or in part until You have performed Your obligations under this Agreement.

4.3 Any payments under this Agreement may be deferred or suspended by Us if You have outstanding or unacquitted moneys under any arrangement (whether contractual or statutory) between Us and You. Notwithstanding such suspension or deferral of any payments, You must continue to perform any obligations under this Agreement, unless We agree otherwise in writing.

5. MANAGEMENT OF FUNDING

5.1 You must carry out the Activity within the Activity Period and in accordance with this Agreement (including any applicable Principles and Guidelines), diligently, effectively and to a high professional standard.

5.2 The Funding must be expended by You only for the Activity in accordance with this Agreement.

5.3 You must:

- (a) ensure that the Funds are held in an account in Your name, and which You solely control, with an authorised deposit-taking institution authorised under the *Banking Act 1959 (Cth)* to carry on banking business in Australia;
- (b) if specified in the Schedule, this must be an account that is:
 - (i) established solely for the purposes of accounting for, and administering, any Funding provided by Us to You under this Agreement; and
 - (ii) separate from Your other operational accounts;
- (c) notify Us, in writing, prior to the receipt of any Funds, of details sufficient to identify the account;
- (d) *INTENTIONALLY DELETED*
- (e) if the account changes, notify Us in writing within 10 Business Days of the change occurring providing Us with details of the new account;
- (f) unless You are a sole director company or an individual, ensure that two signatories, who have Your authority to do so, are required to operate the account; and
- (g) identify the receipt and expenditure of the Funds separately within Your accounting Records so that at all times the Funds are identifiable and ascertainable.

5.4 You must keep financial Records relating to the Activity so as to enable:

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

5.5 Except with Our prior written approval, You must not use any of the following as any form of security for the purpose of obtaining or complying with any form of loan, credit, payment or other interest:

- (a) the Funds;
- (b) this Agreement or any of Our obligations under this Agreement; or
- (c) any Assets or Intellectual Property Rights in Activity Material.

5.6 If, at any time during the Term of this Agreement, there remains an amount of Funding that has not been expended in accordance with this Agreement or not acquitted to Our satisfaction, then this amount must be refunded by You to Us within 20 Business Days of a written notice from Us or, if a different period is stated in the Schedule, that period, or dealt with as directed in writing by Us.

- 5.7 If We do not direct otherwise in writing and the amount is not refunded to Us within 20 Business Days, or as otherwise stated in the Schedule, Interest will accrue and be payable on the amount after the expiry of the 20 Business Days, or the period stated in the Schedule, until the amount is paid in full.
- 5.8 Any amount owed to Us under subclause 5.6, and any Interest owed under subclause 5.7, will be recoverable by Us as a debt due to Us by You without further proof of the debt by Us being necessary.
- 5.9 You must only expend the Funds in accordance with the Budget set out in the Schedule.
- 5.10 You may expend the Funds on any separate category of expenditure item within the Budget, but You are to obtain prior written approval from Us for any transfer of Funds between categories of expenditure items within the Budget which exceed a percentage of the total Budget as specified in the Schedule. The total amount of transfers in any financial year must not exceed the percentage of the Budget specified in the Schedule.
- 5.11 We are not responsible for the provision of additional money to meet any expenditure in excess of the Funds.
- 5.12 The operation of this clause 5 survives the expiration or earlier termination of the Term of this Agreement.

6. OTHER CONTRIBUTIONS

- 6.1 It is a condition precedent to the payment of Funds under this Agreement that You must get people (other than Us), as identified in Item 2 of the Schedule, to provide Us with satisfactory written evidence that they will provide the Other Contributions to You, including the amounts to be provided, their due dates and the terms and conditions of the provision of the Other Contributions. The terms and conditions on which these Other Contributions are to be provided must be satisfactory to Us.
- 6.2 The written confirmation referred to in subclause 6.1 must be provided to Us within 20 Business Days of the Date of this Agreement, failing which this Agreement will be treated as void and as never having been entered into.
- 6.3 You must use all reasonable endeavours to provide or obtain Other Contributions sufficient to enable the completion of the Activity, including but not limited to the Other Contributions specified in the Schedule.
- 6.4 If You are not able to obtain Other Contributions or obtain them in time to enable completion of the Activity, then We may:
- (a) suspend payment of the Funds or an instalment of the Funds (as the case may be) until the Other Contributions are received; or
 - (b) terminate this Agreement in accordance with clause 21.
- 6.5 You must inform Us in writing within 10 Business Days of entering into any arrangement (whether contractual or statutory) under which You are entitled to receive any Other Contributions not identified in the Schedule.

