



# Grant Agreement – ACCO Grants Program

## Refurbishments Grant Agreement

Housing Authority  
(Grantor)

**[insert Organisation Name]**  
(Organisation)

*[Note: this template requires population of all information highlighted in blue.]*

*Highlighted in yellow are guidance notes which will require change or deletion in any final version, if using alternative wording check consistency throughout the document.*

*Delete the drafting instructions (highlighted text) in final copy.]*

# Details

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Date [dd]/[mm]/2024

## Parties

Name The Housing Authority, a body corporate constituted under the *Housing Act 1980* (WA) operating within the Department of Communities, on behalf of the State of Western Australia.

Short form name **Grantor**

Address: 5 Newman Court, Fremantle, Western Australia, 6160

Contact Attention: Monica Nichevich  
Program Director, Priority Projects and Program Management Office  
Housing and Homelessness  
*[change contact as necessary]*

Name [party full name, ABN/ACN#]

Short form name **Organisation**

Address: [insert postal address]

Contact: Attention: [insert contact person name]

## Background

- A** The State of Western Australia, under its 'North West Aboriginal Housing Fund Aboriginal Community Controlled Organisations Aboriginal Employee Housing Grants Program (ACCO Grants Program)', is making funding available to ACCOs for the purpose of refurbishing Dwellings to increase the supply and affordability of housing for Aboriginal Employee's working for ACCOs in the Pilbara and Kimberley regions of WA.
- B** The Organisation is an ACCO and an eligible entity under the Grant Guidelines, and has applied to the Grantor for financial assistance to undertake the Activity.
- C** The Grantor has agreed to provide financial assistance, in the form of the Grant Funds, to the Organisation for the Approved Purpose.
- D** The Organisation is required to be accountable for the Grant Funds that it receives from the Grantor.
- E** The payment of the Grant Funds by the Grantor to the Organisation is made on and subject to the terms and conditions set out in this Agreement.

# Agreed terms

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## 1. DEFINED TERMS AND INTERPRETATION

### 1.1 Defined terms

In this Agreement, unless the context otherwise requires:

**ACCO** means an Aboriginal and/or Torres Strait Islander Community-Controlled Organisation which delivers services, including land and resource management, that builds the strength and empowerment of Aboriginal and Torres Strait Islander communities and people and is:

- a. incorporated under relevant legislation and not-for-profit;
- b. controlled and operated by Aboriginal and/or Torres Strait Islander people;
- c. connected to the community, or communities, in which they deliver the services; and
- d. governed by a majority Aboriginal and/or Torres Strait Islander governing body.

**Aboriginal Employee** means any individual employed by an ACCO who identifies as an Aboriginal and/or Torres Strait Islander.

**Acquittal** means when the Organisation has expended the Grant Funds and provided to the Grantor the reports and financial information required in accordance with clause 13 and the Grantor has confirmed to the Organisation that such reports and financial information are satisfactory to the Grantor.

**Activity** means the works to be undertaken and completed, utilising the Grant Funds, as specified in Item 2 of Schedule 1.

**Agreement** means this agreement, including its background and any schedules or annexures and any other document referenced or incorporated into this agreement.

**Agreement Date** means the date on which the last Party to sign, signs this Agreement.

**Approvals** means all approvals, permits, licences or consents of any Governmental Agency which are required in connection with the Works or to enable the occupation or use of the refurbished Dwellings in accordance with the requirements of this Agreement.

**Approved Purpose** means the purpose or purposes set out in Item 1 of Schedule 1.

**Auditor** means an accountant who is a member of the Institute of Chartered Accountants in Australia, the Australian Society of Certified Practising Accountants or the Institute of Public Accountants and who is independent from the Organisation.

**Auditor General** means the Auditor General for the State of Western Australia.

**Business Day** means a day other than a Saturday, Sunday or public holiday in Western Australia.

**Construction Contract** means the contract between the Organisation and the Contractor for the Works.

**Contractor** means the person or entity which the Organisation has engaged under a Construction Contract for the performance of the Works.

**Copyright Act** means the *Copyright Act 1968* (Cth).

**Corporations Act** means the *Corporations Act 2001* (Cth).

**Dwellings** means those residential units, houses, villas or apartments on the Land as at the Agreement Date which are to be refurbished as part of the Activity.

**Existing Material** means a work (as defined in the Copyright Act), product or other material created prior to the commencement of the Term or created during the Term but outside the scope of this Agreement (including any subsequent modifications to such work, product or other material) and where:

- (a) the Intellectual Property Rights in the work, product or other material are not owned by the Grantor or the Crown in right of the State of Western Australia; and
- (b) the work, product or other material is required specifically for, or in connection with, the Activity.

**Final Financial Report** has the meaning given in Schedule 4.

**Financial Acquittal Report** has the meaning given in Schedule 4

**Governmental Agency** means, in respect of the relevant sovereign state, any government or governmental, semi-governmental, administrative, fiscal or judicial body, responsible Minister, department, office, commission, delegate, authority, instrumentality, tribunal, board, agency, entity or organ of government, whether Federal, State, Territorial or local, statutory or otherwise, anywhere in the world.

**Grant Funds** means the amount specified in Item 1 of Schedule 2.

**Grant Guidelines** means the NWAHF- Aboriginal Community Controlled Organisations' Aboriginal Employee Housing Grants Program Grant Guidelines, .

**Intellectual Property Rights** means:

- (a) patents, copyright, rights in circuit layouts, registered designs, trademarks and the right to have confidential information (being information which is capable of being protected by way of an action for breach of confidence) kept confidential; and
- (b) any application or right to apply for registration of any of those rights,

but does not include Moral Rights.

**Land** means the land on which the Activity is to be undertaken (and on which the Dwellings are located), as described in Item 6 of Schedule 1.

**Law** includes any constitution or provision, treaty, decree, convention, statute, Act, regulation, rule, ordinance, proclamation, subordinate legislation, delegated legislation, by-law, judgement, rule of common law or equity, rule, ruling or guideline by a competent entity exercising jurisdiction in the relevant matter, including a rule, ruling, by-law, town planning scheme, building code or guideline of any Governmental Agency.

**Local Government** means a local government as defined in the *Local Government Act 1995* (WA).

**Moral Rights** has the same meaning as in the Copyright Act.

**New Material** means anything created by the Organisation under this Agreement utilising the Grant Funds and in which Intellectual Property Rights subsist.

**Party** means the Grantor or the Organisation, as the context requires, and **Parties** means both of them.

**Policies** means the Grantor's policies listed in Item 5 of Schedule 1 as updated and/or amended by the Grantor from time to time, and any new policies adopted by the Grantor from time to time and advised to the Organisation in writing.

**Term** means the period specified in Item 3 of Schedule 1.

**Works** means the works required for the refurbishment of the Dwellings (including the design, construction, completion and commissioning of those refurbishment works) on the Land, the scope of which is set out in Schedule 3 and Annexure A of this Agreement.