7. ASSETS

- 7.1 You must not use the Funding to acquire any Asset, apart from those detailed in the Schedule, without obtaining Our prior written approval. Approval may be given subject to any conditions We may impose.
- 7.2 Unless it is specified in the Schedule that We own the asset then, subject to this clause 7 and the terms of any relevant lease, You own any Asset acquired by You with the Funding.
- 7.3 If We own the Asset, or the Asset is leased by You from a third party, then:
- (a) if We own the Asset, subclauses 7.6, 7.9 and 7.10 do not apply;
 - (b) if the Asset is leased, You must ensure that the terms of the lease are consistent with this clause 7 except for subclauses 7.6, 7.7, 7.9 and 7.10.
- 7.4 During the Activity Period You must use any Asset in accordance with this Agreement and for the purposes of the Activity.
- 7.5 You must:
- (a) not encumber or dispose of any Asset, or deal with or use any Asset other than in accordance with this clause 7, without Our prior written approval;
 - (b) hold all Assets securely and safeguard them against theft, loss, damage, or unauthorised use;
 - (c) maintain all Assets in good working order;
 - (d) maintain all appropriate insurances for all Assets to their full replacement value noting Our interest, if any, in the Asset under this Agreement and provide satisfactory evidence of this on request from Us;
 - (e) if required by law, maintain registration and licensing of all Assets;
 - (f) be fully responsible for, and bear all risks relating to, the use or disposal of all Assets;
 - (g) if specified in the Schedule, maintain an Assets register in the form and containing the details as described in the Schedule; and
 - (h) as and when requested by Us, provide copies of the Assets register to Us.
- 7.6 If You sell or otherwise dispose of an Asset during the Term of the Agreement (which must be with our prior written consent and subject to any conditions we may impose) and at the time of the sale or disposal the Asset has not been fully Depreciated You must pay to Us or as We may direct in writing, within 20 Business Days of the date of the sale or disposal, an amount equal to the proportion of the Undepreciated value of the Asset, that is equivalent to the proportion of the purchase price of the Asset that was funded from the Funding.
- 7.7 If any of the Assets are lost, damaged or destroyed, You must reinstate the Assets

including from the proceeds of the insurance and this clause 7 continues to apply to the reinstated Assets. Any surplus from the proceeds of the insurance must be notified to Us and used and accounted for as Funding under this Agreement.

- 7.8 On completion of the Activity or earlier termination of the Term of this Agreement we may require You to deal with the Asset as We may, at our sole discretion, direct in writing.
- 7.9 If, on completion of the Activity or earlier termination of the Term of this Agreement, an Asset has not been fully Depreciated You must pay to Us or as We may direct in writing, within 20 Business Days after completion of the Activity or earlier termination of the Term of this Agreement, an amount equal to the proportion of the Undepreciated value of the Asset, that is equivalent to the proportion of the purchase price of the Asset that was funded from the Funding.
- 7.10 If You fail to make payment as required by either subclauses 7.6 or 7.9:
- (a) You must pay Us the Interest on the relevant amount from the date it was due, for the period it remains unpaid; and
 - (b) the relevant amount, and Interest owed under this clause, will be recoverable by Us as a debt due to Us by You.
- 7.11 Our approvals under subclause 7.1 and paragraph 7.5(a) will not be unreasonably withheld. A decision as to whether an approval will be provided will be made within a reasonable time of the request.
- 7.12 The operation of this clause 7 survives the expiration or earlier termination of the Term of this Agreement.

8. RECORDS

- 8.1 You must keep full and accurate Records of the conduct of the Activity including, without limitation, progress against the Milestones, the receipt and use of Funding and Other Contributions (if any), the acquisition of Assets and the creation of Intellectual Property Rights in Activity Material.
- 8.2 Records maintained under subclause 8.1 must be retained by You for a period of no less than 7 years after the end of the Activity Period.
- 8.3 The operation of this clause 8 survives the expiration or earlier termination of the Term of this Agreement.

9. REPORTING

- 9.1 You must provide to Us progress reports and performance information, at the times and in the manner stated in the Schedule, of Your progress in undertaking the Activity and its Outcomes.
- 9.2 Within:
- (a) the period stated in the Schedule after the expiry of the Activity Period or any earlier termination of the Term of this Agreement; and

- (b) the period stated in the Schedule after the completion of each Financial Year in which a payment of Funding [or Other Contributions (if any)] is made,

You must provide Us with:

- (c) an audited detailed statement of receipts and expenditure in respect of the Funding, [and Other Contributions (if any)] which must include a definitive statement as to whether the financial accounts are complete and accurate, and a statement of the balance of Your account referred to in clause 5.3 [Management of Funding];
- (d) an audited statement that the Funding [and Other Contributions (if any)] was expended for the purpose of the Activity and in accordance with this Agreement; and
- (e) a certificate that:
- (i) all Funding [and Other Contributions (if any)] received was expended for the purpose of the Activity and in accordance with this Agreement; and
 - (ii) salaries and allowances paid to persons involved in the Activity are in accordance with any applicable award or agreement in force under any relevant law on industrial or workplace relations.

9.3 The audits referred to in paragraphs 9.2(c) and (d), and the certificate referred to in paragraph 9.2(e), must also contain the requirements, if any, described in the Schedule.