## 1.2 Interpretation

In this Agreement, headings are for convenience only and do not affect interpretation and unless the context indicates a contrary intention:

- (a) words importing the singular include the plural and *vice versa*;
- (b) words importing any gender include the other gender;
- (c) a reference to persons includes a firm, company, partnership, joint venture, association, corporation or other body corporate or a Governmental Agency;
- (d) a reference to a person includes that person's executors, administrators, successors, substitutes and assigns;
- (e) a reference to a clause or Schedule is to a clause in or Schedule to this Agreement;
- (f) a reference to A\$, \$A, dollar or \$ is to Australian currency unless otherwise stated;
- (g) a reference to any legislation or to any section or provision includes any statutory modification or re-enactment or any statutory provision substituted for it, and ordinances, by-laws, regulations, and other statutory instruments issued there under for the time being in force and having jurisdiction in Western Australia;
- (h) where the day on which or by which any act, matter or thing is to be done under this Agreement is not a Business Day, that act, matter or thing will be done on the immediately following Business Day;
- (i) a word or expression defined in the Corporations Act has the meaning given to it in that Act;
- (j) the meaning of general words is not limited by specific examples introduced by including, 'for example' or similar expressions;
- (k) this Agreement shall be interpreted, applied and will take effect as a contract made in Western Australia;
- (l) the contents of the Schedules to this Agreement are hereby deemed to be provisions of this Agreement and are enforceable in accordance with its terms;
- (m) the Parties shall at all times observe, conform and comply with the provisions of all applicable Laws, legislation, rules, regulations and by-laws of the Commonwealth of Australia, the State of Western Australia and any relevant Local Government as amended from time to time;
- (n) to the extent that any applicable Law, legislative provision, rule, regulations or by-law referred in clause 1.2(m) is inconsistent with this Agreement, the former shall prevail to the extent of the inconsistency;
- (o) nothing in this Agreement shall be construed so as to make a Party a partner, agent or representative of the other Party or to create any partnership, association or agency for any purpose;
- (p) the rights and obligations of the Parties shall be neither joint nor joint and several;
- (q) subject to its provisions, this Agreement will be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns who become Parties under the terms of this Agreement; and
- (r) this Agreement replaces any previous agreement or contract between the Parties in relation to the Approved Purpose.

## **2. PAYMENT OF GRANT FUNDS**

- (a) Subject to this clause 2, clause 3 and all of the other terms and conditions of this Agreement, the Grantor will pay to the Organisation the Grant Funds in accordance with the payment schedule specified in Item 5 of Schedule 2.
- (b) The Grant Funds are fixed for the duration of the Term of the Agreement.
- (c) Notwithstanding anything to the contrary in the payment schedule specified in Item 5 of Schedule 2 and without limiting the Grantor's other rights under this Agreement, the Grantor may, in its sole and absolute discretion and at any time and from time to time:
  - (i) elect to change the frequency of payment of any unpaid Grant Funds from milestone instalments to periodic timeframe based instalments (in which case, the amount of each unpaid instalment shall be adjusted accordingly) and, if it makes such an election, it may subsequently elect to revert to paying the Grant Funds by milestone instalments; and
  - (ii) withhold payment to the Organisation of a milestone instalment(s) (or, if the Grantor has made an election under clause 2(c)(i), a periodic timeframe based instalment(s)) if, in the Grantor's opinion, the Organisation has failed (or there is a likelihood or risk that the Organisation will or may fail) to observe, perform or comply with its obligations under this Agreement (or any of them) (and irrespective of whether any prior notice of such non-performance, non-compliance or failure has been given to the Organisation).
- (d) If the Grantor makes a withholding under clause 2(c)(ii), the Grantor is only required to release the withheld funds to the Organisation upon being satisfied (in its sole and absolute discretion) that the failure (or risk or likelihood of failure) has been rectified or no longer exists.

## **3. CONDITION PRECEDENT**

- (a) This Agreement is subject to and conditional upon:
  - (i) the Grantor obtaining Ministerial approval and all other required internal approvals for the payment of the Grant Funds in accordance with the terms of this Agreement, in each case in writing and on terms and conditions which are acceptable to the Grantor (in its sole and absolute discretion);
  - (ii) if the Organisation is not the registered proprietor or lessee of the Land as at the Agreement Date, either:
    - (A) it becoming the registered proprietor of the Land; or
    - (B) it entering into an unconditional binding lease of the Land for an initial term of not less than 10 years,  
within 120 days of the Agreement Date;
  - (iii) if the Organisation is the lessee of the Land as at the Agreement Date but the current term of that lease has less than 10 years to run, the Lessee entering into an unconditional binding extension of lease, or an unconditional binding new lease, so that the current term of that lease is for a period of not less than 10 years, within 120 days of the Agreement Date; and
  - (iv) the Organisation entering into a Construction Contract with a Contractor, and the date for commencement of the Works under that Construction Contract being, not later than 120 days after the Agreement Date.
- (b) The conditions precedent in clause 3(a) are for the sole benefit of the Grantor and can only be waived by the Grantor in writing.

- (c) If the conditions precedent in clause 3(a) (or any of them) are not satisfied by the latest date for satisfaction therein specified (or waived by the Grantor under clause 3(b)), the Grantor may terminate this Agreement by written notice to the Organisation, whereupon:
  - (i) the Organisation must repay to the Housing Authority any Grant Funds not spent at the date of termination and any Grant Funds which are repayable under clause 6;
  - (ii) subject to the Organisation complying with its obligations under clause 3(c)(i), neither party shall have any further rights or obligations under this Agreement (and, to avoid any doubt, the Grantor shall not be required to pay any of the Grant Funds to the Organisation); and
  - (iii) no party shall have a claim against the other under this Agreement or arising from the termination of this Agreement for any loss (excluding any claim arising under clauses 3(c)(i) or 6 or existing prior to termination).

#### **4. DURATION OF THE AGREEMENT**

This Agreement will be for the Term unless earlier terminated by the Grantor under this Agreement or varied by the Parties' mutual agreement.

#### **5. OBLIGATIONS OF ORGANISATION**

##### **5.1 Agreement to terms and conditions**

The Organisation agrees to be bound by and to comply with all of the terms and conditions which are, by this Agreement, to be observed or performed by the Organisation (including, without limitation, those in this clause 5) in consideration of the Grantor's agreement to enter into this Agreement and to pay to the Organisation the Grant Funds on the terms and conditions set out in this Agreement.

##### **5.2 Use of Grant Payment**

- (a) The Organisation will use the Grant Funds (and any interest which accrues on the Grant Funds) solely for the Approved Purpose.
- (b) The Organisation must not use or apply any of the Grant Funds on or in connection with any of the matters, things or expenses set out in Item 2 of Schedule 2.

##### **5.3 No Changes**

The Organisation will not make any changes to the Approved Purpose without the Grantor's prior written consent.

##### **5.4 No Endorsement**

The Organisation agrees that nothing in this Agreement constitutes an endorsement by the Grantor of any of the Activities to be performed by the Organisation including, without limitation, of the suitability of the refurbished Dwellings for any particular purpose or their compliance with any Laws.

##### **5.5 Request for Information**

The Organisation is to provide the Grantor with any documents or information relating to this Agreement, the Activities or Dwellings within 10 Business Days of receiving such a request from the Grantor.

## **5.6 Accounts and Reporting**

Without limiting clause 13, the Organisation is to keep proper financial records in accordance with generally accepted accounting principles and practices.

## **5.7 Special Conditions of Grant**

- (a) The Organisation agrees to comply with the special conditions (if any) specified in Item 4 of Schedule 1.
- (b) To the extent there is any inconsistency between the terms and conditions of this Agreement and those special conditions, those special conditions shall prevail to the extent of such inconsistency.

## **5.8 General Undertaking of Organisation**

In carrying out the Activities, the Organisation must at all times:

- (a) duly and punctually perform and observe its obligations under this Agreement and will promptly inform the Grantor of any occurrence which might adversely affect its ability to do so in a material way including a potential or actual conflict of interest that could reasonably be perceived by others to have arisen, that may restrict it from undertaking the Activity in a fair and independent way;
- (b) undertake its responsibilities under this Agreement with integrity, good faith and probity in accordance with good corporate governance practices;
- (c) not, nor attempt to, sell, transfer, assign, mortgage, charge or otherwise dispose of, deal with or encumber any of its rights, entitlements and powers or obligations under this Agreement;
- (d) comply with all State and Commonwealth laws, rules, regulations and by-laws and in particular, take all reasonable actions to ensure that no fraud occurs;
- (e) comply with any codes of ethics, regulations or other industry standards applying to or in any way relevant to the Activity including any Policies of the Grantor;
- (f) promptly pay all taxes, duties and government charges imposed in Australia or overseas in connection with this Agreement;
- (g) cooperate fully with the Grantor in the administration of this Agreement;
- (h) upon reasonable notice, provide the Grantor or its agents, with access at any reasonable time and from time to time to the Land and to the Organisation's premises, financial records, other documents, equipment and other property for the purpose of audit and inspection by the Grantor and Auditor General in order to verify the Organisation's compliance with this Agreement; and
- (i) do all things reasonably necessary and necessarily incidental for the proper performance of the Organisation's obligations under this Agreement.

## **5.9 Activity**

- (a) Further to clause 5.2, the Organisation will undertake and complete the Activities, using the Grant Funds, by the latest date specified in Item 1 of Schedule 3.
- (b) In performing the Activities, the Organisation must at all times:
  - (i) perform, and must ensure that its officers, employees, contractors, agents and volunteers perform, the Activities with the due skill, care and diligence expected of a properly qualified, competent, professional contractor experienced in carrying out activities of a similar size, scope and complexity as the Activity;
  - (ii) obtain and keep current all required Approvals;



- (iii) perform the Activity and bring it to completion in a timely manner and, in any event, prior to the latest date specified in Item 1 of Schedule 3;
- (iv) ensure that the Activity complies with the requirements of all Approvals, applicable legislation, statutory instruments, codes, statutory authorities, persons acting with statutory authority and all relevant mandatory Australian Standards applicable to the Activities, are constructed with new and good quality materials and otherwise comply with all standards of quality as may reasonably be required by the Grantor;
- (v) comply with all reasonable directions given by the Grantor to the Organisation in connection with the performance of the Activity;
- (vi) notify the Grantor immediately it becomes aware of the existence or likelihood of any claim, demand or proceedings arising out of or in connection with its performance of the Activity;
- (vii) promptly notify the Grantor if there is a lack of information or authority or any other cause beyond the Organisation's reasonable control, which is hindering the Organisation's performance of the Activity;
- (viii) comply with all Laws relating to occupational health, safety and security;
- (ix) ensure that all rubbish and excess materials resulting from the performance of the Activities are removed from the Land, and that the Land is not left in an unclean or untidy state as a result of the performance of the Activity;
- (x) do everything reasonably necessary to ensure that no injury, damage or death is occasioned to any person and that no damage is occasioned to any property as a result of the performance of the Activity;
- (xi) not cause any nuisance or public disturbance in the performance of the Activity; and
- (xii) avoid any unnecessary interference with the passage of people or vehicles on the Land during the course of performance of the Activity;
- (xiii) if the Organisation leases the Land:
  - (A) promptly notify the Grantor if the lease prohibits the carrying out by the Organisation of the Activities or any of its other obligations under this Agreement or if the Organisation receives a notice of default under the lease, or if the lease is terminated;
  - (B) comply with all requirements of the lease in relation to the carrying out of the Activities and the performance by the Organisation of its other obligations under this Agreement; and
  - (C) comply with all reasonable directions given by the owner of the Land relating to occupational health, safety and security at the Land.

#### **5.10 Variation to Activity**

- (a) If the scope of the Works or timing for the completion of the Works is likely to change, or has changed, or the Organisation will be unable to deliver or perform the Activities, including without limitation due to any conditions or requirements of any Governmental Agencies or a change in construction costs, or any other event outside of the control of the Organisation, the Organisation must immediately give the Grantor notice of, and seek the Grantor's consent (in its sole discretion) to, that change.
- (b) The Grantor will evaluate the proposed change (in accordance with any Policies which it has in place at the relevant time) and:

- (i) if it approves the change, the change will not be deemed to be a breach of this Agreement by the Organisation; and
  - (ii) if it does not approve the change, the Grantor may exercise its rights under clause 12.
- (c) Notwithstanding anything to the contrary in this clause and despite the Grantor's approval of any change, the amount of the Grant Funds is fixed and will not be increased.

### **5.11 Notification of Changes**

The Organisation must immediately notify the Grantor upon the occurrence of any of the following events:

- (a) the appointment of a new director(s), the removal of any director(s) or any other change to the Organisation's board of directors or other governing body;
- (b) any change to the Organisation's rule book or other constituent documents; or
- (c) if there is any issue with the manner in which the Organisation is being run or operated.

## **6. REPAYMENT AND RETENTION OF GRANT FUNDS**

- (a) The Organisation must repay to the Grantor any Grant Funds that the Grantor has paid to the Organisation under this Agreement (including any GST paid by the Grantor on such Grant Funds) which are not used strictly in accordance with this Agreement, unless there has been written agreement otherwise between the Parties.
- (b) If the Organisation must pay any amount pursuant to clause 6(a):
  - (i) it must do so within 20 Business Days after the Grantor provides a notice in writing to the Organisation;
  - (ii) it must pay interest on the amount from the end of the 20 Business Days until the date of repayment (and interest is calculated at the general interest rate as specified in section 8AAD of the *Taxation Administration Act 1953* (Cth) on a daily compounding basis); and
  - (iii) the Grantor may recover the amount and any interest from the Organisation as a debt due to the Grantor.
- (c) The Grantor can recover all or any of the amount and interest by deducting it from subsequent Grant Funds it is required to pay the Organisation under this Agreement.

## **7. LIMITATION OF LIABILITY**

- (a) The Grantor does not accept any responsibility or liability for the success or otherwise of the Approved Purpose or Activity and is not liable for any losses, costs or expenses which may be suffered by the Organisation in undertaking the Activity or (once the Activity is completed) in connection with the occupation or use of the refurbished Dwellings.
- (b) The Organisation will indemnify the Grantor against the following:
  - (i) all liability; and
  - (ii) all losses, costs, and expenses (including those set out in clause 7(c) if caused by the circumstances set out in clause 7(d)),

suffered or incurred by the Grantor under, arising out of or in connection with or in relation to this Agreement, the Approved Purpose, the Activities, the Dwellings or anything done or omitted to be done by the Organisation under this Agreement.

- (c) The losses, costs, and expenses against which the Organisation indemnifies the Grantor include:
  - (i) loss of or damage to the Grantor's property; and
  - (ii) loss or expense in dealing with any claim against the Grantor (including legal costs on a solicitor/own client basis, the cost of time spent, resources used and disbursements paid).
- (d) For the purposes of clauses 7(b) and 7(c), the Organisation indemnifies the Grantor in circumstances where the Grantor's liability, loss, cost or expense was caused by:
  - (i) the Organisation's or that of its officers', employees', agents', contractors' or volunteers' act or omission in carrying out this Agreement, but only where it was, or they were, at fault; or
  - (ii) a breach of this Agreement by the Organisation.
- (e) The Organisation's liability to indemnify the Grantor under this clause 7 is reduced proportionately to the extent that the Grantor's own (or that of its officers', employees', agents', volunteers' or contractors') fault or omission caused its loss.
- (f) The Grantor's right to be indemnified under this clause 7 is a continuing indemnity and is in addition to any other remedy it has at law or under this Agreement. However, it is not entitled to be compensated for more than its actual loss.
- (g) Each indemnity in this Agreement survives expiration or earlier termination of this Agreement.
- (h) Neither Party will be liable for:
  - (i) any indirect, incidental, exemplary, consequential, punitive or special loss, damage, cost or expense;
  - (ii) loss of or corruption to data; or
  - (iii) loss of profits, business, savings, goodwill or revenue,
 (of any kind whatever and however caused), whether arising under contract, tort (including negligence) or otherwise and even if they been advised of their possibility.

## **8. INSURANCE**

- (a) The Organisation agrees to effect and maintain current and adequate insurance appropriate to the Activity funded and, including, at a minimum, those policies of insurance set out in Schedule 5.
- (b) The Organisation must provide to the Grantor on request certificates of currency for the insurance and/or a warranty from its insurer that the policy(ies) extends to and will cover all potential liability arising under this Agreement. To avoid any doubt, if the Organisation has global insurance or a master insurance policy, this clause 8 does not require the Organisation to take out separate insurance policies to cover the Activities, provided the insurance policies in place from time to time provide the coverage required by this clause.
- (c) To the extent the Organisation receives any insurance proceeds under any insurance policy effected by it in compliance with its obligations under clause 8(a), the Organisation must apply those proceeds towards the repair, reconstruction or reinstatement of any damaged or destroyed Works, goods or other property constructed or used in the performance of the Activities or otherwise in satisfaction of any loss, damage or liability suffered or incurred by it in connection with the performance of the Activities.