9.4 The audits referred to in paragraphs 9.2(c) and (d) must be carried out by an Approved Auditor and must comply with the Australian Auditing Standards.

9.5 The certificate referred to in paragraph 9.2(e) must be provided by Your Chief Executive Officer, Chief Financial Officer or a person authorised by You to execute documents and legally bind You by their execution.

9.6 The operation of this clause 9 survives the expiration or earlier termination of the Term of this Agreement.

10. TAXES, DUTIES AND GOVERNMENT CHARGES

10.1 Subject to this clause, all taxes, duties and government charges imposed or levied in Australia or overseas in connection with this Agreement must be borne by You.

10.2 The provisions of this clause in respect of GST apply if You are registered or are required to be registered for GST.

10.3 We are registered in accordance with the GST Act and will notify You of any change in Our GST registration status.

10.4 The Funds paid by Us under this Agreement include GST for supplies provided by You to Us in accordance with this Agreement and which are Taxable Supplies within the meaning of the GST Act.

- 10.5 You must give Us a tax invoice in accordance with the GST Act in relation to any Taxable Supply by You to Us in connection with this Agreement prior to payment of Funds by Us.
- 10.6 The Funding payable by Us to You under this Agreement must not include any amount which represents GST paid by You on Your own inputs and for which an input tax credit is available to You.
- 10.7 If a payment to satisfy a claim or a right to claim under or in connection with this Agreement (for example, a claim for damages for breach of the Agreement) gives rise to a liability to pay GST, the payer must also pay the amount of that GST (except any GST for which the payee is entitled to an input tax credit).
- 10.8 If a Party has a claim under or in connection with this Agreement for a cost on which that Party must pay GST, the claim is for the cost plus all GST on that cost (except any GST for which that Party is entitled to an input tax credit).
- 10.9 Any refund under subclause 5.6 must be inclusive of GST and must be accompanied by an Adjustment Note under the GST Act relating to Taxable Supplies for which you previously issued to Us a tax invoice.
- 10.10 You should be aware that, generally:
- (a) Funding received by You is included in Your assessable income if it is received in relation to the carrying on of a business, unless You are specifically exempt from income tax;
 - (b) any capital gain on disposal of an Asset is included in Your assessable income, unless You are specifically exempt from income tax;
 - (c) You may be required, in respect to an employees, to pay fringe benefits tax and make superannuation contributions to a complying superannuation fund or pay the superannuation guarantee charge to the Australian Taxation Office.

11. COMMONWEALTH MATERIAL

- 11.1 Ownership of all Commonwealth Material, including Intellectual Property Rights in that Material, remains vested at all times in Us but We grant You a licence to use, copy and reproduce that Material only for the purposes of this Agreement and in accordance with any conditions or restrictions specified in the Schedule.
- 11.2 Upon the expiration of the Activity Period or earlier termination of the Term of the Agreement, You may retain all Commonwealth Material remaining in Your possession, unless otherwise specified in the Schedule.
- 11.3 You must keep safely and maintain Commonwealth Material You have been given for the purposes of this Agreement.
- 11.4 The operation of this clause 11 survives the expiration or earlier termination of the Term of this Agreement.

12. INTELLECTUAL PROPERTY

- 12.1 Subject to this clause 12, as between Us and You (but without affecting the position between You and a third party) Intellectual Property Rights in Activity Material vest immediately in You.
- 12.2 You grant to Us a permanent, irrevocable, free, world wide, non-exclusive licence (including a right of sublicense) to use, reproduce, adapt and exploit the Intellectual Property Rights in Activity Material for any Commonwealth purpose.
- 12.3 This clause 12 does not affect the ownership of any Intellectual Property Rights in any Existing Material, which is specified in the Schedule. You, however, grant to Us or must arrange for the grant to Us of a permanent, irrevocable, free, world-wide, non-exclusive licence (including a right of sublicense) to use, reproduce, adapt and exploit the Intellectual Property Rights in Existing Material for any Commonwealth purpose.
- 12.4 You:
- (a) must, if requested by Us to do so, bring into existence, sign, execute or otherwise deal with any document which may be necessary or desirable to give effect to this clause 12;
 - (b) warrant that You are entitled, or will be entitled at the relevant time, to deal with the Intellectual Property Rights in the Activity Material and the Existing Material in accordance with this clause 12; and
 - (c) except as expressly provided for in this Agreement, must not deal with the Intellectual Property Rights in the Activity Material during the Term of this Agreement.
- 12.5 For this clause, the 'Specified Acts' means the following classes or types of acts or omissions by or on behalf of Us:
- (a) those which would, but for this clause infringe the author's right of attribution of authorship or the author's right of integrity of authorship;
- but does not include:
- (b) those which would infringe the author's right not to have authorship falsely attributed.
- 12.6 You warrant or undertake that:
- (a) the author of any Activity Material, other than Existing Material, has given or will give a written consent to the Specified Acts (whether occurring before or after the consent is given) which extends directly or indirectly for Our benefit; and
 - (b) the author of any Existing Material has given or will give a written consent to the Specified Acts (whether occurring before or after the consent is given) which extends directly or indirectly for Our benefit in relation to such material used, reproduced, adapted and exploited in conjunction with the other Activity Material.