- (d) This clause 8 continues to operate for as long as the Organisation has any obligations under this Agreement, including without limitation pursuant to item 4 of Schedule 1.

## **9. FREEDOM OF INFORMATION ACT**

- (a) The Organisation acknowledges and agrees that this Agreement and information regarding it is subject to the *Freedom of Information Act 1992* (WA) and that the Grantor may publicly disclose information in relation to this Agreement, including its terms and the details of the Organisation.
- (b) The Parties acknowledge and agree that, despite any provision of this Agreement to the contrary, the powers and responsibilities of the Auditor General under the *Financial Management Act 2006* (WA) are not limited or affected by this Agreement.
- (c) The Organisation must allow the Auditor General, or an authorised representative, to:
  - (i) have access to and examine the Organisation's records and information concerning this Agreement; and
  - (ii) undertake an audit of those records and information under the *Financial Management Act 2006* and/or the *Auditor General Act 2006*.

## **10. COMMUNICATIONS AND ACKNOWLEDGEMENTS**

- (a) The Organisation agrees not to make any public announcement, including by social media, in connection with the Activity, the Grant Funds or this Agreement without the Grantor's prior written approval.
- (b) The Organisation agrees to acknowledge the financial and other support provided to it by the North West Aboriginal Housing Fund in all presentations, articles, newsletters, literary works, publications and promotional and advertising materials published in connection with the Activity, the Grant Funds, the Dwellings or this Agreement. The Grantor may notify the Organisation of the form of acknowledgement that the Organisation is to use.
- (c) The Organisation agrees not to use the State of Western Australia Coat of Arms or the Department of Communities logo in connection with the Activity, the Grant Funds, the Dwellings or this Agreement without the Grantor's prior written approval.

## **11. NOTICES**

- (a) Any notice or other communication that may or must be given under this Agreement:
  - (i) must be in writing;
  - (ii) may be given by an authorised officer of the Party giving notice;
  - (iii) must be:
    - (A) hand delivered or sent by prepaid post to the address of the Party receiving the notice as set out in item 7 of Schedule 1; or
    - (B) sent by electronic transmission to the email address of the Party receiving the notice as set out in item 7 of Schedule 1;
- (b) subject to clause 11(c), is taken to be received:
  - (i) in the case of hand delivery, on the date of delivery;
  - (ii) in the case of post, on the fifth Business Day after posting; and
  - (iii) in the case of electronic transmission, on the date of transmission (unless the sender's computer indicates an error in transmission); and

- (c) if received after 5.00 pm or on a day other than a Business Day, is taken to be received on the next Business Day.

## **12. DEFAULT AND TERMINATION**

### **12.1 Event of Default by the Organisation**

An Event of Default occurs if:

- (a) the Organisation breaches any of its obligations under this Agreement which continues without remedy for 10 Business Days after notice in writing has been served on the Organisation by the Grantor;
- (b) where the Organisation is not the registered proprietor of the Land as at the Agreement Date, the contract of sale pursuant to which the Organisation is to acquire the Land is terminated for any reason;
- (c) where the Organisation is the lessee of the Land, its lease of the Land is terminated for any reason;
- (d) any Approvals are refused or are granted on terms and conditions which are not reasonably satisfactory to either the Grantor or the Organisation;
- (e) the Organisation becomes insolvent or is deemed to be insolvent under the Corporations Act; or
- (f) the Grantor has reasonable grounds to believe that the Organisation is unwilling or unable to comply with its obligations under this Agreement.

### **12.2 Effect of Event of Default**

If an Event of Default occurs, the Grantor may elect, at its sole and absolute discretion, to:

- (a) terminate the Agreement by providing a further 10 Business Days' notice in writing to the Organisation of the Event of Default;
- (b) suspend payment of the Grant Funds until the Event of Default is remedied;
- (c) commence paying the Grant Funds directly to the Contractor (in satisfaction of invoices issued by the Contractor under the Construction Contract) (and the Organisation acknowledges and agrees that the receipt by the Contractor of any of the Grant Funds shall be in full and final satisfaction of the Grantor's obligation to pay the said amount of the Grant Funds to the Organisation under this Agreement); or
- (d) subject to clause 12.3, to itself take over the performance of the Activity to remedy the Event of Default or may appoint a reputable third-party as its contractor or agent to do the same and the third party costs incurred by the Grantor in doing so:
  - (i) shall be a debt due and payable by the Organisation to the Grantor but only up to the amount of any unspent Grant Funds in the hands of the Organisation; and/or
  - (ii) can be paid from any Grant Funds not yet paid under this Agreement (and to the extent so paid the Organisation acknowledges and agrees that this shall be in full and final satisfaction of the Grantor's obligation to pay the said amount of the Grant Funds to the Organisation under this Agreement).

### **12.3 Step In Rights**

- (a) The Organisation acknowledges and agrees that, where clause 12.2(d) applies, the Grantor may itself take over the performance of the Activity to remedy the Event of Default or may appoint a reputable third-party as its contractor or agent to do the same.

- (b) The Organisation must grant the Grantor or the appointed third-party (**Step In Entity**) unfettered access to the Land to perform the Activity and remedy the Event of Default, including but not limited to completion of the Works (if required).
- (c) In the circumstances referred to in clause 12.2(d), the right to take over the performance of the Activity may be exercised by the Grantor giving to the Organisation, notice in writing within 30 days of an Event of Default (**Step In Notice**).
- (d) If the Grantor gives a Step In Notice, the Grantor agrees that:
  - (i) if it is the Step In Entity, it will; or
  - (ii) if the Step In Entity is a third party, it will use reasonable endeavours to procure that the Step In Entity:
    - (A) comply with all of the obligations imposed on the Organisation under this Agreement in connection with those Activities undertaken by the Step In Entity to cure the Event of Default;
    - (B) use reasonable endeavours to remedy the Event of Default as soon as is reasonably practicable in all of the circumstances; and
    - (C) comply with the requirements of all applicable legislation, statutory instruments, codes, statutory authorities, persons acting with statutory authority and all relevant mandatory industry standards applicable to the Activities.
- (e) The Grantor and the Organisation further agree that if the Grantor gives a Step In Notice:
  - (i) unless and until the performance of the Activity and control and use of the Land reverts to the Organisation under clause 12.3(f), the Grantor is not obliged to pay any further Grant Funds to the Organisation and the Organisation will be released from further obligations to the Grantor under this Agreement in respect of completion of the Works; and
  - (ii) if the performance of the Activity and control and use of the Land reverts to the Organisation under clause 12.3(f), any defect or fault in any of the Works to the extent undertaken by the Step In Entity will not be considered a breach by the Organisation of any of its obligations under this Agreement.
- (f) Once the Step In Entity has remedied the Event of Default to the satisfaction of the Grantor, acting reasonably, the Grantor must allow performance of the Activity and control and use of the Land to revert to the Organisation, and the Step in Entity will no longer have access to the Land.
- (g) The Parties must do all things reasonably necessary to give effect to this clause.
- (h) Except as otherwise stated, the exercise of rights under this clause do not, in any way, affect the accrued rights of the Parties under the terms of this Agreement.

#### **12.4 Recommencement of Grant Payment**

If clause 12.2(b) applies, the Grantor may, in its absolute discretion, recommence payment of the Grant Funds if and when the Organisation has rectified the Event of Default.

#### **12.5 Consequences of termination**

- (a) If the Grantor terminates this Agreement under clause 12.2, the Organisation must repay to the Grantor any Grant Funds not yet spent as at the date of termination and any Grant Funds which are repayable under clause 6.
- (b) Clauses 6, 7, 9, 10, 11, 12, 13, 14.2, 18 and 20, and Item 4 of Schedule 1, of this Agreement survive the expiration or earlier termination of this Agreement.
- (c) A Party's accrued rights or remedies arising before termination will not be affected.

- (d) Termination by the Grantor in accordance with clause 12.2 (a) is without prejudice to any rights or remedies that the Grantor may have under the Agreement or at Law.

### **13. GRANT EXPENDITURE AND ACQUITTAL**

- (a) The Organisation must provide to the Grantor the financial, progress and other reports as set out in Schedule 4.
- (b) The Financial Acquittal Report must:
  - (i) be in accordance with this Agreement, applicable Australian Accounting Standards and based on proper accounts and records;
  - (ii) report expenditure relating to the Grant Funds provided under this Agreement. The report must show expenditure in accordance with the budget submitted by the Organisation with its application for Grant Funds and approved by the Grantor, and include all of the other information which is specified in Schedule 4;
  - (iii) verify that the Organisation has spent the Grant Funds provided on the Activity and in accordance with this Agreement; and
  - (iv) include any other matters (in addition to the matters set out in Schedules) the Grantor requires to allow it to meet financial management and accountability legislation.
- (c) The Final Financial Report must be audited by an Auditor.
- (d) The Auditor of the Final Financial Report must not be a principal member of, shareholder, officer or employee of the Organisation or of a Related Body Corporate as defined in the Corporations Act. The Final Financial Report must be audited in accordance with:
  - (i) the Australian Audit Standards; and
  - (ii) if the Organisation is an Aboriginal Corporation registered under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth) (CATSI Act), all requirements as outlined in Division 339 of the CATSI Act "Audit of Financial Reports" and any amendments to this Division as may occur from time to time.
- (e) At any time up to five years after the expiration or earlier termination of this Agreement, the Grantor may ask the Organisation to send:
  - (i) Original receipts or other documents which account for the expenditure of the Grant Funds; and/or
  - (ii) A statutory declaration made in accordance with the *Oaths Affidavits and Statutory Declarations Act 2005* (WA) accounting for the expenditure of the Grant Funds.
- (f) In addition to its obligations under clause 13(a) the Organisation must provide to the Grantor promptly after demand (whether such demand is made during or after the expiration or earlier termination of this Agreement) any other documents or information reasonably requested by the Grantor in relation to the use of the Grant Funds, the performance of the Activities or the use of the Dwellings.

### **14. ASSETS**

#### **14.1 Ownership of assets**

- (a) The Organisation is and will at all times remain the legal and beneficial owner of all improvements constructed on the Land as part of the Works.

## 14.2 Dealings with the Land

- (a) The Organisation charges the Land (or, if it leases the Land, all of its right, title and interest in the lease) with the performance of its obligations under this Agreement and agrees to the Grantor lodging an absolute caveat over the Land (or its lease, as applicable) to secure the performance of the Organisation's obligations under this Agreement.
- (b) If the Organisation wishes to register any dealing against the certificate of title to the Land, which is not inconsistent with the Grantor's rights under this Agreement, it must notify the Grantor in writing requesting a withdrawal of the caveat referred to in clause 14.2(a).
- (c) The Grantor must, within 15 Business Days of receipt of the Organisation's request made under clause 14.2(b), consider and determine the Organisation's request and may, at its absolute discretion but not unreasonably denied, execute a withdrawal of caveat to enable the dealing to be registered with the registrar of titles.
- (d) The Organisation will notify the Grantor of the proposed lodgement of the dealing so that the Grantor may replace the absolute caveat on the certificate of title for the Land immediately following lodgement of the dealing.

## 15. CONTRACTORS

- (a) The Grantor consents to the Organisation procuring the services of contractors and subcontractors for the performance of the Activities, pursuant to a Construction Contract and any related subcontracts provided that:
  - (i) the Contractor, any other contractors engaged by the Organisation to carry out the Activities and their subcontractors are appropriately qualified and registered to carry out the Works;
  - (ii) the Contractor has sufficient financial and other resources to carry out the Works;
  - (iii) the Organisation provides, upon the Grantor's request, to the Grantor (without limitation) a copy of the Construction Contract and details of any other contract it has entered into in relation to the performance of this Agreement and must procure that the Contractor provides to the Grantor, upon request, a copy of any subcontract entered into by the Contractor in connection with the Works.
- (b) The Organisation is not relieved of its obligation to carry out the Activities as required by this Agreement merely because it contracts or subcontracts any part(s) of the Agreement and the Organisation shall be liable to the Grantor for the acts, defaults and neglects of the Contractor, any other contractor it engages to carry out the Activities or any of their subcontractors (and any employee or agent of any of them) as if they were the acts, defaults and neglects of the Organisation.
- (c) The Organisation agrees to ensure that the Construction Contract or other contracts entered into by it for the purposes of this Agreement, are consistent with the obligations binding on the Organisation under this Agreement.
- (d) The Organisation must:
  - (i) promptly notify the Grantor of any dispute which arises under the Construction Contract, and (without limitation) must provide the Grantor with a copy of any default or termination notices which are served or delivered under or in connection with the Construction Contract or under any Laws relating to security of payments by either the Organisation or the Contractor;
  - (ii) keep the Grantor informed as to the progression and/or resolution of, and promptly answer all queries raised by the Grantor with respect to, any such dispute.



## 16. GOODS AND SERVICES TAX

- (a) For the purposes of this clause 16:
  - (i) “GST” means the goods and services tax applicable to any taxable supplies as determined by the GST Act;
    - (i) “GST Act” means *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and includes all associated legislation and regulations;
    - (ii) the terms “supply”, “tax invoice”, “taxable supply” and “value” have the same meanings as in the GST Act.
- (b) If the supply of anything under this Agreement is a taxable supply under the GST Act, the Grant Funds shall be inclusive of GST.
- (c) Without limiting clause 16(b) the obligation of the Grantor to pay the GST on any supply by the Organisation under this Agreement is conditional upon the prior issue by the Organisation to the Grantor of a tax invoice, which complies with the GST Act. This provision applies notwithstanding any law to the contrary.
- (d) The Parties acknowledge and agree that in respect of any taxable supply made by the Organisation under this Agreement, the Organisation is solely responsible for the payment of any penalties, interest or similar amounts associated with any such taxable supply, including but not limited to, any penalties, interest or similar amounts payable as a result of the failure of the Organisation to pay any GST payable in relation to a taxable supply made under this Agreement.
- (e) The Parties hereby agree that the Grantor may elect to issue a Recipient Created Tax Invoice (RCTI) in respect to any GST payable on any taxable supply made under this Agreement, and, if it does so, the following shall apply:
  - (i) the Grantor will issue a Recipient Created Tax Invoice (**RCTI**) in respect of that supply and the Organisation will not issue a tax invoice in respect of that supply;
  - (ii) the Organisation warrants that it is registered for the purposes of GST and the Organisation will notify the Grantor in writing if it ceases to be registered for the purposes of GST during the Term of this Agreement;
  - (iii) the Grantor warrants that it is registered for the purposes of GST and the Grantor will notify the Organisation in writing if it ceases to be registered for the purposes of GST, or if it ceases to satisfy the requirements of the GST Act, during the Term of this Agreement; and
  - (iv) the Grantor will indemnify and keep indemnified the Organisation for GST and any related penalty that may arise from an understatement of the GST payable on any taxable supply for which the Grantor issues a RCTI under this Agreement.

## 17. PRIVACY ISSUES

- (a) In this clause 17, ‘Australian Privacy Principles’ and ‘Personal Information’ have the same meaning as in the *Privacy Act 1988* (Cth).
- (b) The Organisation agrees:
  - (i) to comply with the requirements of the *Privacy Act 1988* (Cth);
  - (ii) not to do anything which would breach an Australian Privacy Principle;
  - (iii) to ensure that the Contractor and any of the Organisation’s other contractors or personnel who deal with Personal Information for the purposes of this Agreement are aware of the requirements of the *Privacy Act 1988* (Cth) and the Organisation’s obligations under this clause; and

- (iv) to immediately notify the Grantor if the Organisation becomes aware of an actual or possible breach of this clause by the Organisation, the Contractor or any of the Organisation's other contractors or personnel.