- 12.7 The operation of this clause 12 survives the expiration or earlier termination of the Term of this Agreement.

13. DISCLOSURE OF INFORMATION

- 13.1 You acknowledge that We may be required to provide information in relation to the funding or this Agreement, as required by the operation of any law, judicial or parliamentary body or governmental agency and accordingly We can give no undertakings to treat any of Your information or this Agreement as confidential information.
- 13.2 You are permitted to disclose Commonwealth Material, except to the extent, if any, specified in the Schedule. If We require You to keep any Commonwealth Material confidential We may permit You to disclose it subject to compliance with any conditions on that disclosure that We may impose.

14. PROTECTION OF PERSONAL INFORMATION

- 14.1 This clause applies only where You deal with Personal Information when, and for the purpose of, conducting the Activity under this Agreement.
- 14.2 You agree to be treated as a 'contracted service provider' within the meaning of section 6 of the *Privacy Act 1988* (Cth) (the Privacy Act), and agree in respect to the conduct of the Activity under this Agreement:
- (a) to use or disclose Personal Information obtained during the course of conducting the Activity under this Agreement, only for the purposes of this Agreement;
 - (b) not to do any act or engage in any practice that would breach an Information Privacy Principle (IPP) contained in section 14 of the Privacy Act, which if done or engaged in by an agency, would be a breach of that IPP;
 - (c) to carry out and discharge the obligations contained in the IPPs as if You were an agency under that Act;
 - (d) to notify individuals whose Personal Information You hold, that complaints about Your acts or practices may be investigated by the Privacy Commissioner who has power to award compensation against You in appropriate circumstances;
 - (e) not to use or disclose Personal Information or engage in an act or practice that would breach section 16F (direct marketing), a National Privacy Principle (NPP) (particularly NPPs 7 to 10) or an Approved Privacy Code (APC), where that section, NPP or APC is applicable to You, unless:
 - (i) in the case of section 16F - the use or disclosure is necessary, directly or indirectly, to discharge an obligation under this Agreement; or
 - (ii) in the case of an NPP or an APC - where the activity or practice is engaged in for the purpose of discharging, directly or indirectly, an obligation under this Agreement, and the activity or practice which is authorised by this Agreement is inconsistent with the NPP or APC;
 - (f) to disclose in writing to any person who asks, the content of the provisions of this

Agreement (if any) that are inconsistent with an NPP or an APC binding a Party to this Agreement;

- (g) to immediately notify Us if You become aware of a breach or possible breach of any of the obligations contained in, or referred to in, this clause 14, whether by You or any subcontractor;
- (h) to comply with any directions, guidelines, determinations or recommendations of the Privacy Commissioner to the extent that they are not inconsistent with the requirements of this clause; and
- (i) to ensure that any of Your employees who are required to deal with Personal Information for the purposes of this Agreement are made aware of Your obligations set out in this clause 14.

14.3 You agree to ensure that any subcontract entered into for the purpose of fulfilling Your obligations under this Agreement contains provisions to ensure that the subcontractor has the same awareness and obligations as You have under this clause, including the requirement in relation to subcontracts.

14.4 You agree to indemnify Us in respect of any loss, liability or expense suffered or incurred by Us which arises directly or indirectly from a breach of any of Your obligations under this clause 14, or a subcontractor under the subcontract provisions referred to in subclause 14.3.

14.5 In this clause 14, the terms 'agency', 'Approved Privacy Code' (APC), 'Information Privacy Principles' (IPPs), and 'National Privacy Principles' (NPPs) have the same meaning as they have in section 6 of the Privacy Act, and 'subcontract' and other grammatical forms of that word has the meaning given in section 95B(4) of the Privacy Act.

14.6 The operation of this clause 14 survives the expiration or earlier termination of the Term of this Agreement.

15. INDEMNITY

15.1 You indemnify (and keep indemnified) Us, Our officers, employees, and agents against any:

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

arising from:

- (d) any act or omission by You, or any of Your employees, agents, volunteers, or subcontractors in connection with this Agreement, where there was fault on the part of the person whose conduct gave rise to that liability, loss, damage, or expense;

- (e) any breach by You of Your obligations or warranties under this Agreement;
 - (f) the use of the Assets; or
 - (g) the use by Us of the Activity Material or Existing Material, including any claims by third parties about the ownership or right to use Intellectual Property Rights in Activity Material or Existing Material.
- 15.2 Your liability to indemnify Us under this clause 15 will be reduced proportionally to the extent that any fault on Our part contributed to the relevant loss, damage, expense, or liability.
- 15.3 Our right to be indemnified under this clause 15 is in addition to, and not exclusive of, any other right, power, or remedy provided by law, but We are not entitled to be compensated in excess of the amount of the relevant liability, damage, loss, or expense.
- 15.4 In this clause 15, "fault" means any negligent or unlawful act or omission or wilful misconduct.
- 15.5 This operation of this clause 15 survives the expiration or earlier termination of the Term of this Agreement.

16. INSURANCE

- 16.1 You must, for as long as any obligations remain in connection with this Agreement, have insurance as specified in the Schedule.
- 16.2 Whenever requested, You must provide Us, within 10 Business Days of the request, with evidence satisfactory to Us that You have complied with Your obligation to insure.
- 16.3 The operation of this clause 16 survives the expiration or earlier termination of the Term of this Agreement.

17. CONFLICT OF INTEREST

- 17.1 You warrant that, to the best of your knowledge after making diligent inquiry, at the Date of this Agreement no Conflict exists or is likely to arise in the performance of Your obligations under this Agreement.
- 17.2 Without limiting the operation of this clause 17, You must, during the Term of this Agreement, ensure that no Conflict arises through Your involvement with the parties or programmes, if any, specified in the Schedule.
- 17.3 If during the Term of this Agreement, a Conflict arises, You must:
- (a) immediately notify Us in writing of that Conflict and of the steps You propose to take to resolve or otherwise deal with the Conflict;
 - (b) make full disclosure to Us of all relevant information relating to the Conflict; and
 - (c) take such steps as We may, if we choose to, reasonably require to resolve or otherwise deal with that Conflict.

- 17.4 If You fail to notify Us under this clause 17, or are unable or unwilling to resolve or deal with the Conflict as required, We may terminate the Term of this Agreement in accordance with clause 21 [Termination for Default].

18. ACCESS TO PREMISES AND RECORDS

- 18.1 You must give the Auditor-General, the Privacy Commissioner and persons authorised by Us (referred to in this clause 18 collectively as 'those permitted') access to premises at which Records and Material associated with this Agreement are stored or work under the Activity is undertaken at all reasonable times and allow those permitted to inspect and copy Records and Material, in Your possession or control, for purposes associated with this Agreement or any review of performance under this Agreement. You must also give those permitted access to any Assets, wherever they may be located, and reasonable access to Your employees, for the same purpose.
- 18.2 You must provide all reasonable assistance requested by those permitted when they exercise the rights under subclause 18.1.
- 18.3 The rights referred to in subclause 18.1 are subject to:
- (a) the provision of reasonable prior notice by those permitted (except where they believe that there is an actual or apprehended breach of the law); and
 - (b) Your reasonable security procedures.
- 18.4 The requirement for access as specified in subclause 18.1 does not in any way reduce Your responsibility to perform Your obligations in accordance with this Agreement.
- 18.5 You must ensure that any subcontract entered into for the purpose of this Agreement contains an equivalent clause allowing those permitted to have access as specified in this clause 18.
- 18.6 This clause 18 applies for the Term of this Agreement and for a period of 7 years from the date of expiration or earlier termination of the Term of this Agreement.

19. DELAY

- 19.1 You must take all reasonable steps to minimise delay in completion of the Activity.
- 19.2 If You become aware that You will be delayed in progressing or completing the Activity in accordance with this Agreement, You must immediately notify Us in writing of the cause and nature of the delay. You are to detail in the notice the steps You will take to contain the delay.
- 19.3 On receipt of a notice of delay, We may at Our option:
- (a) notify You in writing of a period of extension to complete the Activity and vary this Agreement accordingly;
 - (b) notify You in writing of reduction in the scope of the Activity and any adjustment to the Funds for You to complete the reduced Activity and vary this Agreement accordingly; or

- (c) terminate this Agreement under clause 21 [Termination for Default] or take such other steps as are available under this Agreement.

19.4 Unless We take action under subclause 19.3, You are required to comply with the time frame for progressing and completing the Activity as set out in this Agreement.

20. TERMINATION WITH COSTS

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

- (a) subject to subclause 20.3, payments under the payment provisions of this Agreement; and
- (b) subject to subclauses 20.4, 20.5 and 20.6, any reasonable costs incurred by You and directly attributable to the termination of the Term of this Agreement or reduction in scope of the Agreement.

20.2 Upon receipt of a notice of termination or reduction in scope You must:

- (a) cease or reduce the performance of Your obligations under this Agreement in accordance with the notice;
- (b) immediately do everything possible to mitigate all losses, costs, and expenses, arising from the termination or reduction in scope contained in the notice; and
- (c) immediately return to Us any Funds in accordance with paragraph 20.3(b); or deal with any such Funds as We may direct in writing.