## **18. CONFIDENTIAL INFORMATION**

- (a) In this clause 18, "Confidential Information" means information that:
  - (i) the Parties know, or ought to know is confidential; or
  - (ii) information that the Parties agree in writing after the date of this Agreement is confidential information for the purposes of this Agreement.
- (b) Subject to clause 18(c), a Party must not disclose Confidential Information of the other Party to anyone, without the prior written consent of that other Party.
- (c) A Party can disclose Confidential Information to the extent that it:
  - (i) is disclosed to its internal management personnel, solely to enable effective management or auditing of Agreement-related activities;
  - (ii) is disclosed by the Grantor to the responsible Minister or to the Auditor General;
  - (iii) is disclosed by the Grantor, in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia or of the State of Western Australia;
  - (iv) is shared within a Party, or with another agency, where this serves the Commonwealth's or the State of Western Australia's legitimate interests;
  - (v) is authorised or required by law to be disclosed; or
  - (vi) is in the public domain otherwise than due to a breach of this clause 18;
  - (vii) the information was already known to it prior to its disclosure by the other Party under this Agreement (as evidenced by written documents or materials in its possession or control).
- (d) Where a Party discloses Confidential Information to another person under clause 18(c)(i), they must:
  - (i) notify the receiving party that the information is confidential; and
  - (ii) not provide the information unless the receiving person agrees to keep the information confidential.
- (e) The Organisation agrees to secure all of the Grantor's Confidential Information against loss and unauthorised access, use, modification or disclosure.

## **19. CONFIDENTIALITY DEEDS**

If the Grantor makes a request, the Organisation must promptly arrange for the Contractor, any of its other contractors, and its employees, agents and volunteers to promptly provide the Grantor with a signed confidentiality deed relating to the use and non-disclosure of the Grantor's Confidential Information.

## **20. INTELLECTUAL PROPERTY RIGHTS**

### **20.1 New Material owned by the Organisation**

- (a) Unless otherwise agreed between Parties, the Intellectual Property Rights in New Material will be owned by the Organisation.
- (b) The Organisation:
  - (i) grants to the Grantor an irrevocable, perpetual, royalty-free, non-exclusive licence to exercise any or all of the rights of an owner of Intellectual Property

Rights in the New Material during the remainder of the duration of the Intellectual Property Rights in that New Material; and

- (ii) must, if a third-party owns Moral Rights in any New Material, obtain a written consent and waiver from the third-party owner in relation to his or her Moral Rights to enable the Grantor to use the New Material without regard to the third-party's Moral Rights.

## **20.2 Existing Material**

- (a) Nothing in this clause 20 affects the ownership of any Intellectual Property Rights in any Existing Material.
- (b) The Organisation:
  - (i) grants, and must ensure that any third-party owner of any Intellectual Property Rights in any Existing Material grants, to the Grantor in writing, an irrevocable, perpetual, royalty-free, non-exclusive licence to exercise any or all of the rights of an owner of Intellectual Property Rights in the Existing Material during the duration of the Intellectual Property Rights in that Existing Material; and
  - (ii) must, if a third-party owns Moral Rights in any Existing Material, obtain a written consent and waiver from the third-party owner in relation to his or her Moral Rights to enable the Grantor to use the Existing Material without regard to the third-party's Moral Rights.
- (c) The Organisation warrants that it has the right to grant the licences under clause 20.2(b)(i) and if a third-party owns any Intellectual Property Rights in the Existing Material, the Organisation has obtained a written licence from that third-party owner to enable the Grantor to use the Material without infringing any Intellectual Property Rights or Moral Rights of that third-party.

## **20.3 Intellectual Property Rights Indemnity**

- (a) The Organisation indemnifies and will keep indemnified the Grantor and all its respective officers, employees and agents from and against all costs, losses, expenses, actions, suits, demands, claims, damages and other liabilities resulting from the Organisation's failure to comply with this clause 20, or otherwise resulting from the actual or alleged infringement of the Intellectual Property Rights or the Moral Rights of any third-party by the Organisation.
- (b) The obligations of the Organisation under this clause 20 are continuing obligations and survive expiration or termination of this Agreement.

## **21. RELATIONSHIP**

- (a) The Parties agree that nothing in this Agreement may be construed to make either of them a partner, agent, employee or joint venturer of the other.
- (b) Neither Party is authorised to legally commit or attempt to bind or represent the other Party in any way.

## **22. WAIVER**

- (a) No right under this Agreement shall be deemed to be waived except by notice in writing signed by both Parties.
- (b) A waiver by either Party will not prejudice that Party's rights in relation to any further breach of this Agreement by the other Party.
- (c) Any failure to enforce this Agreement, or any forbearance, delay or indulgence granted by one Party to the other Party, will not be construed as a waiver of any rights.

### **23. NO ASSIGNMENT**

The Organisation must not assign this Agreement, or any of its rights, powers, remedies or obligations hereunder without the Grantor's prior written consent.

### **24. ENTIRE AGREEMENT**

- (a) The Parties acknowledge and agree that there may be other communications, negotiations, arrangements and agreements, whether oral or written, made between the Parties with respect to the subject matter of this Agreement.
- (b) In the event of any conflict, contradiction or inconsistency between those communications, negotiations, arrangements and agreements referred to in clause 24(a) and the provisions of this Agreement, this Agreement shall prevail.
- (c) This Agreement may be executed in any number of counterparts all of such counterparts taken together constitute the one instrument signed as an agreement.

### **25. DISPUTE RESOLUTION**

- (a) Before resorting to external dispute resolution mechanisms, the Parties shall in good faith attempt to settle by negotiation any dispute in relation to this Agreement or the rights and obligations of any Party under it, and where practical, each Party shall refer the matter to personnel who have authority to intervene and facilitate some form of resolution.
- (b) If a dispute or difference (called collectively a "dispute" in this clause 25 arises between both Parties, both Parties agree to deal with the dispute in the following way:
  - (i) the Party who claims that a dispute exists will give the other Party a notice setting out the nature of the dispute;
  - (ii) the Parties will then try to resolve the dispute by negotiation, within 20 Business Days from when the notice is given, and for that purpose may authorise persons to act for them;
- (c) If the dispute is not resolved within 20 Business Days from when the notice is given, a Party may (with the agreement of the other Party) submit the dispute to a form of alternative dispute resolution (including mediation).
- (d) A Party cannot start legal proceedings in relation to the dispute unless:
  - (i) the negotiations fail to resolve the dispute within 20 Business Days of when the notice is given; or
  - (ii) where a Party submits the dispute to alternative dispute resolution under clause 25(c) – the dispute is not resolved within 20 Business Days of that submission (or any extended time the parties have agreed in writing before the expiry of the 20 Business Days).
- (e) Each Party must at all times continue to perform its obligations under this Agreement notwithstanding the existence of a dispute or difference under this clause 25.
- (f) Nothing in this clause 25 precludes any Party from seeking any urgent interlocutory, injunctive or declaratory relief.

# Schedule 1- General

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## Item 1 Approved Purpose of Grant

Payment of the capital costs of carrying out and completing the Activity on the Land.

## Item 2 Activity

To deliver the Works outlined in Schedule 3, subject to any variations to the Works in accordance with this Agreement.

## Item 3 Agreement Term

Subject to the special conditions specified in Item 4 below, which survive expiry, and to clause 12.5, the Agreement Term is for the period commencing on the Agreement Date and expiring on the date of Acquittal.