20.3 Where We terminate the Term of this Agreement under subclause 20.1 We:

- (a) will not be obliged to pay to You any outstanding amount of the Funds except to the extent that those monies have been legally committed for expenditure by You in accordance with this Agreement and payable by You as a current liability (written evidence of which will be required) by the date notice of termination given under subclause 20.1 is deemed to be received in accordance with subclause 35.2 [Notices]; and
- (b) will be entitled to recover from You any part of the Funds which:
 - (i) has not been legally committed for expenditure by You in accordance with this Agreement and payable by You as a current liability (written evidence of which will be required) by the date the notice of termination given under subclause 20.1 is deemed to be received in accordance with subclause 35.2 [Notices]; or
 - (ii) has not, in Our opinion, been expended by You in accordance with the terms and conditions of this Agreement;

and all such Funds will be regarded as a debt due to Us capable of being recovered as

such in any court of competent jurisdiction.

- 20.4 If there is a reduction in scope of the obligations under this Agreement, Our liability to pay any part of the Funding will, in the absence of agreement to the contrary, abate proportionately to the reduction in the obligations under this Agreement.
- 20.5 Our liability to pay any compensation under or in relation to this clause 20 is subject to:
- (a) Your strict compliance with this clause 20; and
 - (b) Your substantiation of any amount claimed under paragraph 20.1(b).
- 20.6 We will not be liable to pay compensation for loss of prospective profits for a termination or reduction in scope under this clause 20 or loss of any benefits that would have been conferred on You had the termination or reduction not occurred.

21. TERMINATION FOR DEFAULT

21.1 IF:

- (a) You fail to fulfil, or are in breach of any of Your obligations under this Agreement, and do not rectify the omission or breach within 10 Business Days of receiving a notice in writing from Us to do so;
- (b) You are unable to pay all your debts as and when they become due and payable or You fail to comply with a statutory demand within the meaning of sections 459E and 459F of the *Corporations Act 2001* (Cth);
- (c) proceedings are initiated with a view to obtaining an order for Your winding up or any shareholder, member or director convenes a meeting for the purpose of considering or passing of any resolution for Your winding up;
- (d) You come under one of the forms of external administration referred to in Chapter 5 of the *Corporations Act 2001* (Cth) or equivalent provisions in Incorporated Associations legislation of the States and Territories or Parts IV and V of the *Aboriginal Councils and Associations Act 1976* (Cth), or an order has been made for the purpose of placing You under external administration;
- (e) being an individual, You become bankrupt or enter into a scheme of arrangement with creditors;
- (f) in relation to this Agreement, You breach any law of the Commonwealth, or of a State or Territory;
- (g) You cease to carry on business;
- (h) We are satisfied that any statement made in Your application for Funding is incorrect, incomplete, false or misleading in a way which would have affected the original decision to approve the Funding; or
- (i) notice is served on You or proceedings are taken to cancel Your incorporation or registration or to dissolve You as a legal entity,

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then, in the case of any one or more of these events, We may immediately terminate the Term of this Agreement by giving written notice to You of the termination.

21.2 Where We terminate the Term of this Agreement under subclause 21.1 We:

- (a) will not be obliged to pay to You any outstanding amount of the Funds except to the extent that those monies have been legally committed for expenditure by You in accordance with this Agreement and payable by You as a current liability (written evidence of which will be required) by the date notice of termination given under subclause 21.1 is deemed to be received in accordance with subclause 35.2 [Notices]; and
- (b) will be entitled to recover from You any part of the Funds which:
 - (i) has not been legally committed for expenditure by You in accordance with this Agreement and payable by You as a current liability (written evidence of which will be required) by the date the notice of termination given under subclause 21.1 is deemed to be received in accordance with subclause 35.2 [Notices]; or
 - (ii) has not, in Our opinion, been expended by You in accordance with the terms and conditions of this Agreement;

21.3 If you do not repay Us the amount referred to in paragraph 21.2(b) within 10 Business Days of receipt of the notice of termination (or if a different period is stated in the Schedule, that period) You must also pay Us Interest on the outstanding amount which You acknowledge represents a reasonable pre-estimate of the loss incurred by Us as a result of the loss of investment opportunity for, or the reasonable cost of borrowing other money in place of, the amount which should have been repaid. The amount set out in the notice, and Interest owed under this clause will be recoverable by Us as a debt due to Us by You.

21.4 Subclause 21.2 does not limit or exclude any of Our other rights, including the right to recover any other amounts from You on termination of the Term of this Agreement.

22. SUBCONTRACTING

- 22.1 You must not, without Our prior written approval, subcontract the performance of any obligations under this Agreement. In giving written approval, We may impose such terms and conditions as We think fit. Any subcontractor who You propose to replace an approved subcontractor must also be approved by Us under this clause 22. The subcontractors We have approved at the Date of this Agreement, and any terms and conditions relating to their use, are identified in the Schedule.
- 22.2 You are fully responsible for the performance of Your obligations under this Agreement, even though You may have subcontracted any of them.
- 22.3 Despite any approval given by Us under subclause 22.1, You are responsible for ensuring the suitability of a subcontractor for the work proposed to be carried out and for ensuring that such work meets the requirements of this Agreement.
- 22.4 We may revoke Our approval of a subcontractor on any reasonable ground.

22.5 Upon receipt of a written notice from Us revoking Our approval of a subcontractor, You must, as soon as practicable (or as We may direct in the notice), cease using that subcontractor to perform any of Your obligations unless We direct that the subcontractor be replaced immediately, in which case You must comply with the direction.

22.6 If We withdraw our approval of a subcontractor, You remain liable under this Agreement for the past acts or omissions of Your subcontractors as if they were current subcontractors.

22.7 You must, in any subcontract placed with a subcontractor, reserve a right of termination to take account of Our right of termination under clauses 20 [Termination with Costs] or 21 [Termination for Default] and our right of revocation of approval under subclause 22.5, and You must, where appropriate, make use of that right in the event of a termination or revocation by Us.

22.8 You must not enter into a subcontract under this Agreement with a subcontractor named by the Director of the Equal Opportunity for Women in the Workplace Agency as an employer currently not complying with the *Equal Opportunity for Women in the Workplace Act 1999* (Cth).

23. ACKNOWLEDGMENT AND PUBLICITY

23.1 You must, in all publications, promotional and advertising materials, public announcements and activities by You or on Your behalf in relation to the Activity, or any products, processes or inventions developed as a result of it, acknowledge the financial and other support You have received from Us, in the manner, if not set out in the Schedule, then to be approved by Us prior to its use.

23.2 We reserve the right to publicise and report on the awarding of Funding to You. We may do this by including in media releases, general announcements about the Funding and in annual reports Your name, the amount of the Funds given to you and the title and a brief description of the Activity.

23.3 This clause 23 applies for the Term of this Agreement and for a period of 7 years from the date of expiration or earlier termination of the Term of this Agreement.

24. SPECIFIED PERSONNEL

24.1 You must ensure that the Specified Personnel, if any, listed in the Schedule undertake activities in respect of the Activity in accordance with the terms of this Agreement.

24.2 Where Specified Personnel are unable to undertake activities in respect of the Activity, You must notify Us immediately. You must, if so requested by Us, provide replacement personnel acceptable to Us without additional payment and at the earliest opportunity.

24.3 We may give notice on reasonable grounds related to performance of the Activity requiring You to remove personnel (including Specified Personnel) from work in respect of the Activity. You must, at Your own cost, promptly arrange for the removal of such personnel from work in respect of the Activity and their replacement with personnel acceptable to Us.

24.4 If You are unable to provide acceptable replacement personnel We may terminate this Agreement in accordance with the provisions of clause 21 [Termination for Default].

25. COMPLIANCE WITH LAWS AND OUR POLICIES

- 25.1 You must, in carrying out Your obligations under this Agreement, comply with the provisions of all relevant statutes, regulations, by-laws and requirements of any Commonwealth, State, Territory or Local Authority, including those listed in the Schedule. You should note that under the *Criminal Code Act 1995* (Cth) section 137.1 giving false or misleading information is a serious offence.
- 25.2 You must, in carrying out Your obligations under this Agreement, comply with any of Our policies as notified by Us to You in writing, including those listed in the Schedule.
- 25.3 You must, when using Our premises or facilities, comply with all reasonable directions and procedures relating to occupational health, safety and security in effect at those premises or in regard to those facilities, as notified by Us or as might reasonably be inferred from the use to which the premises or facilities are being put.

26. NEGATION OF LEGAL RELATIONSHIP OF EMPLOYMENT, PARTNERSHIP AND AGENCY

- 26.1 You, Your employees, partners and agents will not, by virtue of this Agreement, be or for any purpose be deemed to be Our legal employees, partners or agents.
- 26.2 You must not, and must ensure that Your employees, partners and agents do not, represent Yourself or themselves as being Our employees, partners or agents.

27. ENTIRE AGREEMENT, VARIATION AND SEVERANCE

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

28. WAIVER

- 28.1 If either You or We do not exercise (or delay in exercising) any of Your or Our rights, that failure or delay does not operate as a waiver of those rights.
- 28.2 A single or partial exercise by You or Us of any of Your or Our rights does not prevent the further exercise of any right.
- 28.3 Waiver of any provision of, or right under, this Agreement:
- (a) must be in writing signed by the Party entitled to the benefit of that provision or right; and
 - (b) is effective only to the extent set out in the written waiver.

28.4 In this clause 28, 'rights' means rights or remedies provided by this Agreement or at law.

29. ASSIGNMENT AND NOVATION

29.1 You must not assign Your rights under this Agreement without prior written approval from Us.

29.2 You agree not to enter into negotiations with any other person for the purposes of entering into an arrangement that will require novation of this Agreement without first consulting Us.

30. INCORPORATION

30.1 You warrant that Your Constitution is not, and will not become, inconsistent with this Agreement.

30.2 You must provide a copy of Your Constitution to Us upon request.

30.3 You must obtain Our written approval to any amendments to Your Constitution which may affect Your eligibility for the Funding or Your capacity to comply with this Agreement. If You alter Your Constitution in breach of this clause We may terminate this Agreement in accordance with clause 21 [Termination for Default].