## Item 4 Special Conditions of Grant

- (a) The Dwellings, once refurbished, must be allocated by the Organisation to, and used exclusively to house, Aboriginal Employees of the Organisation.
- (b) The Organisation must:
  - a. if it is the registered proprietor of the Land as at the Agreement Date or thereafter becomes the registered proprietor of the Land, remain the registered proprietor of the Land,
  - b. if it is the lessee of the Land as at the Agreement Date or thereafter becomes the lessee of the Land, ensure it has a current enforceable lease of the Land; and
  - c. in either case, solely use the Dwellings to house the Organisation's Aboriginal Employees,for a minimum of 10 years following Acquittal.
- (c) The Organisation must not:
  - (i) sell, transfer or otherwise dispose of or surrender; or
  - (ii) let or lease its estate or interest in (otherwise than as expressly provided for in Item 4(a) of this Schedule 1 of this Agreement),  
the Land (or any part thereof) (or if it is the lessee of the Land, its lease, or any interest therein) at any time in the 10 year period following Acquittal.
- (d) To protect the Grantor's rights and in support of these special conditions in this Item 4, the Organisation hereby charges the Land (or if it is the lessee of the Land, its lease) with the performance of its obligations under these special conditions and agrees that the Grantor may lodge (and maintain) an absolute caveat against the certificate of title to the Land (or its lease, as applicable) for a period of 10 years following Acquittal.
- (e) The Grantor will pay the costs of the preparation and lodgement or withdrawal of any caveat lodged pursuant to these special conditions.
- (f) In the event that this Agreement is terminated, to avoid any doubt, the Grantor's obligations under this Agreement, including to pay to the Organisation the Grant Funds (either at all, or any further instalments of the Grant Funds) will immediately be at an end and, to the extent that any Grant Funds have been paid by the Grantor to the Organisation prior to termination of this Agreement, clause 6 will apply.

- (g) The Grantor is not liable for any claim, loss or damage arising out of or in connection with any accident or negligence which occurs in the course of the performance of the Activity.
- (h) If the Organisation leases the land, the Organisation must strictly comply with the terms and conditions of the Lease and must not do anything which may render the lease liable to be terminated, forfeited or to otherwise come to an end.

### Item 5 Policies, legislation and other agreements

The Organisation agrees to comply with the provisions of the following during the Term:

- (a) the Department of Communities or Government policies set out below:
  - (i) Liveable Housing Australia (LHA) Liveable Housing Design Guidelines – Silver Level; and
  - (ii) any other policies advised to the Organisation by the Grantor from time to time;
- (b) any requirement of any relevant Law, including without limitation:
  - (i) the provisions of the *Jobs Act 2017 (WA)* and, without limiting any of its statutory obligations under that legislation or under this Agreement, the Organisation must submit an annual report on workforce participation as and when requested by the Department of Jobs, Tourism, Science and Innovation; and
  - (ii) the provisions of the *Equal Opportunity Act 1984 (WA)* and any other legislation or Government policies designed to promote equality. The Organisation must ensure substantive equality in its practices and service delivery and make certain that all aspects of the Activities are sufficiently tailored to meet the needs of Western Australia's diverse community including, without limitation, individuals and groups from Aboriginal and ethnic and social minorities; and
  - (iii) comply with all relevant Australian Standards and Building Codes, including the National Construction Code, Disability (Access to Premises - Buildings) Standards 2010, *Health Act 1911 (WA)* and all Occupation Health and Safety laws.

The Organisation also agrees to provide to the Grantor, promptly after request, evidence that the Contractor, any other contractor engaged by the Organisation in connection with the Activity, and their subcontractors have been paid all amounts then due and owing to them in connection with the performance by them of any Works relating to the Activity.

### Item 6 Land

The land commonly known as [insert address] and being Lot [insert] on Plan/Diagram/Deposited Plan [insert] and being all of the land comprised in certificate of title volume [insert] folio [insert].

### Item 7 Notice Addresses

<b>Grantor:</b>	Housing Authority
<b>Registered Mail:</b>	5 Newman Court, Fremantle, WA, 6160 Postal Address: Locked Bag 5000, Fremantle WA 6959
<b>Contact:</b>	Monica Nichevich Program Director, Priority Projects and Program Management Office Housing and Homelessness

<b>Email:</b>	<a href="mailto:communityhousinggrants@communities.wa.gov.au">communityhousinggrants@communities.wa.gov.au</a>
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<b>Organisation:</b>	[insert details]
<b>Registered Mail:</b>	[insert details]
<b>Contact:</b>	[insert details]
<b>Email:</b>	[insert details]

# Schedule 2– Grant Funds

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## Item 1 Amount of Grant Funds

The Grant Funds is a total amount of [amount in words] (amount in figures \$) (inclusive of GST) payable in instalments as set out in the payment schedule at Item 5 below.

## Item 2 Exclusions

Grant Funds cannot be used or applied by the Organisation for:

- (a) Purchase of land;
- (b) To pay rent or outgoings under any lease of the Land;
- (c) Tenant relocation costs;
- (d) ICT Costs;
- (e) Housing that is not for the purpose of accommodating Aboriginal Employees of the Organisation;
- (f) Non-fixed furniture/fit-out;
- (g) Funding for property or tenancy management services; or
- (h) Staff salaries and training.

## Item 3 Invoicing

The payment of the Grant Funds, or each tranche of the Grant Funds, will only be made in accordance with the payment schedule set out in Item 5 of this Schedule 2 within 30 days of submission by the Organisation of a correctly rendered invoice.

To be correctly rendered, the invoice must:

- (a) be emailed as a PDF to the Grantor's contact for processing and payment [communityhousinggrants@communities.wa.gov.au](mailto:communityhousinggrants@communities.wa.gov.au);
- (b) contain the following information:
  - (i) the Organisation's business name;
  - (ii) the Organisation's Australian Business Number (ABN);
  - (iii) the words Tax Invoice;
  - (iv) Invoice number;
  - (v) Invoice date;
  - (vi) Details of the construction milestone which has been achieved (and attach evidence of the same);
  - (vii) Amount of the Grant Funds applicable to the relevant construction milestone;
  - (viii) Amount of GST (only applicable if registered for GST)
- (c) allow for EFT (electronic funds transfer)



#### Item 4 Payment of Grant Funds

The Organisation's Bank Details for the deposit of the Grant Funds is:

<b>Financial Institution</b>	[insert details]
<b>BSB Number</b>	[insert details]
<b>Account Number</b>	[insert details]
<b>Account Name</b>	[insert details]

#### Item 5 Payment Schedule

[Select appropriate table, depending on the size of the Grant Funds]

<b>Milestone*</b>	<b>Anticipated Date</b>	<b>Portion of Grant Funds Payable and Amount</b>
Execution of the Grant Agreement, and confirmation of satisfaction of the condition set out in clause 3(a)(i)	[insert]	[20]% of Grant Funds
Confirmation of Contractor appointment, supported by appropriate documentation	[insert]	[20]% of Grant Funds
Completion of 50% of the Works	[insert]	[25]% of Grant Funds
Completion of 75% of the Works	[insert]	[25]% of Grant Funds
Completion of the Works	[insert]	[10]% of Grant Funds
<b>TOTAL AMOUNT</b>		[insert]

<b>Milestone*</b>	<b>Anticipated Date</b>	<b>Portion of Grant Funds Payable and Amount</b>
Execution of the Grant Agreement and confirmation of satisfaction of the conditions set out in clauses 3(a)(i)	[insert]	[20]% of Grant Funds
Completion of 50% of the Works	[insert]	[50]% of Grant Funds
Completion of the Works	[insert]	[30]% of Grant Funds
<b>TOTAL AMOUNT</b>		[insert]

\*Subject to submission by the Organisation of a correctly rendered invoice as required by Item 4 of this Schedule 2 and evidence, which is satisfactory to the Grantor, that the relevant milestone has been achieved.

# Schedule 3– Details of Activity

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## Item 1 Summary of Activities to be Delivered

- (a) The Organisation will:
  - (i) refurbish the Dwellings on the Land, which must be located in the Pilbara or Kimberley regions of Western Australia;
  - (ii) solely use the Grant Funds to pay capital costs associated with the Works;
  - (iii) in the event that the Grant Funds are not sufficient to complete the Activities, complete the Activities at its own cost, notwithstanding any assumptions made regarding the cost of carrying out the Activities prior to entry into the Agreement.
- (b) Refurbishment of the dwellings to be completed by no later than 31 October 2026.
- (c) The requirements and obligations under this Schedule 3 may be subject to variation in accordance with clause 5.10 of this Agreement.
- (d) Where an activity or service outlined or listed in any other document, including the grant application process, conflicts with or differs from any provision of this Schedule 3, the provisions and requirements of this Schedule 3 will prevail.