31. FUNDING PRECONDITION

31.1 You agree that it is a precondition of entitlement to the Funding that You must:

- (a) have an Australian Business Number ("ABN");
- (b) immediately notify Us if You cease to be registered with an ABN;
- (c) correctly quote the ABN on all documentation to Us;
- (d) supply proof of GST status, if requested by Us; and
- (e) immediately notify Us of changes to Your GST status.

32. DISPUTE RESOLUTION

32.1 Subject to subclause 32.3, both You and We agree not to commence any legal proceedings in respect of any dispute arising under this Agreement, which cannot be resolved by informal discussion, until the procedure provided by this clause has been utilised.

32.2 Both You and We agree that any dispute arising during the course of this Agreement is dealt with as follows:

- (a) the Party claiming that there is a dispute will send the other a written notice setting out the nature of the dispute;
- (b) the parties will try to resolve the dispute through direct negotiation by persons who they have given authority to resolve the dispute;

- (c) the parties have 10 Business Days from the receipt of the notice to reach a resolution or to agree that the dispute is to be submitted to mediation or some alternative dispute resolution procedure; and
- (d) if:
 - (i) there is no resolution of the dispute;
 - (ii) there is no agreement on submission of the dispute to mediation or some alternative dispute resolution procedure; or
 - (iii) there is a submission to mediation or some other form of alternative dispute resolution procedure, but there is no resolution within 15 Business Days of the submission, or such extended time as the parties may agree in writing before the expiration of the 15 Business Days,

then, either You or We may commence legal proceedings.

32.3 This clause 32 does not apply to the following circumstances:

- (a) either You or We commence legal proceedings for urgent interlocutory relief;
- (b) action by Us under or purportedly under clauses 4 [Payment], 18 [Access to Premises and Records], 20 [Termination with Costs] or 21 [Termination for Default];
- (c) an authority of the Commonwealth, a State or Territory is investigating a breach or suspected breach of the law by You.

32.4 Despite the existence of a dispute, both You and We must (unless requested in writing by the other Party not to do so) continue to perform obligations under this Agreement.

32.5 The operation of this clause 32 survives the expiration or earlier termination of the Term of this Agreement.

33. APPLICABLE LAW AND JURISDICTION

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

33.2 Both You and We agree to submit to the non-exclusive jurisdiction of the courts of the Australian Capital Territory in respect to any dispute under this Agreement.

34. LIAISON AND MONITORING

34.1 You must:

- (a) liaise with and provide information to Us as reasonably required by Us; and
- (b) comply with all Our reasonable requests, directions, or monitoring requirements.

34.2 You may nominate, from time to time, a person who has authority to receive and sign notices and written communications for You under this Agreement and accept any request or direction in relation to the Activity.

35. NOTICES

35.1 A Party giving notice or notifying under this Agreement must do so in writing or by Electronic Communication:

- (a) directed to the recipient's address, as varied by any notice; and
- (b) hand delivered or sent by pre-paid post or Electronic Communication to that address.

The parties' address details are as specified in the Schedule.

35.2 A notice given in accordance with subclause 35.1 is taken to be received:

- (a) if hand delivered, on delivery;
- (b) if sent by pre-paid post, 5 Business Days after the date of posting unless it has been received earlier;
- (c) if sent by Electronic Communication, at the time that would be the time of receipt under the *Electronic Transactions Act 1999 (Cth)* if a notice was being given under a law of the Commonwealth, which is currently when the Electronic Communication enters the addressee's Information System.

THIS AGREEMENT is made on the date that all Parties have signed in accordance with the requirements specified below.


EXECUTION CLAUSES

Executed by the parties.

SIGNED for and on behalf of the
COMMONWEALTH OF AUSTRALIA represented
by and acting through the Department of Transport and
Regional Services ABN 86 267 354 017 on 7 day
of FEBRUARY 05 by

RAYMOND THESEIRA

Print name of delegate



sign here

in the presence of:

EMMA YATES

Print name of witness



witness sign here

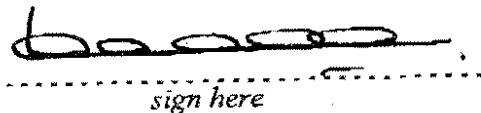
Executed on behalf of AQUACAROTENE LIMITED
ABN 18 074 969 056
This Signatory warrants that they have the authority to
bind AQUACAROTENE LIMITED.

DONALD JEFFREY SMITH

Print name of signatory

DIRECTOR

Position



sign here

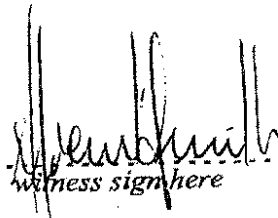
Signed in the presence of:

A GRANT SMITH

Print name of witness

DIRECTOR

Position



witness sign here