## Item 2 The Works

- (a) The Works to be performed including the scope of them are set out in **Annexure A** to this Agreement.

## Item 3 Management of the Works

- (a) The Organisation shall have full responsibility for managing the delivery of the Works.
- (b) The Organisation shall engage suitably qualified and experienced contractors who have the appropriate technical certifications and where necessary, licensed to carry out any licensed trades.
- (c) In performing its obligations under Schedule 3, Item 3(a) , the Organisation shall:
  - (i) nominate a person within the Organisation to be a point of contact and have overall responsibility for communications with, and reporting to, the Grantor with respect to the Works;
  - (ii) provide sufficiently detailed updates on the progress of the Works at requested periodic intervals upon the Grantor's request, from the date of this Agreement to the completion of the Works including as to the rectification of any defects; and
  - (iii) procure the undertaking and completion of the Works, enter into any contracts with respect to the Works including the Construction Contract, and obtain all necessary Approvals.
- (d) A maximum amount of 5% of the Grant Funds may be spent by the Organisation for the procurement of external professional consultancy services, such as project management costs, with the Grantor's prior written approval.

# Schedule 4 – Reporting Requirements

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## Item 1 Financial and Performance Reporting Requirements

- (a) The Organisation is to provide to the Grantor, on request during the Term:
- (i) evidence of the insurance policies (referred to in clause 8);
  - (ii) evidence of compliance with any necessary police checks;
  - (iii) a copy of the Construction Contract within three (3) of the Agreement Date, and any other contract(s) entered into by the Organisation in relation to the Activities; and
  - (iv) receipts and/or invoices for payments made by the Organisation under the Construction Contract or any other contract entered into by the Organisation relating to the Activities.
- (b) The Organisation is to provide the Grantor with the following reports on a **bi-monthly basis (i.e. every two months)**, or as determined from time to time by the Grantor, until completion of the Works:
- (i) Financial report (certified by the Chief Financial Officer of the Organisation).
  - (ii) Progress report showing how and to what extent the Grant Funds were spent, the extent to which any specified milestones were achieved, any milestones which are expected to be achieved in the next reporting period, any actual or potential risks and issues which have been identified and which may impact on the Activities being completed in accordance with the requirements of this Agreement, and any changes (actual or proposed) to the delivery timeframes, costs or scope of the Works.
- (c) Upon completion of the Works, the Organisation is to provide, as soon as practicable but within 3 months of the last financial report provided under Item 1(b) above, to the Grantor a final report on the Grant Funds expenditure ("**Final Acquittal Report**") that shall include:
- (i) Financial report (certified by the Chief Financial Officer of the Organisation) and audited in accordance with clauses 13(c) and 13(d) (**Final Financial Report**).
  - (ii) A final progress report showing how and to what extent the Grant Funds were spent and the Works completed (**Final Progress Report**).
- (d) A Financial Report, including the Final Financial Report, shall include to the extent relevant:
- (i) Total Grant Funds for the current financial year.
  - (ii) Balance brought forward from previous reporting period, if any.
  - (iii) Total committed in the current period.
  - (iv) Actual payments made.
  - (v) Initial estimated cost of the Activity.
  - (vi) Amount of interest earned.
  - (vii) Forecast cost to complete the Activity.
- (e) A Progress Report, including the Final Progress Report, shall include to the extent relevant:
- (i) Milestones/achievement targets for the reporting period.

- (ii) Milestone/actual achievements for the reporting period.
  - (iii) Explanation of variances between target and actual achievements, including impediments encountered, action taken to overcome these and potential future impediments if any.
- (f) The Organisation is to provide to the Grantor, on request following Acquittal and for so long as the Organisation has any obligations under this Agreement, including without limitation pursuant to item 4 of Schedule 1, evidence of the insurance policies referred to in clause 8.
- (g) The Organisation is to provide, for the five (5) year period following Acquittal, a report yearly (at the end of each year) on the ongoing use of the Land (to enable the Grantor to understand and assess the social outcomes of the Program referred to in Background Recital A).

# Schedule 5 - Insurance

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The Organisation is required to effect and maintain for the Term of this Agreement and for so long as the Organisation has any obligations under this Agreement, including without limitation pursuant to item 4 of Schedule 1 (save and except for the policy referred to in item 5, which only needs to be effected whilst the Works are being constructed and for the policy referred to in item 6, which only needs to be effected from the date of practical completion of the Works), each and all of the following policies of insurance:

## Item 1 Public Liability Insurance

Public Liability Insurance covering the legal liability of the Organisation and Organisation's personnel arising out of the Activities and compliance with its obligations under this Agreement including without limitation pursuant to item 4 of Schedule 1, for an amount of not less than **twenty million dollars** (\$20,000,000) for any one occurrence and unlimited in the aggregate.

## Item 2 Professional Indemnity Insurance

- (a) Professional Indemnity Insurance covering the legal liability of the Organisation and the Organisation's personnel under the Agreement, arising out of any act, negligence, error or omission made or done by or on behalf of the Organisation, or any associate, agent or subcontractor in connection with this Agreement for a sum of **five million dollars** (\$5,000,000) for any one claim and in the annual aggregate, with a provision of one automatic reinstatement of the full sum insured in any one period of insurance.
- (b) Professional Indemnity Insurance required under this clause must be extended to include:
  - (i) fraud, dishonesty, defamation, breach of confidentiality, infringement of patent, copyright, design, trademark or circuit layout rights;
  - (ii) loss of or damage to documents and data; and
  - (iii) breach of Chapters 2 and 3 of the *Australian Consumer Law* (WA).

## Item 3 Workers' Compensation Insurance:

Workers' Compensation Insurance in accordance with the provisions of the *Workers' Compensation and Injury Management Act 1981* (WA), including cover for common law liability for an amount of not less than **fifty million dollars** (\$50,000,000) for any one occurrence in respect of workers of the Organisation. The insurance policy must be extended to cover any claims and liability that may arise with an indemnity under Section 175(2) of the *Workers' Compensation and Injury Management Act 1981* (WA).

## Item 4 Motor Vehicle Third-party Insurance:

Motor Vehicle Third-party Insurance covering legal liability against property damage and bodily injury to, or death of, persons (other than compulsory third-party motor vehicle insurance) caused by motor vehicles used in connection with the Activity for an amount of not less than **thirty million dollars** (\$30,000,000) for any one occurrence or accident.

## Item 5 Contracts Works Insurance:

Contracts works insurance for not less than (a) the amount of the Grant Funds or (b) the full reinstatement or replacement cost of the Works and an amount to cover any necessary demolition and removal of debris (whichever is greater), which covers the Works (including

things in storage off the Land and in transit to the Land) against loss or damage against all usual insurable risks.

**Item 6 Building Insurance:**

Comprehensive building insurance to cover loss or damage to the Dwellings arising from damage caused by fire, lightning, explosion or earthquake, vandalism, storms or flooding and all other usual insurable risks.

**ANNEXURE “A”**

[insert details of the Works]



# Signing page

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**EXECUTED** as an agreement

**For and on behalf of the Grantor –**

**State of Western Australia represented by the Department of Communities:**

Executed for and on behalf of the **HOUSING  
AUTHORITY**, by:

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Signature of authorised officer

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Witness signature

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Name of authorised Officer (please print)

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Witness name (please print)

---

Position of authorised Officer

---

Witness position (please print)

**For and on behalf of the Organisation –**

[insert Organisation Name and appropriate execution clause

e.g. signing clause for company]:

Executed by **[ORGANISATION NAME]** )  
**[ABN]** in accordance with section 127 of )  
the *Corporations Act 2001* (Cth): )

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Signature of Authorised Officer

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Signature of Director/Secretary\*

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Name (please print)

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Name (please print)

*\*Delete as applicable or specify if sole director/secretary*

**[Drafting Note: this is a suggested signature clause only – to be amended as required.]**